

**Before the  
Federal Communications Commission  
Washington, DC 20554**

<b>In the Matter of</b>	)	
	)	
<b>Rules and Regulations Implementing the</b>	)	<b>CG Docket No. 02-278</b>
<b>Telephone Consumer Protection Act of 1991</b>	)	<b>FCC number 10-18</b>
	)	

**REPLY COMMENTS OF THE FINANCIAL SERVICES ROUNDTABLE,  
THE AMERICAN BANKERS ASSOCIATION,  
AND THE CONSUMER BANKERS ASSOCIATION**

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## EXECUTIVE SUMMARY

The initial comments in this proceeding overwhelmingly oppose the imposition of new, written consent obligations on automated, non-telemarketing calls to customer-provided wireless numbers, and demonstrate that the Commission's existing guidance concerning such calls has engendered legitimate, investment-based expectations that the Commission may not lightly ignore. In contrast, none of the comments suggests any sound legal or policy reason why those new obligations *should* be imposed. Accordingly, the Financial Services Roundtable ("FSR"),<sup>1</sup> American Bankers Association ("ABA")<sup>2</sup> and Consumer Bankers Association ("CBA")<sup>3</sup> urge the Commission to confirm its current guidance, which permits businesses to make autodialed and artificial or prerecorded voice calls to wireless numbers that the called parties have voluntarily provided to those businesses. Efficient, effective communications are essential if financial institutions are to serve their customers and comply with their regulatory obligations; therefore, we oppose the imposition of unnecessary and disruptive change to the Commission's longstanding guidance governing automated non-marketing calls to cellular phones.

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<sup>1</sup> The Financial Services Roundtable is an association of financial services companies providing banking, insurance, and investment products and services to the American consumer. Roundtable member companies provide fuel for America's economic engine, accounting directly for \$74.7 trillion in managed assets, \$1.1 trillion in revenue, and 2.3 million jobs.

<sup>2</sup> The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's \$13 trillion banking industry and its two million employees.

<sup>3</sup> The Consumer Bankers Association is the only national financial trade group focused exclusively on retail banking and personal financial services – banking services geared toward consumers and small businesses. CBA provides leadership, education, research and federal representation on retail banking issues. CBA members include most of the nation's largest bank holding companies, as well as regional and super-community banks that collectively hold two-thirds of the industry's total assets.

In addition, the FSR, ABA and CBA urge the Commission not to adopt the proposed rule subject to the narrower relief requested by some comments, which would create exceptions from the written consent requirement for some non-telemarketing calls but not others. Although those requests for relief are meritorious, they effectively will be granted by the more appropriate decision to decline to adopt the proposed rule.

Finally, a number of substantive comments support the view of the undersigned that the definition of an automatic telephone dialing system, for purposes of the Telephone Consumer Protection Act (“TCPA”), should be confined to equipment that stores and dials telephone numbers sequentially or at random. None of the comments offers substantive reasons why this clarification should not be adopted. Accordingly, the FSR, ABA and CBA renew their request that this clarification be included in the order that results from this proceeding.

## **DISCUSSION**

### **I. THE COMMENTS OVERWHELMING SUPPORT RETENTION OF THE COMMISSION’S CURRENT GUIDANCE CONCERNING AUTOMATED CALLS TO WIRELESS NUMBERS**

In our comments filed on May 21, 2010, the FSR, ABA and CBA pointed out that autodialed and prerecorded voice calls (a category referred to collectively in our comments, for convenience, as “automated” calls) have become a critical channel for non-telemarketing communications between financial services institutions and their customers.<sup>4</sup> The purposes served by these calls include fraud prevention and protection, avoidance of late fees, prevention of defaults and foreclosures, responses to service

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<sup>4</sup> Comments of the Financial Services Roundtable, the American Bankers Association, and the Consumer Bankers Association (CG Docket No. 02-278, May 21, 2010)(referred to herein as “our comments” or “FSR/ABA/CBA Comments”).

inquiries, prevention of lapses in insurance coverage, and protection from life-threatening disasters.<sup>5</sup> As our initial comments also explained, calls to wireless numbers account for a rapidly increasing percentage of these vital communications as more and more consumers are part of “wireless-only” households.<sup>6</sup> Our comments also explained how adoption of the proposed written consent requirement for automated calls to customer-provided wireless numbers would increase the cost of these beneficial calling programs and require many of them to be abandoned altogether.<sup>7</sup>

The beneficial, pivotal role that automated wireless communication – both vocal and text – plays in the consumer financial services market was confirmed and reinforced in the Reply Comments of the Board of Governors of the Federal Reserve staff filed on June 8, 2010. The Board staff explained, at length, its concern that adoption of the proposed rule would “restrict a financial institution’s ability to contact the consumer in circumstances which may benefit, the consumer, such as to prevent fraud or identity theft or to comply with other legal requirements.”<sup>8</sup> The Board staff has essentially endorsed the position of the FSR, ABA and CBA and asked the Commission not to adopt the proposed rule in its present form.<sup>9</sup>

These comments combined with those filed by other parties in this proceeding show that the concerns expressed in our comments are shared, not only by financial institutions, but by a wide range of businesses and organizations representing many segments of the U.S. economy and government. In fact, at least 50 of the comments

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<sup>5</sup> *Id.* pp. 4-10.

<sup>6</sup> *Id.* pp. 11-12.

<sup>7</sup> *Id.* pp. 13-16.

<sup>8</sup> Reply Comments of Staff of Board of Governors of Federal Reserve System (“Federal Reserve Staff Comments”)(CG Docket No. 02-278, June 8, 2010) pp. 1-2.

<sup>9</sup> *Id.* pp. 4-5.

submitted to the Commission expressly oppose the proposed written consent requirement, and described longstanding practices that are based upon existing Commission guidance concerning calls of this kind.<sup>10</sup>

The breadth of the *applications* for automated wireless communications illustrated by the comments demonstrates the importance of a similarly comprehensive rule for *preserving* these forms of beneficial automated communication. Carving out a patchwork of enumerated, specialized exceptions to an overbroad prohibition would result in a compliance nightmare burdensome to consumers and service providers alike – a burden that is more likely to enrich lawyers than to protect consumers. No piecemeal solution could match the pace of innovation in automated wireless applications needed to fulfill the needs of an increasingly mobile citizenry.

As the United States Supreme Court pointed out in last years' *Fox Television Stations* decision, an agency must provide a “detailed justification” for a change of policy when “its prior policy has engendered serious reliance interests that must be taken into account.”<sup>11</sup> As the comments of the FSR, ABA and CBA along with the 50 additional comments described in the Attachment illustrate, there is expansive and substantial reliance on the existing policy position of the Commission. The radical new path proposed by the Commission is therefore not supported by this record. Rather than embark on such a disruptive departure from the steady course already laid out, refinement of efforts to harmonize the TCPA with the telemarketing focus of the TSR is all that is necessary for the Commission to preserve the privacy protections contemplated by

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<sup>10</sup> For a summary of those filings, *see* the Attachment to these Reply Comments.

<sup>11</sup> *Federal Communications Commission v. Fox Television Stations, Inc.*, 556 US \_\_\_\_, 129 S.Ct. 1800, 1810 (2009), citing *Smiley v. Citibank (South Dakota), N.A.*, 517 US 735, 742 (1996).

Congress and to maintain the beneficial reliance interests engendered by the soundness of its existing guidance. Consequently, the Commission should reconfirm the reasonable guidance it already has provided, which construes the customer's voluntary act of providing a wireless contact number to a business as prior express consent to receive calls from that business at the number provided.<sup>12</sup>

## **II. THE COMMENTS IN OPPOSITION TO THE COMMISSION'S CURRENT GUIDANCE ARE WITHOUT MERIT**

In contrast to the overwhelming opposition, only a handful of substantive comments supported the proposal. The principal such comments were those of the National Consumer Law Center ("NCLC") and the Consumer Litigation Group ("CLG"), neither of which offered sufficient legal or policy grounds for adoption of the proposed rule and abandonment of longstanding Commission guidance.<sup>13</sup>

Specifically, both the NCLC and CLG comments are directed entirely at the debt collection industry, and argue that automated calling by that industry is especially subject to abuse. The NCLC argues that debt collection calls are "intrusive, abusive, and objectionable," and that collection calls find consumers in "circumstances where privacy and avoidance of intrusion is particularly important."<sup>14</sup> The CLG focuses on the problem

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<sup>12</sup> FSR/ABA/CBA Comments, pp. 17-23.

<sup>13</sup> Comments of the National Consumer Law Center, on behalf of its Low-Income Clients (CG Docket No. 02-278, May 21, 2010)("NCLC Comments"); Comments of Consumer Litigation Group (CG Docket No. 02-278, May 21, 2010)("CLG Comments"). The Michigan Public Service Commission also agreed with the Commission's proposal, but offered no arguments in support of that position. Comments of the Michigan Public Service Commission (CG Docket No. 02-278, May 21, 2010) p. 6.

<sup>14</sup> NCLC Comments, *supra* pp. 7-9.

of debt collection calls to persons at numbers to which the debtor's telephone service is no longer assigned.<sup>15</sup>

The present rulemaking is not the forum in which the issues raised by those commenters should be decided. Congress has expressly assigned the regulation of debt collection to the Fair Debt Collection Practices Act ("FDCPA"), which was designed to protect consumers when communicating with debt collectors and to provide remedies for abusive collection practices.<sup>16</sup> Significantly, Congress addressed the consumer's right to privacy in the FDCPA, empowering a consumer to invoke his or her right to stop all communications by a debt collector.<sup>17</sup> Accordingly, regulation of debt collection by the Commission, as requested by the NCLC and CLG, would be disruptive, potentially contradictory and unnecessary.

Moreover, the NCLC's arguments about the intrusiveness of debt collection calls made to cellphones ignore the fact that financial institutions are only using autodialers to call those wireless phone numbers that a consumer has provided to the creditor, as permitted by the *ACA Declaratory Ruling*.<sup>18</sup> As the Commission recognized in 2008, nothing in the legislative history suggests that Congress intended the TCPA to be used as a shield against communications between a creditor and its customers concerning a past

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<sup>15</sup> CLG Comments, *supra*.

<sup>16</sup> *See* 15 U.S.C. § 1692.

<sup>17</sup> *Id.* § 1692c(c). Also, the Fair Debt Collection Practices Act prohibits debt collectors from communicating with debtors at any "time or place known or which should be known to be inconvenient to the consumer." *Id.* § 1692c(a)(1). Thus, if the debtor tells the debt collector that the debtor is engaged in a high risk activity, the debt collector may be obligated by the FDCPA to terminate the call.

<sup>18</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 23 FCC Rcd 559 (2008).

due obligation. Indeed, as the report of the House Committee on Energy and Commerce clearly states:

The restriction on calls to emergency lines, pagers, and the like does not apply when the called party has provided the telephone number of such line to the caller for use in normal business communications. *The Committee does not intend for this restriction to be a barrier to the normal, expected or desired communications between businesses and their customers.* For example, a retailer, insurer, banker or other creditor would not be prohibited from using an automatic dialer recorded message player to advise a customer (at the telephone number provided by the customer) that an ordered product had arrived, a service was scheduled or performed, *or a bill had not been paid.*<sup>19</sup>

Since the enactment of the TCPA, the Commission has consistently recognized the unequivocal intent of Congress that autodialed calls to consumers to notify them of overdue bills do not infringe the privacy rights Congress sought to protect.

To conclude otherwise would significantly harm both private and public debt collection programs, further straining our distressed economy. *Ex parte* notices filed by the Financial Management Service of the Department of the Treasury (“FMS”) and the Department of Education described their concerns with the proposed written consent requirement.<sup>20</sup> FMS pointed out that it is tasked with the federal government’s debt collections for all agencies except the Internal Revenue Service, and relies heavily on private sector debt collection professionals employing autodialer technology to support these efforts.<sup>21</sup> The Department of Education explained its interest in successfully collecting student loans made under Title VI of the Higher Education Act of 1965, noting the increased proportion of student loan borrowers who can only be contacted at wireless

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<sup>19</sup> H.R. REP. 102-317 (Nov. 15, 1991)(*emphasis added*).

<sup>20</sup> These filings also are described in the Attachment to these Reply Comments.

<sup>21</sup> *Ex Parte* Notice of the Department of the Treasury, Financial Management Service (CG Docket No. 02-278, May 21, 2010).

telephone numbers.<sup>22</sup> Clearly, the annual recovery of billions of dollars owed to the federal government would be made considerably less efficient if the Commission adopted the proposed rule, negatively impacting the federal deficit and our economic recovery. Moreover, as explained in our initial comments, adoption of the proposed written consent requirement for autodialed calls to customer-provided mobile numbers will impede industry efforts to reach out to consumers experiencing financial hardship to offer mortgage modifications or to offer alternative payment plans for other consumer loans. Administration efforts to stabilize the housing market and strengthen the domestic economy will be seriously undermined by adoption of the proposed rule.

Fundamentally, congressional recognition of TCPA privacy rights applicable to mobile telephone customers was intended to provide choice of contact, not isolation from contact. Those who elect to conduct telecommunications solely by cell phone, or who choose to identify mobile telephone numbers as their preferred method of contact in dealing with service providers, have exercised the privacy choice protected by the TCPA. Making that choice more burdensome and less efficient is not an appropriate policy path for the Commission to follow. Rather than adopt the proposed rule as written, or adopt the rule subject to unworkable exceptions, we urge the Commission simply to decline to adopt the rule at all.

### **III. THE COMMENTS DEMONSTRATE THE NEED FOR CLARIFICATION OF THE AUTODIALER DEFINITION**

As the FSR, ABA and CBA pointed out in their initial comments, the Telephone Consumer Protection Act defines an automatic telephone dialing system as “equipment

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<sup>22</sup> *Ex Parte* Notice of the Department of Education (CG Docket No. 02-278, May 21, 2010).

which has the capacity – (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers.”<sup>23</sup> As our comments also point out, the intention of this definition is clear: it is intended to control the use of technologies that do not merely facilitate dialing of numbers stored in databases compiled for a specific purpose (such as lists of numbers of a business’s existing customers), but that create numbers at random or in sequence.

A number of commenters agree with our concern that by sweeping devices into the definition that merely automate the dialing of calls contained in databases of numbers that were not generated by a random or sequential algorithm, the Commission has adopted an interpretation of “automatic telephone dialing system” that ignores the narrow statutory definition in favor of a definition that is essentially boundless.<sup>24</sup> We urge the Commission to give careful consideration to those comments, and also note that no substantive filings in this proceeding have provided any basis for not granting the clarification of the autodialer definition we have requested. Accordingly, the record in this proceeding fully supports that relief.

## CONCLUSION

The comments in this proceeding, coming as they do from every segment of the U.S. economy and even from agencies of the government, show that the world has changed dramatically since the TCPA was enacted. Notably, automated voice and text messages to mobile devices now are a mainstay of consumer communications for a range

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<sup>23</sup> 47 U.S.C. § 227(a)(1).

<sup>24</sup> ACA International’s Comment to Proposed Amendments to the Telephone Consumer Protection Act Regulations, pp. 66-69; Comments of National Retail Federation, p. 3; Comments of JPMorgan Chase & Co., pp. 17-20; Comments of Wells Fargo & Co., pp. 19-21 (all CG Docket No. 02-278, May 21, 2010).

of purposes that could not have been envisioned in 1991. Adoption of a rule that ignores these developments and turns back to the clock to a landline world will prove profoundly costly, disruptive and harmful to consumers. The record in this proceeding offers no support for such a decision, and we urge the Commission to reconsider its tentative conclusion that such a decision is appropriate.

Respectfully submitted,

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June 21, 2010

**Attachment to Reply Comments of the Financial Services Roundtable, American Bankers Association and Consumer Bankers Association in CG Docket No. 02-278 (June 21, 2010)**

The sectors of government and the economy opposing the written consent requirement for automated calls to customer-provided mobile telephone numbers, and the specific concerns they have expressed, include the following:<sup>25</sup>

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<sup>25</sup> Comments/Ex Parte Notice of United States Department of the Treasury, Financial Management Service, (“Department of Treasury Comments”); Comments/Ex Parte Notice of United States Department of Education (“Education Department Comments”); Reply Comments of Staff of Board of Governors of Federal Reserve System (“Federal Reserve Staff Comments”); Comments of JPMorgan Chase & Co. (“JPMorgan Comments”); Comments of Newspaper Association of America (“NAA Comments”); ACA International’s Comment to Proposed Amendments to the Telephone Consumer Protection Act Regulations (“ACA Comments”); Comments of Wells Fargo & Co. (“Wells Fargo Comments”); Comments of kgb USA, Inc. (“kgb Comments”); Comments of Bank of America (“Bank of America Comments”); Comments of National Retail Federation (“Retail Federation Comments”); Comments of the Marketing Research Association (MRA)(“MRA Comments”); Comments of International Bank of Commerce (“IBC Comments”); Comments of Portfolio Recovery Associates, LLC (“Portfolio Recovery Associates Comments”); Comments of Mortgage Bankers Association (“MBA Comments”); Comments of PayPal, Inc. (“PayPal Comments”); Comments of National Association of Chain Drug Stores (“NACDS Comments”); Comments of Bill Me Later, Inc. (“BMLI Comments”); Comments of Career College Association (“CCA Comments”); Comments of American Financial Services Association (“AFSA Comments”); Comments of National Retail Federation (“Retail Federation Comments”); Comments of American Council of Life Insurers (“ACLI Comments”); Comments of DIRECTV, Inc. (“DIRECTV Comments”); Reply [sic] Comments of the Alarm Industry Communications Committee (“Alarm Industry Comments”); Comments of Walgreen Company (“Walgreen Comments”); Comments of Soundbite Communications (“Soundbite Comments”); Comments of the CBE Group, Inc. (“CBE Comments”); Comments of the National School Boards Association (“NSBA Comments”); Comments of USAA (“USAA Comments”); Comments of Arbitron Inc. (“Arbitron Comments”); Comments of the United States Telecom Association (“USTA Comments”); Comments of the American Teleservices Association (“ATSA Comments”); Comments of Sprint Nextel Corporation (“Sprint Nextel Comments”); Comments of Medco Health Solutions, Inc. (“Medco Comments”); Comments of Online Lenders Alliance (“OLA Comments”); Comments of the Progressive Group of Insurance Companies (“Progressive Comments”); Comments of West Corporation (“West Comments”); Comments of Macy’s, Inc. (“Macy’s Comments”); Comments of Discover Bank (“Discover Comments”); Comments of DBA International (“DBA Comments”); Comments of State Farm Insurance Companies (“State Farm Comments”);

## 1. Federal Government Agencies

The Financial Management Service of the Department of the Treasury and the Department of Education met separately with Commission personnel prior to the deadline for filing of comments, and filed written *ex parte* notices that explained the concerns of those federal agencies with the proposed written consent requirement. In addition to those filings, the staff of the Board of Governors of the Federal Reserve System filed reply comments with the Commission on June 8, 2010.<sup>26</sup>

Notably, the Financial Management Service pointed out that it is tasked with the federal government's debt collections for all agencies except the Internal Revenue Service, and relies heavily on private sector debt collection professionals to support those efforts.<sup>27</sup> The Department of Education explained its interest in successfully collecting student loans made under Title VI of the Higher Education Act of 1965, and the increasing proportion of student loan borrowers who can only be contacted at wireless

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Comments of SCI Management ("SCI"); Comments of TRS Recovery Services, Inc., subsidiary of First Data Corporation ("TRS Comments"); Comments of Citigroup Inc. ("Citi Comments"); Comments of MessageBroadcast.com ("MessageBroadcast Comments"); Comments of the National Association of Mutual Insurance Companies ("NAMIC"); Comments of Independent Bankers Association of Texas ("IBAT Comments"); Comments of MDS Communications, Inc. ("MDS Comments"); Comments of Education Finance Council ("EFC Comments"); Comments of SmartReply ("SmartReply Comments"); Comments of the Student Loan Servicing Alliance (SLSA) and the SLSA Private Loan Committee ("SLSA Comments"); Comments of Visa Inc. ("Visa Comments"); Comments of America's Health Insurance Plans ("AHIP Comments"); Comments of DMAA: the Care Continuum Alliance ("DMAA Comments"); Comments of Education Sales Management ("ESM Comments"); Comments of World Financial Network National Bank ("WFNNB Comments"); Comments of Silverlink Communications, Inc. ("Silverlink Comments"), all filed in CG Docket No. 020278 on or before May 21, 2010 except the Federal Reserve Staff Comments, which were filed as reply comments on June 8, 2010.

<sup>26</sup> Federal Reserve Staff Comments, *supra*.

<sup>27</sup> Department of Treasury Comments, *supra*.

telephone numbers.<sup>28</sup> Both agencies explained that the proposed rule will significantly, and adversely, affect their ability to carry out their statutory responsibilities.

Finally, the staff of the Board of Governors of the Federal Reserve Board explained, at length, its concern that adoption of the proposed rule would “restrict a financial institution’s ability to contact the consumer in circumstances which may benefit the consumer, such as to prevent or identity theft or to comply with other legal requirements.”<sup>29</sup> Based upon those concerns, the staff of the Board of Governors of the Federal Reserve System has asked the Commission not to adopt the rule in its present form.<sup>30</sup>

## **2. Educational Institutions**

Education service providers and their representatives at all levels explained the adverse impact that the proposed rule would have on their operations. Notably, the National School Boards Association noted that “notifications about schedules, parent engagement activities, and school events” often must be placed to wireless devices, and that local schools could ill afford the costs of complying with the proposed rule before making those calls.<sup>31</sup> Similarly, the Career College Association pointed out that the proposed rule will interfere with communications with prospective or current students, including “upcoming deadlines such as registration for classes or submission of financial aid materials, . . . disbursement and collection of student loans or applying for admission to a postsecondary institution . . .”<sup>32</sup>

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<sup>28</sup> Education Department Comments, *supra*.

<sup>29</sup> Federal Reserve Staff Comments, *supra* at 1-2.

<sup>30</sup> *Id.* At 4-5.

<sup>31</sup> NSBA Comments, *supra*.

<sup>32</sup> CCA Comments, *supra*.

### **3. Communications Service Providers**

Comments from various sectors of the communications industry underscore the importance of convenient, low-cost communication with customers of that industry who have provided wireless contact numbers. DIRECTV, for example, emphasizes the importance of “installation reminders, service interruption/outage messages, and notices of resolved billing disputes.”<sup>33</sup> Similarly, Sprint Nextel points out that “it is essential for Sprint to be able to contact our customers using the numbers they have provided to us” for various purposes, including “service issues, outstanding bills, or for other account-related reasons.”<sup>34</sup> Finally, the United States Telecom Association describes other uses of automated communications in the telecommunications industry, including AT&T’s use of a text message to advise customers when a free trial period has expired, as needed to comply with a New York State consumer protection law.<sup>35</sup>

### **4. Retailers**

The comments of retail merchants and their representatives cited a number of purposes for which efficient, low-cost messages must be transmitted to customers and employees. Notably, Macy’s points out that customers need to be called about scheduling of furniture delivery dates, repairs and warranty services and surveys.<sup>36</sup>

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<sup>33</sup> DIRECTV Comments, *supra* at 2-3.

<sup>34</sup> Sprint Nextel Comments, *supra* at 5. We express no opinion on Sprint Nextel’s request that the Commission retain its standing exemption for “communications between a wireless carrier and its customers when the subscriber is not charged for the call.” *Id.* at 3. However, the customer communications to which Sprint Nextel refers, like other customer service communications between companies in other industry segments and their customers, lend additional support to the general principle that businesses should be permitted to contact customers by automated means at wireless numbers those customers have provided.

<sup>35</sup> USTA Comments, *supra* at 6.

<sup>36</sup> Macy’s Comments, *supra* at 5.

According to Macy's, retailers also use automated calling to thousands of employees when a workplace is suddenly closed, to remind employees of benefit enrollment deadlines or to "remind employees to use funds in their flexible spending accounts before those accounts expire."<sup>37</sup> Similarly, Walgreens uses prerecorded calls to tell pharmacy customers that their medications are ready to be picked up, or to inform customers of possible drug interactions or recalls.<sup>38</sup> Also, the National Association of Chain Drug Stores points out that its members use automated messaging for "drug recall alerts," to advise customers that "their prescription requires doctor approval, that there [are] insurance billing issues, and [to send] prescription refill reminders."<sup>39</sup> All of these worthwhile uses of automated calling and messaging are likely to be curtailed or eliminated if the proposed rule is adopted.

## **5. Polling and Research Organizations**

Organizations that conduct surveys and opinion research, and their representatives, filed comments that demonstrated the unintended consequences a rule of the kind the Commission proposes can have for an important industry that serves both public and private purposes. Notably, the Marketing Research Association pointed out that much research and opinion polling is rendered useless or threatening to privacy if made to depend upon manual calling or obtaining, prior written consent.<sup>40</sup> Notably, time-sensitive political polling cannot be usefully conducted if manual means must be used to conduct those polls.<sup>41</sup> Also, because the proposed consent requirements will fall

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<sup>37</sup> *Id.*

<sup>38</sup> Walgreens Comments, *supra* at 2.

<sup>39</sup> NACDS Comments, *supra* at 2.

<sup>40</sup> MRA Comments, *supra*.

<sup>41</sup> *Id.* at 4.

disproportionately on mobile phone users, polls and surveys that must reach a representative sample of the population will be skewed in favor of groups that are less likely to have cut the cord with landline service.<sup>42</sup> Finally, the requirement of prior written consent will deprive persons who are surveyed of the privacy they often demand if they are to respond honestly, or at all, to polling and survey questions.<sup>43</sup> Arbitron also describes in persuasive detail the obstacles that the rule will pose to its media survey techniques, which will suffer both in accuracy and efficiency if the proposed rule is adopted.<sup>44</sup>

## **6. Other Industries and Organizations**

Besides the segments of government and the economy already mentioned, a number of companies and organizations filed comments that explore the harmful, and needless, consequences for their legitimate activities if the proposed rule is adopted. Those commenters include organizations as diverse as debt collection agencies,<sup>45</sup> funeral directors,<sup>46</sup> providers of call automation equipment and services,<sup>47</sup> alarm companies<sup>48</sup> and nonprofits.<sup>49</sup> The variety of the interests represented in these comments demonstrates that the proposed rule, if adopted, will have repercussions throughout the fragile economy of the United States.

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Arbitron Comments, *supra*.

<sup>45</sup> See TRS Comments; DBA Comments; CBE Comments; Portfolio Recovery Associates Comments; ACA International Comments; all *supra*.

<sup>46</sup> SCI Management Comments, *supra*.

<sup>47</sup> SmartReply Comments; MessageBroadcast Comments; Soundbite Comments; ATSA Comments; all *supra*.

<sup>48</sup> AICC Comments, *supra*.

<sup>49</sup> MDS Communications Comments, *supra*.