

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 )  
Rules and Regulations Implementing the ) CG Docket No. CG 02-278  
Telephone Consumer Protection Act of 1991 )  
 )  
Petition for Declaratory Ruling of a Coalition )  
of Mobile Engagement Providers )

To: The Commission

**COMMENTS OF THE RETAIL INDUSTRY LEADERS ASSOCIATION**

The Retail Industry Leaders Association (“RILA”) is writing in support of the Petition filed by the Coalition of Mobile Engagement Providers requesting the Federal Communications Commission (“FCC”) to explicitly declare that in those cases where a mobile marketer has, prior to October 16, 2013, already received a consumer’s consent in writing to receive certain mobile marketing communications, the consumer does not have to take additional steps in order to continue receiving those messages, and with respect to the existing consumers, the mobile marketer does not need to take steps to obtain the revised forms of written consent applicable to *new* customers starting October 16, 2013.<sup>1</sup> RILA supports the legal and policy arguments made by the Coalition in its Petition and respectfully urges the Commission to make the requested declaration expeditiously to promote certainty for retailers and others that operate in the mobile

---

<sup>1</sup> *A Coalition of Mobile Engagement Providers*, Petition for Declaratory Ruling, CG Docket No. 02-278 (filed Oct. 17, 2013) (“Petition”); *see also Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Declaratory Ruling From A Coalition of Mobile Engagement Providers*, Public Notice, CG Docket No. 02-278, DA 13-2118 (rel. Nov. 1, 2013)(“Public Notice”).

marketing space.

RILA is the trade association of the world's largest and most innovative retail companies. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs and more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad. RILA member contributions to the overall economic well-being of local, national and international economies are unparalleled.

As a trusted source to speak on behalf of leading retailers, RILA is committed to ensuring that lawmakers and regulators understand trends in the retail industry and how government decisions may intentionally or unintentionally impact retailers. Presently, throughout the retail industry, it has become increasingly common for consumers to demand and expect concierge-like service that allows them to make purchases on demand. To meet these higher expectations, many retailers are now converging brick-and-mortar outlets, eCommerce sites, social media sites and mobile applications to deliver a single, unified marketplace. Further, retailers now routinely seek out new ways to deliver top-flight experiences with sophisticated programs in order to match consumer preferences. These experiences may include loyalty and rewards programs, discount cards, receipt messaging, personalized messaging (in offline, online and mobile contexts), receipt-less returns, express checkout, and no-line and no-wait purchases.

One of the most important ways retailers meet these increased consumer expectations for value, personalization, and convenience is through the use of text-based messaging. While mobile marketing messaging is an especially effective tool given the simultaneous rise in consumer demand for personalized retail experiences with consumer reliance on mobile devices, a retailer following mobile marketing industry guidelines will only send mobile marketing

messages to a consumer after – and only after – a consumer initiates the text relationship through a structured, verifiable opt-in process. These strict industry guidelines require that consumers must initiate this opt-in process, receive clear and accurate disclosures, and be free to easily opt-out of receiving marketing messages at any time for any reason.<sup>2</sup> This process protects consumers by ensuring they have full control over the marketing messages they receive and understand at the outset what they are opting-in to, while at the same time providing a convenient and accessible communication path for consumers to receive greater value and personalized offers from their favorite brands. Due to the very structured nature of the opt-in process, retail companies have spent years and substantial resources in developing and maintaining their customer subscriber lists based on these express opt-ins.

Given that consumers who have opted-in to receiving mobile marketing messages have already provided unambiguous, written consent that fulfills the same objectives of the revised TCPA rules, RILA respectfully urges the Commission to confirm explicitly that the new TCPA prior express written consent rules do not nullify the written consents that consumers already provided before October 16, 2013, to receive mobile marketing messages. This explicit declaration is critical to ensure that consumers who have already provided written consent are not confused by an additional opt-in request, and do not inadvertently opt-out of desired retail-related communications. In addition, this clarification will preserve the valuable subscriber lists being maintained by retailers that have already been created through the provision of written consent. Finally, an explicit clarification will eliminate any uncertainty over how the new rules impact written consent previously obtained from existing customers, thereby shielding retailers

---

<sup>2</sup> See CTIA, CTIA Compliance Assurance Solution Mobile Commerce Compliance Handbook (effective Aug 1, 2013), at page 5, Section B1, *available at* [http://wmcglobal.com/assets/ctia\\_handbook.pdf](http://wmcglobal.com/assets/ctia_handbook.pdf).

from expensive, meritless TCPA class action litigation based on any potential ambiguity in the revised rules.

Respectfully submitted,

A handwritten signature in cursive script that reads "Deborah White".

---

Deborah R. White  
General Counsel & Executive Vice President  
Retail Industry Leaders Association  
1700 N. Moore Street, Suite 2250  
Arlington, VA 22209

Dated: December 2, 2013