In the Matter of

Petition of Wells Fargo & Company for
Waiver of Section 64.1200(a)(4)(iv) of the
Commission’s Rules

CG Docket No. 02-278

CG Docket No. 05-338

REPLY COMMENTS OF WELLS FARGO & COMPANY IN SUPPORT OF ITS PETITION FOR RETROACTIVE WAIVER OF SECTION 64.1200(a)(4)(iv) OF THE COMMISSION’S RULES

Wells Fargo & Company (“Wells Fargo”), through counsel, respectfully submits these Reply Comments in support of its Petition for Waiver (“Petition”) asking that the Commission grant Wells Fargo a retroactive waiver of Section 64.1200(a)(4)(iv) of the Commission’s Telephone Consumer Protection Act (TCPA) rules with respect to any advertising facsimiles that were sent or may be alleged to have been sent by Wells Fargo with the recipient’s prior express invitation or permission, but that did not include the opt out notice specified in that rule.1

As the Commission found in the Order issued October 30, 2014 in the above-referenced dockets, there is good cause for such a waiver because of the “specific combination” of two factors: first, the inconsistent footnote in the Junk Fax Order that stated that the “opt-out notice requirement only applies to communications that constitute unsolicited advertisements;” and, second, a “lack of explicit notice” provided prior to the Junk Fax Order that the Commission

was considering an opt out requirement on fax advertisements sent with the prior express
invitation or permission of the recipient."² The Commission further found that such a waiver
served the public interest because the “reasonable confusion” surrounding the opt out notice
requirement left some businesses open to “potentially substantial damages” under the TCPA.”³

The Commission’s rationale for granting waivers to other entities pursuant to the Order
applies with equal force to Wells Fargo. Any potential noncompliance by Wells Fargo with the
opt out notice requirement was due to the “reasonable confusion” surrounding the opt-out notice
requirement and the “lack of explicit notice” that the Commission was considering that
requirement.⁴ And, as a nationwide financial institution, Wells Fargo is frequently the target of
TCPA litigation and faces ongoing risk of “potentially substantial damages” under the
TCPA.⁵ In sum, as established by the factors set forth in the Order, granting a waiver to Wells
Fargo is supported by good cause and is in the public interest.

Moreover, no commenter filed an opposition to the Petition. Accordingly, Wells Fargo
respectfully requests that the Commission grant Wells Fargo a retroactive waiver of Section
64.1200(a)(4)(iv) for any fax that was sent prior to April 30, 2015 with the invitation or
permission of the recipient but that did not include the opt out notice specified by that rule.

² Order ¶¶ 24-26 (the Commission found that the “specific combination” of these factors
“presumptively establishes good cause for retroactive waiver” of the opt out requirement); Rules
and Regulations Implementing the Telephone Consumer Protection Act of 1991, Junk Fax
Prevention Act of 2005, CG Docket Nos. 02-278, 05-338, Report and Order and Third Order on
³ Order ¶ 27.
⁴ Petition at 4.
⁵ Id. at 4-5, n. 17.
Respectfully submitted,

WELLS FARGO & COMPANY

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