

order the entry "Ohio" under paragraphs 1. and 2. to read as follows:

**Appendix A to Subpart II of Part 97—
States With Approved State
Implementation Plan Revisions
Concerning CAIR NO_x Opt-In Units**

1. * * *
Ohio
* * * * *
2. * * *
Ohio
* * * * *

■ 6. Appendix A to subpart III of part 97 is amended by adding in alphabetical order the entry "Ohio" under paragraphs 1. and 2. to read as follows:

**Appendix A to Subpart III of Part 97—
States With Approved State
Implementation Plan Revisions
Concerning CAIR SO₂ Opt-In Units**

1. * * *
Ohio
* * * * *
2. * * *
Ohio
* * * * *

■ 7. Appendix A to subpart EEEE of part 97 is amended by adding in alphabetical order the entry "Ohio" to read as follows:

**Appendix A to Subpart EEEE of Part
97—States With Approved State
Implementation Plan Revisions
Concerning Allocations**

* * * * *
Ohio
* * * * *

■ 8. Appendix A to subpart IV of part 97 is amended by adding in alphabetical order the entry "Ohio" under paragraphs 1. and 2. to read as follows:

**Appendix A to Subpart IV of Part 97—
States With Approved State
Implementation Plan Revisions
Concerning CAIR NO_x Ozone Season
Opt-In Units**

1. * * *
Ohio
2. * * *
Ohio
* * * * *

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**FEDERAL COMMUNICATIONS
COMMISSION**

47 CFR Part 64

[CG Docket No. 02-278; FCC 07-232]

**Rules and Regulations Implementing
the Telephone Consumer Protection
Act of 1991**

AGENCY: Federal Communications
Commission.

ACTION: Clarification.

SUMMARY: In this document, the Commission addresses a Petition for Expedited Clarification and Declaratory Ruling filed by ACA International (ACA). Specifically, the Commission clarifies that autodialed and prerecorded message calls to wireless numbers that are provided by the called party to a creditor in connection with an existing debt are permissible as calls made with the "prior express consent" of the called party.

DATES: Effective February 1, 2008.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:

Erica McMahan, Consumer & Governmental Affairs Bureau at (202) 418-0346 (voice), or e-mail Erica.McMahan@fcc.gov.

SUPPLEMENTARY INFORMATION: On October 4, 2005, ACA filed a petition for expedited clarification and declaratory ruling against the Commission's *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, FCC 03-153, published at 68 FR 44144 (July 25, 2003). This is a summary of the Commission's document, FCC 07-232, adopted December 28, 2007, released January 4, 2008, addressing a Petition for Expedited Clarification and Declaratory Ruling filed by ACA International (ACA).

Copies of document FCC 07-232 and any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. Document FCC 07-232 and any subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at their Web site: www.bcpweb.com or call 1-800-378-3160. To request materials in accessible

formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). Document FCC 07-232 can also be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/policy>.

**Paperwork Reduction Act of 1995
Analysis**

Document FCC 07-232 does not contain new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198. See 47 U.S.C. 3506(c)(4).

Synopsis

On October 4, 2005, ACA filed a petition seeking clarification that the prohibition against autodialed or prerecorded calls to wireless telephone numbers in 47 CFR 64.1200(a)(1)(iii) of the Commission's rules does not apply to creditors and collectors when calling wireless telephone numbers to recover payments for goods and services received by consumers.

Although the TCPA generally prohibits autodialed calls to wireless phones, it also provides an exception for autodialed and prerecorded message calls for emergency purposes or made with the prior express consent of the called party. Because the Commission finds that autodialed and prerecorded message calls to wireless numbers provided by the called party in connection with an existing debt are made with the "prior express consent" of the called party, the Commission clarifies that such calls are permissible. The Commission concludes that the provision of a cell phone number to a creditor, e.g., as part of a credit application, reasonably evidences prior express consent by the cell phone subscriber to be contacted at that number regarding the debt. In the *1992 TCPA Order* (FCC 92-443) published at 57 FR 48333 (October 23, 1992), the Commission determined that "persons who knowingly release their phone numbers have in effect given their invitation or permission to be called at the number which they have given, absent instructions to the contrary." The legislative history in the TCPA provides support for this interpretation. Specifically, the House report on what

ultimately became section 227 of the Communications Act states that: “[t]he restriction on calls to emergency lines, pagers, and the like does not apply when the called party has provided the telephone number of such a line to the caller for use in normal business communications.”

The Commission emphasizes that prior express consent is deemed to be granted only if the wireless number was provided by the consumer to the creditor, and that such number was provided during the transaction that resulted in the debt owed. To ensure that creditors and debt collectors call only those consumers who have consented to receive autodialed and prerecorded message calls, the Commission concludes that the creditor should be responsible for demonstrating that the consumer provided prior express consent. The creditors are in the best position to have records kept in the usual course of business showing such consent, such as purchase agreements, sales slips, and credit applications. The Commission encourages creditors to include language on credit applications and other documents informing the consumer that, by providing a wireless telephone number, the consumer consents to receiving autodialed and prerecorded message calls from the creditor or its third party debt collector at that number. Should a question arise as to whether express consent was provided, the burden will be on the creditor to show it obtained the necessary prior express consent. Similarly, a creditor on whose behalf an autodialed or prerecorded message call is made to a wireless number bears the responsibility for any violation of the Commission’s rules. Calls placed by a third party collector on behalf of that creditor are treated as if the creditor itself placed the call. A third party collector may also be liable for a violation of the Commission’s rules. In addition, prior express consent provided to a particular creditor will not entitle that creditor (or third party collector) to call a consumer’s wireless number on behalf of other creditors, including on behalf of affiliated entities.

The Commission also reiterates that the plain language of section 227(b)(1)(A)(iii) of the Communications Act prohibits the use of autodialers to make any call to a wireless number in the absence of an emergency or the prior express consent of the called party. The Commission notes that this prohibition applies regardless of the content of the call, and is not limited only to calls that constitute “telephone solicitations.”

However, the Commission agrees with ACA and other commenters that calls

solely for the purpose of debt collection are not telephone solicitations and do not constitute telemarketing. Therefore, calls regarding debt collection or to recover payments are not subject to the TCPA’s separate restrictions on “telephone solicitations.”

In document FCC 07–232, the Commission affirms that a predictive dialer constitutes an automatic telephone dialing system and is subject to the TCPA’s restrictions on the use of autodialers. In its Supplemental Submission, ACA argues that the Commission erred in concluding that the term “automatic telephone dialing system” includes a predictive dialer. ACA states that debt collectors use predictive dialers to call specific numbers provided by established customers, and that a predictive dialer meets the definition of autodialer only when it randomly or sequentially generates telephone numbers, not when it dials numbers from customer telephone lists.

As noted above, the Commission first sought comment on predictive dialers in 2002 and asked whether using a predictive dialer is subject to the TCPA’s autodialer restrictions. The Commission found that, based on the statutory definition of “automatic telephone dialing system,” the TCPA’s legislative history, and current industry practice and technology, a predictive dialer falls within the meaning and definition of autodialer and the intent of Congress. The Commission noted that the evolution of the teleservices industry had progressed to the point where dialing lists of numbers was far more cost effective, but that the basic function of such dialing equipment, had not changed—the capacity to dial numbers without human intervention. The Commission noted that it expected such automated dialing technology to continue to develop and that Congress had clearly anticipated that the FCC might need to consider changes in technology.

Moreover, the Commission noted that the TCPA does not ban the use of automated dialing technology. It merely prohibits such technologies from dialing emergency numbers, health care facilities, telephone numbers assigned to wireless services, and any other numbers for which the consumer is charged for the call. Such practices were determined by Congress to threaten public safety and inappropriately shift costs to consumers. Most importantly, the Commission said that, to find that calls to emergency numbers, health care facilities, and wireless numbers are permissible when the dialing equipment is paired with predictive dialing

software and a database of numbers, but prohibited when the equipment operates independently of such lists, would be inconsistent with the avowed purpose of the TCPA and the intent of Congress in protecting consumers from such calls. ACA raises no new information about predictive dialers that warrants reconsideration of these findings. With this ruling, however, creditors and debt collectors may use predictive dialers to call wireless phones, provided the wireless phone number was provided by the subscriber in connection with the existing debt. The Commission notes, however, that where the subscriber has not made the number available to the creditor regarding the debt, we expect debt collectors to be able to utilize the same methods and resources that telemarketers have found adequate to determine which numbers are assigned to wireless carriers, and to comply with the TCPA’s prohibition on telephone calls using an autodialer or an artificial or prerecorded voice message to wireless numbers.

Congressional Review Act

The Commission will not send a copy of document FCC 07–232 pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because no new rules were adopted in the document.

Ordering Clauses

Pursuant to sections 1–4, 227, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 227 and 303(r); and § 64.1200 of the Commission’s rules, 47 CFR 64.1200, document FCC 07–232 *is adopted*.

By Commission authority, the Request for Clarification filed by ACA International in CG Docket 02–278 on October 4, 2005 and supplemented by ACA on April 26, 2006, *is granted* insofar as ACA seeks clarification that autodialed and prerecorded message calls to wireless numbers that are provided by the called party to a creditor in connection with an existing debt are permissible as calls made with the “prior express consent” of the called party, and in all other respects, *is denied*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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