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

In the Matter of

Rules and Regulations Implementing the
Telephone Consumer Protection Act of 1991

NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION
PETITION FOR WAIVER

The National Cable & Telecommunications Association (NCTA)\(^1\) hereby petitions on behalf of its members to be included in the group of entities eligible for the waiver of the Commission’s rules granted in the Commission’s recent action in the above-captioned proceeding, relating to the Commission’s rules and 2012 interpretation of the prior express written consent requirement in the Telephone Consumer Protection Act of 1991 (“TCPA”).\(^2\) In granting the waiver, the Commission recognized that the language of its 2012 decision promulgating the rules that required written consent both “caused confusion” and had the potential to subject entities to “pointless and expensive class action litigation.”\(^3\) As discussed below, this is no less true for NCTA’s members than it was for the entities for which the Commission granted the waiver. Accordingly, the Commission should, for the same reasons it granted the prior wavier and in the interest of equity, grant the same waiver for NCTA and its members, if not a blanket waiver for all entities subject to TCPA obligations.

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\(^1\) NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 80 percent of the nation’s cable television households and more than 200 cable program networks. The cable industry is the nation’s largest provider of broadband service after investing over $230 billion since 1996 to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to approximately 30 million customers.


\(^3\) Id.
As background, the 2015 TCPA Order granted retroactive and prospective waivers from the prior express written consent requirement, as promulgated by the Commission in 2012, to the Coalition of Mobile Engagement Providers, the Direct Marketing Association, and the Retail Industry Leaders Association (collectively, the “Original Petitioners”). The retroactive waiver provides relief from October 16, 2013, which was the effective date of the 2012 requirement, to the 2015 TCPA Order release date, which was July 10, 2015. The prospective waiver began on the 2015 TCPA Order release date of July 10, 2015, and will expire eighty-nine (89) days thereafter, or on October 7, 2015.

Subsequently, the National Association of Broadcasters (NAB) filed a petition with the Commission seeking the same relief for its members. NCTA, which also actively participated in this proceeding and is similarly situated to both NAB and the Original Petitioners, hereby formally requests such relief on behalf of its members. As explained herein, and as in the case of the Original Petitioners (and NAB), “good cause” exists for such a waiver.

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5 See 2015 TCPA Order ¶ 102.

6 See id.

7 See id.

8 See Nat’l Ass’n of Broadcasters (NAB) Petition for Retroactive Waiver, CG Docket No. 02-278 (filed Aug. 18, 2015) (“NAB Petition”). The Commission has since published and requested comments on the NAB petition, along with several other petitions seeking similar relief. See FCC, Public Notice, Consumer and Governmental Affairs Bureau Seeks Comment on Petitions for Retroactive Waiver Filed by the National Association of Broadcasters, F-19 Holdings, LLC, and Kale Realty, LLC, CG Dkt. No. 02-278, DA 15-1074 (rel. Sept. 25, 2015).

9 See, e.g., Letter from Stephanie L. Podey, NCTA, to Marlene H. Dortch, FCC, CG Dkt. No. 02-278 (Jun. 10, 2015); Letter from Stephanie L. Podey, NCTA, to Marlene H. Dortch, FCC, CG Dkt. No. 02-278 (May 20, 2015); Letter from Stephanie L. Podey, NCTA, to Marlene H. Dortch, FCC, CG Dkt. No. 02-278 (Apr. 25, 2014).

10 See 47 C.F.R. § 1.3.
As NAB explained in its petition, the Commission, in granting the Original Petitioners’ waivers, “recognized that the language in its 2012 TCPA Order, which established the October 16, 2013 date by which an additional prior express written notification was required for certain mobile telemarketing messages (including automated texts [sic] messages to mobile numbers), caused confusion for Petitioners.”11 Specifically, the Commission acknowledged that the language “could have reasonably been interpreted to mean that written consent obtained prior to the current rule’s effective date would remain valid even if it does not satisfy the current rule.”12 Like the Original Petitioners and NAB, NCTA’s members – and no doubt every other party to the proceeding – have faced similar confusion.

Moreover, the Commission noted that Original Petitioners needed time “to obtain new consents under the new rule without running the risk of being subjected to pointless and expensive class action litigation.”13 Many of NCTA’s members are already facing such litigation, and would benefit from both the added clarity granted by the waiver and the additional time granted for compliance with the prior written consent requirement.

NCTA’s members have suffered the same confusion, and are exposed to the same kind of “pointless and expensive class action litigation” as the Original Petitioners, and should accordingly receive the same relief. It is plain that failure to grant the waiver would result in “strict compliance inconsistent with the public interest,” while a grant would “better serve[] the public interest.”14

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11 See NAB Petition at 2 (citing 2015 TCPA Order ¶¶ 101-02).
12 2015 TCPA Order ¶ 101 (emphasis added).
13 Id. ¶ 102 (citing NAB Comments, CG Dkt. No. 02-278 (filed Dec. 2, 2013)).
14 Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969)).
Even though the prospective 89-day waiver granted to the Original Petitioners will expire on October 7, 2015 – a date that may come and go before the Commission acts upon this request\(^\text{15}\) – there is benefit to granting a waiver with the same time limitations to NCTA on behalf of its members. As previously mentioned, due to the confusion caused by the language in the \textit{2012 TCPA Order}, NCTA members are currently facing expensive class action litigation that implicates the consent issue. Grant of the waiver relief that was extended to the Original Petitioners in the \textit{2015 TCPA Order} would provide NCTA’s members sufficient time to comply with the prior written consent requirement and would enable NCTA’s members to better defend claims and avoid unnecessary and costly litigation moving forward.

For the foregoing reasons, the Commission should declare that NCTA’s members are entitled to a waiver from the prior written consent requirement that runs from October 16, 2013 through October 7, 2015.

Respectfully submitted,

\(\text{/s/}\)

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\(^{15}\) That said, we note that the NAB Petition advocated that “all parties to the proceeding, Petitioners and commenters alike, are entitled to the retrospective and prospective waivers articulated in the 2015 Order.” NAB Petition at 3. NCTA agrees, and will file comments in support of the NAB Petition in due course. \textit{See supra} note 8. If the Commission agrees with NAB on this point – as it should – NCTA’s waiver would be granted at the same time as that awarded to NAB, providing earlier relief to NCTA and rendering a decision on this Petition unnecessary.