

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991)	CG Docket No. 02-278
)	
Petition for Declaratory Ruling of the Retail Industry Leaders Association)	

**REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (“NAB”)¹ submits these reply comments regarding the above-captioned petition (the “Petition”) filed by the Retail Industry Leaders Association (“RILA”).² For the reasons stated in the Petition and NAB’s initial comments,³ the Federal Communications Commission (“Commission”) should clarify that the Telephone Consumer Protection Act (“TCPA”) and the Commission’s rule requiring prior express consent to receive automated text messages⁴ do not apply to one-time responses to consumer-initiated text requests (*i.e.* an “on-demand text offer,” “on-demand text message,” or “on-demand text”). In the alternative, the Commission should confirm that such on-demand texts are informational messages

¹ NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the Commission and other federal agencies, and the courts.

² Petition for Declaratory Ruling of the Retail Industry Leaders Association, CG Docket No. 02-278 (filed Dec. 30, 2013) (“Petition”); *see also Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Declaratory Ruling Filed by Retail Industry Leaders Association*, Public Notice, DA 14-75 (CGB rel. Jan. 22, 2014).

³ Comments of the National Association of Broadcasters, CG Docket No. 02-278 (filed Feb. 21, 2014) (“NAB Comments”).

⁴ 47 C.F.R. § 64.1200(a)(1).

that require only prior express consent and not prior express written consent.⁵ The Commission should make clear that any such relief applies not only to text offers, but also to automatic, one-time return text messages, such as those broadcasters may send to confirm receipt of a consumer's text message requesting participation in a contest (or alert a consumer of contest results), making a song request, or providing comments and feedback to a station.

DISCUSSION

As NAB indicated in its initial comments, broadcasters, like retailers, may send automated text messages in response to a consumer-initiated text message.⁶ These messages, whether text offers or automatic responses confirming receipt of (or reporting results in response to) a consumer's text message, are consistent with consumer expectations.⁷ Nothing in the record contradicts this fact. Indeed, as RILA indicates, even commenters opposing the Petition acknowledge that, in certain circumstances, on-demand texts do not trigger the prior express written consent rule.⁸ Accordingly, consistent with the overwhelming support in the record in favor of the

⁵ *Id.* § 64.1200(a)(2).

⁶ See generally NAB Comments at 2.

⁷ See, e.g., *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling, 27 FCC Rcd 15391, 15396 ¶ 10 (2012) (“*SoundBite*”) (“[W]ithout confirmation, a consumer may be uncertain whether his or her request was successfully processed and unnecessarily spend time and resources trying to find out.”); see also NAB Comments at 7 n. 26 (discussing *SoundBite*, 27 FCC Rcd at 15395 ¶ 9); Ex Parte Notice of the Retail Industry Leaders Association, CG Docket No. 02-278, at 2 (filed Feb. 27, 2014) (“RILA Ex Parte”).

⁸ RILA Ex Parte at 3.

Petition, the Commission should grant the requested relief under either of the clarification options previously offered by NAB.⁹

CONCLUSION

The Commission should either (1) declare that the TCPA and the Commission's prior express consent rule do not apply to one-time on-demand text messages, including text offers and automatic confirmation messages; or (2) confirm that on-demand text messages are informational messages that require only prior express consent, not prior express written consent, and that the original consumer text itself provides the requisite express consent. Such relief should apply not only to text offers, but also to automatic, one-time confirmation messages, including responsive texts by broadcasters confirming receipt of a consumer's text message requesting participation in a contest (or alerting a consumer of contest results), making a song request, or providing comments and feedback to a station.

⁹ See NAB Comments at 3-4 (urging the Commission to confirm that the TCPA does not apply to on-demand text messages); *id.* at 5-8 (in the alternative, urging the Commission to confirm that on-demand text messages are informational messages that require only prior express consent).

Respectfully submitted,

NATIONAL ASSOCIATION OF
BROADCASTERS

By:

A handwritten signature in black ink that reads "Ann West Bobeck". The signature is stylized, with a large, looped initial "A" and a long horizontal line extending from the end of the name.

Jane E. Mago
Jerianne Timmerman
Ann West Bobeck

National Association of Broadcasters
1771 N Street, N.W.
Sixth Floor
Washington, DC 20036
(202) 429-5430

March 10, 2014