

§ 180.420 Fluridone; tolerances for residues. (2) * * *
 (a) * * *

Commodity	Parts per million
Animal feed, nongrass, group 18	0.15
Berry and small fruit, group 13–07	0.1
* * * * *	
Fruit, citrus, group 10–10	0.1
Fruit, pome, group 11–10	0.1
* * * * *	
Grass, forage, fodder and hay, group 17	0.15
* * * * *	
Hop, dried cones	0.1
* * * * *	
Nut, tree, group 14–12	0.1
Peanut	0.1
Peanut, hay	0.15
* * * * *	
Rice, grain	0.1
* * * * *	
Tropical and subtropical, small fruit, edible peel, subgroup 23A	0.1
Tropical and subtropical, medium to large fruit, smooth, inedible peel, subgroup 24B	0.1

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 [FR Doc. 2023–00949 Filed 1–19–23; 8:45 am]
 BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02–278, FCC 20–186; FR ID 122726]

Limits on Exempted Calls Under the Telephone Consumer Protection Act of 1991

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces the effective date for the rules implementing section 8 of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act) per the *TCPA Exemptions Order*, published on February 25, 2021. Specifically, compliance is required for the Telephone Consumer Protection Act (TCPA) exemptions for artificial or prerecorded voice calls made to residential telephone lines to ensure each satisfies the TRACED Act’s requirements to identify who can call, who can be called, and any call limits. Compliance is also required with the

limits on the number of calls that can be made under the exemptions for non-commercial calls to a residence; commercial calls to a residence that do not include an advertisement or constitute telemarketing; tax-exempt nonprofit organization calls to a residence; and Health Insurance Portability and Accountability Act (HIPPA)-related calls to a residence. Finally, callers must have mechanisms in place to allow consumers to opt out of any future calls.

DATES: The amendments to 47 CFR 64.1200(a)(3)(ii) through (v), (b)(2) and (3), and (d), published at 86 FR 11443 (Feb. 25, 2021), are effective July 20, 2023.

FOR FURTHER INFORMATION CONTACT: Richard D. Smith of the Consumer and Governmental Affairs Bureau, Consumer Policy Division, at (717) 338–2797 or *Richard.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION: This document announces that the Office of Management and Budget (OMB) approved the information collection requirements in § 64.1200(a)(3)(ii) through (v), (b)(2) and (3), and (d) on September 15, 2021.

The Commission publishes this document as an announcement of the effective date of the rules.

In a final rule (FCC 22–100), released on December 27, 2022, and published elsewhere in this issue of the **Federal Register**, the Commission amended rule

47 CFR 64.1200(a)(3) to allow callers the option of obtaining either oral or written consent if they wish to make more calls than the numerical limits on exempted artificial or prerecorded voice message calls to residential telephone lines and announced the compliance date for the amended rule.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice).

Federal Communications Commission.

Marlene Dortch,
Secretary, Office of the Secretary.

[FR Doc. 2023–00634 Filed 1–19–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02–278; FCC 22–100; FR ID 122724]

Limits on Exempted Calls Under the Telephone Consumer Protection Act of 1991

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) amends its rules to allow callers the option of obtaining either oral or written consent if they wish to make more calls than the numerical limits on exempted artificial or prerecorded voice message calls to residential telephone lines and affirms the numerical limits and opt-out requirements on such calls.

DATES: *Effective date:* July 20, 2023.

FOR FURTHER INFORMATION CONTACT:

Richard D. Smith of the Consumer and Governmental Affairs Bureau at (717) 338-2797 or Richard.Smith@fcc.gov. For information regarding the Paperwork Reduction Act (PRA) information collection requirements contained in the PRA, contact Cathy Williams, Office of Managing Director, at (202) 418-2918, or Cathy.Williams@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration and Declaratory Ruling (Order on Reconsideration) in CG Docket No. 02-278; FCC 22-100, adopted on December 22, 2022, and released on December 27, 2022. The full text of document FCC 22-100 is available online at ECFS—Filing Details ([fcc.gov](https://docs.fcc.gov/public/attachments/FCC-22-100A1.pdf)) or <https://docs.fcc.gov/public/attachments/FCC-22-100A1.pdf>. To request this document in accessible formats for people with disabilities (e.g., Braille, large print, electronic files, audio format) or to request reasonable accommodations (e.g., accessible format documents, sign language interpreters, CART), send an email to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice).

Final Paperwork Reduction Act of 1995 Analysis

The Order on Reconsideration contains non-substantive modifications to information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. On January 4, 2023, these modifications were submitted to the Office of Management and Budget (OMB) and approved as non-substantive changes. Because these changes are non-substantive, there is no 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.

Congressional Review Act

The Commission sent a copy of document FCC 22-100 to Congress and the Government Accountability Office

pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Synopsis

1. On reconsideration of the *Telephone Consumer Protection Act (TCPA) Exemptions Order*, CG Docket No. 02-278, Report and Order, published at 86 FR 11443 (Feb. 25, 2021), we revise the Commission's rule requiring prior express written consent to make informational calls over the numerical limits to permit such callers to obtain the necessary consent either orally or in writing. We decline, however, to revise any of the numerical limitations on the number of exempt non-telemarketing calls to residential lines that we established in the *TCPA Exemptions Order*. We also conclude that the differing numerical limitations for different categories of exempt calls to residential lines are both constitutional and necessary to advance the health and safety of consumers. We also retain the opt-out requirements for exempt informational calls. Finally, we decline to revisit the limitations on package delivery notifications to wireless numbers that have been in place since 2015 and confirm that the Commission's 2016 declaratory ruling on calls by utilities to wireless numbers applies equally to similar calls made to residential lines.

A. Consent Requirements for Exempted Calls to Residential Lines

2. We grant petitioners' request that we clarify that callers may obtain consent either orally or in writing to exceed the numerical limits on artificial or prerecorded voice calls to residential telephone lines made under the exemptions contained in § 64.1200(a)(3)(ii) through (v) of our rules. We agree with the petitioners and commenters, including both industry and consumer organizations, that the Commission did not intend to require that such callers obtain consent only in writing. While the text of the *TCPA Exemptions Order* did not specify that consent must be obtained in writing, we agree with petitioners that the amended rule implementing the numerical limitations appears to require prior express written consent to exceed those limitations. As a result, we amend § 64.1200(a)(3) to make clear that consent for informational (i.e., non-telemarketing) calls to residential telephone numbers can be obtained orally or in writing, consistent with longstanding Commission rules and precedent, as discussed below.

3. We agree with petitioners and commenters that there is no reason for the consent requirements for

informational calls to residential lines differ from the consent requirements for informational calls to wireless numbers, which allow for either oral or written consent. In addition, as some commenters note, to extend the written consent requirement to informational calls that include calls from utilities and healthcare providers could impair the ability of these callers to provide important public safety information to consumers, though we note that to the extent such calls are "necessary in any situation affecting the health and safety of consumers," they would fall under the exemption for "calls made for emergency purposes" and thus would not require prior express consent.

4. The Commission's rules prior to adoption of the *TCPA Exemptions Order* did not require prior express written consent for artificial or prerecorded voice message calls made under any of the exemptions for calls to residential lines. The *TCPA Exemptions Order* expressed no intent to amend these rules to require written consent to make informational artificial or prerecorded voice calls to residential lines, and it provided no justification for such a requirement. In fact, the text of the *TCPA Exemptions Order* refers only to "prior express consent": "callers can make more than three non-commercial calls using an artificial or prerecorded voice message within any consecutive thirty-day period by obtaining the *prior express consent* from the called party, including by using an exempted call to obtain consent." The Commission's rules distinguish "prior express consent" from "prior express written consent." Only the latter requires consent to be obtained in writing. To obtain consent by "using an exempted call" strongly suggests that the Commission contemplated that such callers could obtain consent orally while communicating with the called party.

5. In addition, the Commission's longstanding precedent has expressly limited the written consent requirement only to telemarketing calls. We note, for example, that the Commission did not amend the definition of "prior express written consent" in our rules, which is limited to "advertisements or telemarketing messages" to encompass exempted informational calls to residential lines. As a result, we agree with the petitioners and commenters that there is no indication that the *TCPA Exemptions Order* intended to change the Commission's longstanding rules and precedent that apply the written consent requirement only to telemarketing calls. As noted above, commenters, including several

consumer organizations, unanimously support this conclusion, and none oppose it. We therefore amend § 64.1200(a)(3) of our rules accordingly to implement this clarification.

6. **Effective Date.** The effective date of the amended rule contained herein is six months after publication in the **Federal Register**. This timeframe allows the amended rule to take effect on the same date as the rules that were adopted in the *TCPA Exemptions Order*. The Commission published an announcement of the effective date for the rules adopted in the *TCPA Exemptions Order* elsewhere in this issue of the **Federal Register**. In the *TCPA Exemptions Order*, the Commission concluded that a six-month implementation period was warranted to allow callers an opportunity to take measures to comply with the numerical limits and opt-opt requirements on artificial or prerecorded voice calls made to residential lines.

7. Because the amended rule contained herein is interrelated with the rules from the *TCPA Exemptions Order*, we are establishing an effective date of six months after **Federal Register** publication of this rule such that all the amended rules can take effect on the same date. As a result, our **Federal Register** publication will set the same effective date for both the rules from the *TCPA Exemption Order* and for the amended rule contained herein.

B. Numerical Limits for Exempt Calls to Residential Lines

8. We deny petitioners' request to reconsider the Commission's numerical limits on exempt informational calls to residential lines. We note that section 8(a) of the TRACED Act provides that the Commission "(I) shall ensure that any exemption under subparagraph (B) or (C) contains requirements with respect to— . . . (iii) the number of such calls that a calling party may make to a particular called party." In response to the Commission's request on the matter, commenters generally opposed any limits on exempt calls, but did not submit any specific cost or benefit data on potential call limits or numerical limits that the Commission had imposed in other contexts, and offered little guidance on appropriate limits for different types of calls to meet the TRACED Act's requirements.

9. As the *TCPA Exemptions Order* emphasized, limiting the number of exempted calls to residential lines will greatly reduce interruptions from intrusive and unwanted calls and reduce the burden on residential telephone users to manage such calls. As Congress noted in enacting the

TCPA, artificial and prerecorded voice calls are often a greater invasion of privacy than live calls because the call recipient cannot interact with the caller. And more recently, in passing the TRACED Act, Congress noted that "[u]nwanted or illegal robocalls threaten . . . critical communication[s] when frustrated recipients, fearing unwanted or illegal robocalls, are hesitant to answer their phones."

10. Further, while the adoption of a numerical limit satisfies the requirements of the TRACED Act, it also brings the residential exemptions "in line with" exempted calls to wireless numbers, which contain a numerical limitation on the number of calls that can be made. We agree with the Joint Consumer Organizations that the adopted limits on artificial and prerecorded calls to residential lines will have "particularly profound benefits for consumers." As the Joint Consumer Organizations note, the absence of any limits on prerecorded non-telemarketing calls to residential lines is a primary source of consumer frustration that has led to consumers abandoning their landline telephone service.

11. We continue to believe that—with respect to the exemptions for non-commercial calls, commercial calls that do not constitute telemarketing, and calls by tax-exempt nonprofit organizations—limiting the number of calls that can be made to a particular residential line to three artificial or prerecorded voice calls within any consecutive thirty-day period strikes the appropriate balance between these callers reaching consumers with valuable information and reducing the number of unexpected and unwanted calls consumers currently receive and thus restoring trust in the residential landline network and advancing health and the safety of life, as discussed further below.

12. We also believe a consistent limit for those three exemptions is appropriate. We therefore disagree with ACA International et al. (ACA) that we should impose different numerical limits for each type of informational call based on the content or purpose of the message. While petitioners characterize this as a "one-size fits all" approach, we find that such a consistent numerical limit for these three exemptions will benefit both callers and consumers.

13. In addition, contrary to ACA's assertion, there is ample support in the record for the adopted three-calls-per-thirty-day numerical limit. As discussed above, numerous consumer organizations supported this limit, arguing that the three-call-per-thirty-day

limit is reasonable. We agree with the Joint Consumer Organizations who argue that, in the context of our federal debt collection rules adopted in 2016, "the Commission engaged in an extensive and thorough analysis of the appropriate number of unconsented-to calls that should be permitted," and that "[a]fter a full proceeding in which interested parties were invited to provide comments and reply comments, the Commission adopted a limit of three calls per thirty days for these calls." Nothing in the current record disturbs that analysis and thus gives us cause to change any of the numerical limits. We also note that the numerical limit for Health Insurance Portability and Accountability Act of 1996 (HIPAA)-related calls to residential lines is identical to the limit that has been in place for more than six years and functioned without any record evidence of unduly restricting the ability of callers to make autodialed or prerecorded voice calls under a similar exemption for wireless telephone numbers. The Commission thus has six years of experience of applying that numerical limit to this same category of calls to wireless numbers, and this experience has demonstrated that this numerical limit strikes an appropriate balance between these callers reaching consumers with valuable healthcare information and restoring trust in the residential landline network, which can help to advance health and the safety of life as discussed further below.

14. Further, we agree with the Joint Consumer Organizations that the three-calls-per-thirty-day numerical limit is also reasonable in light of the two exceptions that the T CPA already provides for artificial or prerecorded voice calls: all calls relating to emergencies are permitted, and all calls for which prior express consent has been provided are permitted. The limitations the Commission adopted in the *TCPA Exemptions Order* are narrowly tailored to advance the health, safety, and privacy of consumers, while still providing opportunities for callers to contact consumers in an emergency or when they have received prior express consent. If callers need to make the calls because of a health or safety emergency or pursuant to prior express consent, there is no limit on the calls. Thus, we disagree with ACA's position that we did not consider the needs of utilities to make emergency calls, as permitted in the rules and Commission precedent.

15. Moreover, as the Commission emphasized in the *TCPA Exemptions Order*, callers wishing to make more than three non-telemarketing calls using

an artificial or prerecorded voice within any consecutive thirty-day period can obtain consumer consent to make more. Callers can use exempted calls to obtain consent if the calls satisfy other applicable conditions. And most significantly, as discussed above, now that we have made clear that callers can obtain consent orally from consumers, informational callers will more easily be able to obtain permission to exceed the numerical limits. We continue to believe that consumers who welcome such calls are likely to readily give such consent, and the record developed on reconsideration does not contradict this assertion. In addition, because the TCPA only restricts calls to a residential telephone number when they use an artificial or prerecorded voice, callers using a live agent to make such calls should not risk violating the TCPA rules.

16. While ACA and several commenters oppose the three-calls-per-thirty-day limit and argue such limit is arbitrary and will impede the ability of informational callers to deliver time-sensitive information to consumers, they neither offer a clear alternative limit to apply to all exempted callers nor suggest appropriate distinct limits for each and every various type of call. In addition, the petitioners offer no new facts or data on the calls they make that have changed since the last opportunity to present such matters to the Commission. “In the absence of additional data from commenters,” and to implement the statutory mandate, we conclude that these numerical limits adequately balance the privacy interests of consumers with the ability of informational callers to communicate with the public, and that there is no reason to revisit these limits at this time.

17. Given that we find the numerical limits to be reasonable, we decline to adopt what ACA describes as “important safeguards” to ensure that consumers receive the calls they expect. ACA argues that, if the Commission retains the existing numerical limits, it should apply them on a “per event” or “per account” basis rather than on a “per telephone number” basis. We believe a per-event or per-account condition is unnecessary in order for callers to deliver important information to consumers. We emphasize that informational callers need only obtain consent orally or in writing from a consumer to be able to make unlimited calls to that telephone number regarding any event—whether it be a utility service upgrade, a security threat on a financial account, or a scheduled medical appointment. Thus, callers can obtain consent from consumers who

desire to receive more than three calls per thirty days; consent is an important safeguard to ensure not only that callers can make the calls they need to make, but that consumers are protected from repetitive nuisance calls. Moreover, ACA’s argument in its reply comments for a “per event” or “per account” approach to call limits is new, but we see no reason why it could not have been presented during the rulemaking proceeding. In the absence of any clear reason that it is in the public interest to adopt ACA’s alternative approach to numerical limits, we find this to be an alternative and independent reason not to grant ACA’s late request.

18. Finally, we decline ACA’s request for the Commission to revisit the numerical limit under the wireless exemption for package delivery notifications that has been in place since 2014. As the Commission stated in the *TCPA Exemptions Order*, such request, which was also made in response to the *TRACED Act Notice of Proposed Rulemaking (NPRM)*, published at 85 FR 64091 (Oct. 9, 2020), is outside the scope of section 8 of the TRACED Act. In addition, we deny ACA’s request to allow package delivery companies to send at least two additional follow-up messages, even when no signature is required. We find no reason to conclude that the existing exemption that allows for one notification (whether by voice call or text message) to notify a consumer about a package delivery is inadequate to address these situations as described in the record. To the extent that additional notifications may prove helpful in these situations, we note that callers may use their one exempted notification to obtain consent from recipients to make additional notifications or use a live caller to contact the recipient.

C. Numerical Limits Are Consistent With the First Amendment as They Help Restore Trust in the Residential Landline Network and Advance Health and Safety of Life

19. We also conclude that it is fully consistent with the First Amendment to retain the call limitation established in the *TCPA Exemptions Order* for the residential line exemption for healthcare calls subject to HIPAA and the distinct call limitation applicable to the residential line exemptions for noncommercial calls; commercial calls that do not include an unsolicited advertisement; and calls from tax exempt nonprofit organizations (collectively, the “non-HIPAA exemptions”). In its Petition, Enterprise Communications Advocacy Coalition (ECAC) argues that the different

numerical limits adopted for the residential line exemption for healthcare calls subject to HIPAA (one call per day up, to three calls per week) and those adopted for the non-HIPAA exemptions (three calls per thirty days) constitute content-based restrictions that fail strict scrutiny and thus violate the First Amendment. NCTA—The Internet & Television Association (NCTA) similarly argues that “the three-call limit [on exempted commercial informational calls] imposes overbroad restrictions on fully protected speech and violates the First Amendment.” ECAC and NCTA argue that because the distinction in the call limitations for the different residential line exemptions are content-based, that subjects the Commission’s regulatory regime to strict First Amendment scrutiny, and that the Commission has not satisfied that standard. For the reasons explained below, we reject the claim that the call limitations violate the First Amendment and therefore deny requests for reconsideration premised on that theory.

20. Particularly in light of the Supreme Court’s recent decision in *Barr v. Am. Ass’n of Political Consultants (AAPC)*, we recognize that a court could view the Commission’s approach to the residential line exemptions as implicating content-based regulation of speech subject to strict scrutiny. Strict scrutiny requires the “government [to] prove[] that the[restrictions] are narrowly tailored to serve compelling state interests.” Evaluating the First Amendment concerns raised on reconsideration, we find that the call limitations for our residential line exemptions satisfy strict First Amendment scrutiny. As discussed below, we conclude that our call limitations are narrowly tailored to advance a distinct governmental interest—that is, restoring trust in the residential landline network and advancing the health and safety of life—and thus satisfy strict First Amendment scrutiny.

21. We conclude that the adopted call limitations for the residential line exemptions are narrowly tailored to advance the compelling governmental interest in health and safety of life. The landline telephone network—and the communication it enables—is an important tool in ensuring residential consumers receive the information they need to advance their own health and safety of life along with that of others. Yet the evidence reveals that the escalating problem of robocalls has undermined consumers’ trust and willingness to rely on their landline telephone, leading consumers in many

cases to simply not answer the phone. That communication breakdown can have significant health and safety of life implications for the many consumers who rely on residential landline service.

22. As a statutory matter, when calibrating the residential line exemptions, it is appropriate for the Commission to consider the health and safety of life implications of the use of the telephone network that our exemption rules would facilitate. Although the TCPA includes a special focus on consumer privacy, it nonetheless recognizes the importance of health and safety of life considerations through the statutory exemption from TCPA restrictions for calls made or initiated for emergency purposes. Congress likewise recognized that “privacy rights, public safety interests, and commercial freedoms of speech and trade must be balanced in a way that protects the privacy of individuals and permits legitimate telemarketing practices.” Further, the TCPA was enacted as part of the Communications Act, which established the Commission to, among other things, “promot[e] safety of life . . . through the use of wire and radio communications.”

23. Turning to the specific context at issue here, evidence supports the conclusion that the volume of robocalls landline consumers receive undermines their trust in, and willingness to rely on, the landline telephone network. There is evidence that the number of robocalls has increased dramatically in recent years. The Commission previously has cited “hundreds of comments from consumers [filed in a rulemaking] stating that they no longer answer their phone when it rings,” and has concluded that “[i]t is obvious that the volume of unwanted calls is reducing the value of telephony to anyone who makes or receives calls.” Commenters state that “[t]he unremitting nature of unwanted and unstoppable—even if technically legal—calls made to landlines has led to a wavering trust in voice calls.” Unwanted robocalls, for example, often are either delivered with inaccurate caller identification (caller ID) information or are delivered with caller ID information that is not familiar to a consumer, and thus are highly likely to be viewed by called parties with suspicion. The Joint Consumer Organizations also explain the practical consequences that flow from this state of affairs: “[p]eople have become so inured to the unwanted calls ringing their lines that they do not pick up—even when the calls are important.” There also is evidence that consumers’ increasing reluctance to answer the

phone undermines public health and safety of life that depends on the phone network. Exacerbating this concern is the fact that traditional residential voice service can be particularly important for vulnerable populations, such as the elderly. As the Joint Consumer Organizations observe, “[t]he Commission’s new regulations provide a meaningful way to rebuild the fading trust in the usefulness of landlines by arming recipients with effective tools to stop many of the unconsented-to calls they receive.”

24. Importantly, we find that it is the overall volume of unauthorized robocalls that has led residential landline consumers increasingly to simply decline to answer the phone, even if a given call might, in the abstract, be subjectively desirable to a given consumer. It is reasonable to assume that callers generally, and specifically those callers who argue here to be able to make unlimited numbers of robocalls without consumer consent, have incentives to call repeatedly because the cost of repeated calling is trivial to the caller financially, and there exists only an incremental risk a consumer will not pick up their call. Thus, callers individually have little or no incentive to be concerned about the collective problem of unwanted robocalls undermining trust in the network. As a result, it is appropriate for us to take action to address the larger overall volume of robocalls. We expect that curtailing the number of calls to residential lines that can be made by virtue of FCC exemptions under section 227(b)(2)(B) will substantially reduce the total volume of calls consumers receive without their prior authorization, helping restore consumers’ confidence in the calls they do continue to receive.

25. As a general matter, and in the absence of anything other than conclusory assertions to the contrary, we are not persuaded that a less restrictive limitation than three calls per thirty days would be a reasonable choice of call limitation for these residential line exemptions given the compelling governmental interests at stake. Indeed, one could argue that the need to address the volume of unauthorized calls and thereby restore trust in the telephone network could be addressed most effectively by eliminating these exemptions altogether. But we also must weigh First Amendment considerations, and in this proceeding we do not find a basis to restrict these calls further than a limit of three calls per thirty days under the residential line exemption. In particular, against the backdrop of the Commission

previously having adopted, after a thorough and reasoned analysis, a three-call-per-thirty day limit for other types of unconsented-to calls, we conclude that, at least on this record, we do not find a sufficient justification for taking a more restrictive approach and either eliminating the exemptions entirely or adopting lower call limitations, given the need for an appropriate fit between the regulatory approach and the relevant governmental interest.

26. Notwithstanding those general findings regarding the call limits for residential line exemptions, we nonetheless find a less restrictive call limitation warranted for the exemption for healthcare calls as defined by HIPAA. The exemption for healthcare calls as defined by HIPAA is unique in that the governmental interest in health and safety of life cuts both ways with respect to such calls. In other words, curtailing unauthorized robocalls as a whole will help restore consumers’ trust and willingness to rely on residential landline service, thereby advancing the governmental interest in health and safety of life—but, at the same time, allowing healthcare calls as defined by HIPAA to reach residential consumers is itself also a benefit to the governmental interest in health and safety of life.

27. On balance, the governmental interest in health and safety of life is best advanced in this unique scenario by allowing a higher number of calls under the exemption for healthcare calls as defined by HIPAA. This call limit matches the limit the Commission adopted for calls to wireless numbers in 2015, and the Commission found “no credible evidence it has unduly restricted healthcare providers’ ability to communicate with their patients.” We thus conclude that the risk that a more restrictive call limitation could unduly restrict healthcare providers’ ability to communicate with their patients—a possibility the Commission cannot rule out on this record—counsels against a lower call limitation. At the same time, in light of our experience with the prior limit for calls to wireless numbers, we also do not find a basis to conclude that a higher number of calls is warranted here, given the mixed effects of such calls when considered in conjunction with all the other calls made without prior consent under the residential line exemptions.

28. We also are not persuaded by commenters’ objections to the Commission’s call limitations for the residential call exemptions. Some commenters contend that other calls implicate health and safety of life just like health care messages as defined by HIPAA. These commenters appear

concerned that the Commission's approach unduly restricts that speech by failing to apply the more generous call limitations that apply to healthcare calls as defined by HIPAA. But these claims do not account for the full range of calls that can be made notwithstanding the TCPA's restriction on calls to residential lines. In particular, in addition to the Commission-created exemption for health care calls as defined by HIPAA, section 227(b)(1)(B) expressly carves out any call made with "the prior express consent of the called party," and any "call [] initiated for emergency purposes" from the scope of its prohibitions.

29. As discussed above, the TCPA's restrictions for calls to residential lines do not apply to calls unless they use an artificial or prerecorded voice. If callers need to make calls related to, for example, power outages or utility work, they can either obtain the consumer's consent to do so before using an artificial or prerecorded voice or use a live caller to make the call. Or, if the call is made for an "emergency purpose" as defined by the Commission's rules and orders, it is exempted by our rules. None of the examples in the record articulate a scenario for which distinct, more lenient call limitations practically could be crafted, that would apply to circumstances that both: (i) implicate the governmental interest in health and safety of life and (ii) is not already subject to either the FCC's exemption for health care messages as defined by HIPAA or one of the statutory exceptions. Indiscriminately expanding call limitations based on speculation that they conceivably might benefit such calls would also allow an array of other calls that undermine our goal of restoring greater consumer trust and confidence in the landline telephone network, to the benefit of health and safety of life. Consequently, the record does not reveal a plausible alternative approach to expanding the universe of calls subject to a higher call limitation under the theory that they are similarly situated to healthcare calls as defined by HIPAA.

30. Nor does the record identify a plausible alternative approach that would give more lenient call limitations for calls that commenters claim are delivered for important interests other than the interest in health and safety of life. ACA, for example, alludes to an example of political speech and cites examples of communications bearing on consumers' financial interests or safety of property. More generally, NCTA cites TCPA legislative history that "Congress did not intend the statute 'to be a barrier

to the normal, expected, or desired communications between businesses and consumers.'" These commenters largely do not contend, let alone provide persuasive evidence, that the other interests—such as commercial or financial interests or safety of property—are as compelling as the governmental interest in health and safety of life that we are seeking to advance, which would be undermined by allowing more calls to residential landline consumers without their prior consent. And in all cases, it is essential to keep the aggregate effects in mind—the higher volume of these other types of calls raised by commenters will contribute to the overall lack of trust in the telephone network—a fact undiminished if they at the same time advance some more narrow interest. Furthermore, the First Amendment only requires us to consider plausible alternatives, and the record here does not reveal alternatives that could target just that speech that advances the other identified interests without sweeping in other types of speech that would simply contribute to the call volume that undermines trust in the telephone network without any adequate countervailing benefit.

31. We also are not persuaded that our call limitations for the residential call exemptions are unnecessary in light of anti-illegal robocall measures as a result of the TRACED Act and prior Commission policies—namely: opt-out rights specified by rule; the required implementation of STIR/SHAKEN; and call blocking. As discussed below, we conclude that those other measures—while designed to address important aspects of the robocalls problem—do not obviate the need for our approach to call limitations.

32. Opt-Out. The consumer opt-out rights in our rules, while helpful for consumers, alone are not adequate to protect consumers who have lost trust in the telephone network and consequently are reluctant to answer the phone in the first place. If consumers do not answer a given call and learn who the caller is (assuming that the caller provides accurate information), they have no ability to opt out of future calls from that caller. Thus, despite the important protections they afford, opt-out mechanisms are unlikely to meaningfully reduce the volume of calls received by those consumers who already have lost trust in the telephone network.

33. STIR/SHAKEN. While voice service provider implementation of STIR/SHAKEN will combat robocalls and introduce additional trust into the network, it addresses a different

problem than the rules at issue here. STIR/SHAKEN combats the problem of illegal spoofing—that is, the falsification of caller ID information by bad actors to deceive call recipients into believing a call is trustworthy. It accomplishes this goal by allowing terminating providers to verify that the caller ID information attached to a call is legitimate. By adding new information about the call originator and caller ID information displayed, widespread implementation of STIR/SHAKEN promotes call blocking and labeling, enables more effective enforcement, and restores trust in caller ID information.

34. STIR/SHAKEN combats scam spoofed calls, which is a subset of unwanted calls. All forms of unwanted robocalls undercut Americans' trust in the voice network in their own way. An estimate from YouMail found that scam robocalls were just 47% of all robocalls in 2019. The remainder totals an estimated 31 billion robocalls—comparable to the number of *all robocalls* in 2016. Other estimates also indicate that a large proportion of robocalls are not scams. Merely reducing the number of scam calls—while highly valuable as a form of consumer protection and significant progress relative to the *status quo* in terms a reduction to the volume of robocalls—is not sufficient in itself to restore trust that an incoming call is likely to be one the recipient wants to answer. Even if STIR/SHAKEN implementation—and the associated call blocking and consumer response—succeeds at eliminating *all* scam robocalls, a significant number of unwanted robocalls would remain. This, in turn, would continue to undermine trust in the telephone network unless it can be further addressed by the Commission in its calibration of residential line exemptions.

35. Call Blocking. In significant part, the call blocking analysis follows our analysis of STIR/SHAKEN. Even though call blocking measures need not focus solely on scam or illegal robocalls, measures currently in place for landline customers frequently are focused in that manner. To the extent that call blocking targets scam calls, that step—while important and beneficial—does not fully address the problem with lost confidence in the telephone network for the same reasons discussed above with respect to STIR/SHAKEN.

36. Although call blocking tools also can, in part, address legal but unwanted calls, the record here does not support a finding that such measures have the prevalence and degree of success needed to obviate the need for call limitations (or to enable the relaxation

of call limitations) for the residential line exemptions. For one, the record does not demonstrate how successful blocking tools are today at blocking unwanted calls. For another, the Commission has acknowledged and emphasized on numerous occasions in its call blocking orders that any single solution will not be sufficient to address the full problem of unwanted robocalls, and that we therefore need to approach it from multiple angles. Thus, even accepting that some tools seek to block calls beyond scam or illegal calls, we are not confident yet that they would curtail such calls to an appreciable degree. This concern about the tools' design is exacerbated by the limited extent of the public's use of them today. Tools blocking unwanted calls (as distinct from scam or illegal calls) do not appear to be widely in use by consumers today, even if available (and even if available at no cost). In a number of cases, they appear to be offered on an opt-in basis and/or otherwise require affirmative steps by the consumer to set it up. Thus, although they are important tools even today, and have promise to become even more important over time, there is not sufficiently widespread use of tools that block unwanted calls that are not scam or illegal calls to adequately address the circumstances that have led to a loss of trust in the telephone network and associated risks to health and safety of life. Because these tools, however successful they may prove to be, will take substantial time to be deployed on a widescale basis by both internet Protocol (IP) and non-IP based providers, we do not find them to serve as an adequate remedy for the immediate scourge of illegal and unwanted robocalls that will continue to serve as a deterrent to residential telephone use today and in the immediate future. Thus, while blocking tools are incredibly valuable, additional steps to reduce the number of potentially unwanted calls overall: (1) reduce the risk that consumers will be disrupted by a high volume of such calls; and (2) reduce the risk that calls made under the TCPA exemptions will be blocked that, individually, may be wanted, but are not wanted at such high volumes. We will continue to monitor the success of blocking tools and reevaluate our numerical limits in light of our experience with these tools.

37. In sum, we conclude that our call limitations for the residential line exemptions are narrowly tailored to advance the compelling government interest in health and safety of life because they help restore residential landline consumers' trust and

willingness to rely on the residential landline telephone network. Further, we do not find that other regulatory alternatives adequately meet this need. Indeed, not only do opt-out, STIR/SHAKEN, and call blocking each have a discrete sphere of likely impact, but even taken in the aggregate they do not address all aspects of the problem. This is sufficient to satisfy strict First Amendment scrutiny.

D. Opt-Out Requirements for Exempt Calls to Residential Lines

38. We deny ACA's request to reconsider the Commission's decision to extend to informational calls opt-out requirements that had previously applied only to telemarketing calls. These requirements mandate use of automated opt-out mechanisms, as well as opt-out lists and policies. Under the new rules, a consumer who wants to avoid further artificial or prerecorded informational calls can "opt out" by dialing a telephone number (required to be provided in the artificial or prerecorded voice message) to register his or her do-not-call request in response to that call. Our rules also require that the caller provide an automated, interactive voice- and/or key press-activated opt-out mechanism for the called person to make a do-not-call request. To effectuate an opt-out mechanism, callers must comply with the requirements of § 64.1200(d) of our rules, which governs the process for handling do-not-call requests. ACA argues that such requirements would be burdensome and that the former rules requiring informational callers to provide only caller identification and a telephone number at the beginning of prerecorded and artificial voice calls are sufficient to protect consumers. ACA further maintains that the Commission did not provide "any reasoned explanation, cost-benefit analysis, or assessment of the impact on the informational calls that might no longer be able to reach consumers."

39. As the Commission explained in the *TCPA Exemptions Order*, an opt-out mechanism gives consumers more say in how many calls they receive. We believe consumers should be able to decide which types of calls they want to receive on their residential lines and which they wish to avoid. We agree with the Joint Consumer Organizations that requiring callers making exempt calls to provide an automated opt-out mechanism will significantly empower telephone call recipients to stop unwanted calls. In addition, eliminating opt-out requirements for prerecorded calls to residential lines, as the ACA Petition requests, would remove an

additional tool that consumers can use to limit the number of artificial or prerecorded voice calls that they receive—a tool that is consistent with Congress's direction in the TRACED Act of placing limits on the number of calls made pursuant to exemptions—and would lead to more unwanted calls. While commenters argue that applying the same opt-out requirements that apply to telemarketers is a departure from longstanding precedent, they offer no persuasive reasons for why consumers should not be afforded the same tools to avoid unwanted informational calls as they have to combat unwanted telemarketing calls, particularly given the unrelenting number of unwanted robocalls consumers face today. NCTA argues that businesses "have every incentive to communicate efficiently with and respect the privacy of their customers, as any failure to do so could result in reputational harm and a loss of business." And yet the evidence shows that consumers continue to be deluged with unwanted robocalls to their landlines.

40. Informational callers have a variety of alternative methods they may use to reach consumers, including the use of live operators on any calls they make. Our opt-out requirement prohibits only the use of an artificial or prerecorded voice message on future calls to the call recipient. It does not preclude further communication by any other means. To the extent that consumers consider such calls beneficial, they have the ability not to exercise the option to opt out from receiving them and even to consent to receiving unlimited calls from a particular caller. We thus disagree with ACA's assertion that the Commission did not fully consider the cost-benefit impact of precluding informational calls after a consumer opts out of such calls. To the contrary, the Commission recognized that requiring an opt-out mechanism for informational calls will provide a significant benefit—it will "empower consumers to stop unwanted calls made pursuant to an exemption under section 227(b)(2)(B)" and "give consumers more say in how many calls they receive"—and it also considered the burden that adopting an automated, interactive opt-out mechanism will impose on callers who make prerecorded message calls. In doing so, however, the Commission noted that "the technology that enables opt out is commonplace and easily accessible." Nevertheless, "we recognize that this requirement will impose some additional burden," and to alleviate that

burden, we allowed for a six-month implementation period before the opt-out requirements took effect. We took that action to “ensure that affected calling parties can implement necessary changes in a cost-effective way that makes sense for their individual business models.” Thus, we reject ACA’s argument that we failed to consider the costs and benefits associated with the new rule.

41. Furthermore, we continue to disagree with commenters who argue that opt-out requirements for exempt callers are overly burdensome. The Commission placed a similar condition on exemptions for calls to wireless numbers, and there is no evidence that callers have not been able to comply with such requirements in that context. The technology that enables opt-out mechanisms is commonplace and easily accessible; the Commission’s rules have required telemarketers to use the available tools and equipment since 2012.

E. Declaratory Ruling

42. We grant ACA’s request to confirm that an earlier Commission ruling on “prior express consent” for calls made by utility companies to wireless phone numbers applies equally to residential numbers. As discussed herein, we apply the guidance and compliance standards set forth in the *Edison Electric Institute (EEI) Declaratory Ruling*, FCC 16–88, released on August 4, 2016, which addressed utility calls to wireless telephone numbers, to calls made to residential lines. Specifically, we confirm that consumers who provide their wireless or residential telephone number to a company involved in the provision of their utility service when they initially sign up to receive utility service, subsequently supply the wireless or residential telephone number, or later update their contact information with their wireless or residential telephone number, have given prior express consent to be contacted by that company at that number with messages that are closely related to the utility service so long as the consumer has not provided instructions to the contrary.

43. In addition, at the request of several Texas utility companies, and consistent with the Commission’s treatment of prior express consent in other contexts, we take this opportunity also to confirm that the provision of a telephone number to the subscriber’s utility service provider reasonably evidences prior express consent by the subscriber to be contacted at that number by an upstream electric utility that: (1) provides electricity service to

the subscriber’s retail electricity provider, to whom the telephone number is given by the subscriber; or (2) is an affiliate of another utility company that provides some other type of utility service to the subscriber, to whom the telephone number is given by the subscriber. In some instances, the upstream electric utility provider may be best positioned to provide subscribers with more timely information regarding issues that may be affecting their service. This ensures that utility service providers involved in the provision of utility service to a subscriber but do not have a direct customer relationship with the subscriber can rely upon consent given to a retail utility provider to communicate with an affected subscriber on matters closely related to the utility service, such as situations in which the provision of electricity service is, or is scheduled to be, impacted due to issues related to the upstream utilities’ generation or transmission of electricity.

44. Consistent with the Commission’s precedent, we confirm that calls closely related to utility services include those that warn about planned or unplanned service outages; provide updates about service outages or service restoration; ask for confirmation of service restoration or information about lack of service; provide notification of meter work, tree trimming, or other field work that directly affects the customer’s utility service; notify consumers they may be eligible for subsidized or low-cost services due to certain qualifiers such as, for example, age, low income or disability; or provide information about potential brown-outs due to heavy energy usage.

45. With regard to calls regarding payment for current utility service, we also incorporate the Commission’s prior ruling. Specifically, in the absence of facts supporting a contrary finding, prior to the termination of a customer’s utility service, a customer who provided a residential telephone number when he or she initially signed up to receive utility service, subsequently supplied the residential telephone number, or later updated his or her contact information with a residential telephone number, is deemed to have given prior express consent to be contacted by their utility company with messages that are closely related to the service, as described above, as well as calls to warn about the likelihood that failure to make payment will result in service curtailment. After a customer’s utility service has been terminated, however, routine debt collection calls by utilities to those customers will continue to be

governed by existing rules and requirements, and we leave undisturbed the existing legal and regulatory framework for those calls.

46. We agree with the petitioner and commenters who support this request that these types of informational communications from utility providers are critical to providing safe, efficient, and reliable service. In fact, the Commission has long recognized that “[s]ervice outages and interruptions in the supply of water, gas or electricity could in many instances pose significant risks to public health and safety, and the use of prerecorded message calls could speed the dissemination of information regarding service interruptions or other potentially hazardous conditions to the public.” There are a wide range of potential risks to public health and safety presented by the interruption of utility services, and the use of artificial or prerecorded voice message calls can be critically important in speeding dissemination of time-sensitive information to the public. We also note that no commenter opposes this request.

47. To ensure that utility companies call only those consumers who have consented to receive artificial or prerecorded voice calls and that such calls are closely related to the provision of service, we reiterate that the utility company is responsible for demonstrating that the consumer provided prior express consent, as it is in the best position to keep records in the usual course of business showing such consent, and the utility company will bear the burden of showing it obtained the necessary prior express consent. We also note that consumers have the right to revoke consent to such calls if they no longer wish to receive them, just as they can when these calls are made to wireless numbers. As a result, we believe this ruling balances important public safety communications with consumer privacy interests.

Ordering Clauses

48. *It is ordered*, pursuant to the authority contained in sections 1–4, 227, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 227, 405, and §§ 1.2 and 1.429 of the Commission’s rules, 47 CFR 1.2, 1.429, that the Order on Reconsideration and Declaratory Ruling is *adopted*.

49. *It is further ordered* that the Declaratory Ruling of the Order on Reconsideration and Declaratory Ruling *shall be effective* upon release. *It is further ordered* that rule amendments adopted in the Order on Reconsideration and Declaratory Ruling *shall be effective* six months after

publication in the **Federal Register**, which shall be preceded by OMB approval of the modified information collection requirements adopted herein.

50. *It is further ordered* that, pursuant to 47 CFR 1.4(b)(1), the period for filing petitions for reconsideration or petitions for judicial review of any aspect of the Order on Reconsideration and Declaratory Ruling will commence on the date that a summary of the Order on Reconsideration and Declaratory Ruling is published in the **Federal Register**.

51. *It is further ordered* that the *TCPA Exemptions Order* adopted in CG Docket No. 02–278 on December 29, 2020, is affirmed in part and reversed in part to the extent indicated herein.

52. *It is further ordered* that the Petitions for Reconsideration filed by the ACA International et al. and Enterprise Communications Advocacy Coalition in CG Docket No. 02–278 on March 29, 2021, and March 17, 2021, respectively, are granted in part and denied in part to the extent indicated herein.

Supplemental Final Regulatory Flexibility Analysis

53. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Traced Act NPRM*, CG Docket No. 02–278, Notice of Proposed Rulemaking, published at 85 FR 64091, October 9, 2020. The Commission sought written public comment on the proposals in the *Traced Act NPRM*, including comment on the IRFA. The Commission subsequently incorporated a Final Regulatory Flexibility Analysis (FRFA) in the *TCPA Exemptions Order*. This Supplemental FRFA conforms to the RFA and adopts by reference the FRFA in the *TCPA Exemptions Order*. It reflects changes to the Commission's rules arising from the Order on Reconsideration prepared in response to the Petitions for Reconsideration filed by ACA International et al. (ACA) and Enterprise Communications Advocacy Coalition (ECAC).

A. Need for, and Objectives of, the Order on Reconsideration

54. The Order on Reconsideration is part of the Commission's ongoing work to combat unwanted robocalls while permitting legitimate callers to deliver information consumers have consented to receive. Specifically, the Order on Reconsideration grants petitioners' request to clarify and amend the rules so that callers may obtain consent either orally or in writing to exceed the numerical limits on artificial or prerecorded voice calls to residential

telephone lines made under the exemptions through in § 64.1200(a)(3)(ii) of the Commission's rules. The Commission agrees with the petitioners and commenters, including both industry and consumer organizations, that the Commission did not intend to require that such callers obtain consent only in writing. While the text of the *TCPA Exemptions Order* did not specify that consent must be obtained in writing, the Commission agrees with petitioners that the amended rule implementing the numerical limitations inadvertently appeared to require prior express written consent to exceed those limitations. As a result, the Commission now amends § 64.1200(a)(3) of its rules to make clear that consent for informational, non-telemarketing calls to residential telephone lines can be obtained orally or in writing, consistent with longstanding Commission precedent.

55. The Order on Reconsideration denies petitioners' request to reconsider the Commission's numerical limits on exempt non-telemarketing calls to residential lines. The Commission affirms that limiting the number of exempted calls to residential lines will greatly reduce the interruptions from unwanted calls and reduce the burden on residential telephone users to manage such calls. The Commission continues to believe that limiting the number of calls that can be made to a particular residential line to three artificial or prerecorded voice calls within any consecutive thirty-day period strikes the appropriate balance between these callers reaching consumers with valuable information and reducing the number of unexpected and unwanted calls consumers currently receive. In addition, the limit of three calls per thirty-day period is "in line with" the conditions for exempted calls to wireless numbers.

56. The Order on Reconsideration also denies petitioners' request to reconsider the Commission's decision to extend to informational calls opt-out requirements that had previously applied only to telemarketing calls. These requirements mandate use of automated opt-out mechanisms, as well as opt-out lists and policies. Under the new rules, a consumer who wants to avoid further artificial or prerecorded informational calls can "opt out" by dialing a telephone number (required to be provided in the artificial or prerecorded voice message) to register his or her do-not-call request in response to that call. The rules also require that the caller provide an automated, interactive voice-and/or key press-activated opt-out

mechanism for the called person to make a do-not-call request. The Commission affirms that an opt-out mechanism gives consumers more say in how many calls they receive and that consumers should be able to decide which types of calls they want to receive on their residential lines and which they wish to avoid.

57. Finally, the Order on Reconsideration grants the request of ACA to confirm that the Commission's ruling on "prior express consent" for calls made by utility companies to wireless phones applies equally to residential landlines. The Commission confirms that consumers who provide their residential telephone number to a utility company when they initially sign up to receive utility service, subsequently supply the residential telephone number, or later update their contact information with their residential telephone number, have given prior express consent to be contacted by their utility company at that number with messages that are closely related to the utility service so long as the consumer has not provided "instructions to the contrary." The Order on Reconsideration concludes that there are a wide range of potential risks to public health and safety presented by the interruption of utility services, and the use of prerecorded voice message calls can be critically important in speeding dissemination of time sensitive information to the public.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA and FRFA

58. In the *Traced Act NPRM*, the Commission solicited comments on how to minimize the economic impact of the new rules on small businesses. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA. In the *TCPA Exemptions Order*, however, the Commission described three comments that focused on the challenges certain entities might face in complying with the opt-out requirements, given their small staffs and limited resources. The FRFA addressed those concerns. The ACA Petition and ECAC Petition addressed in the Order on Reconsideration, and in associated comments, did not raise any concerns with the FRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

59. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the

Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the rules as a result of those comments. The Chief Counsel did not file any comments in response to the rules adopted in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

60. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

61. As noted above, the Commission incorporated a FRFA into the *TCPA Exemptions Order*. In that analysis, the Commission described in detail the various small business entities that may be affected by the final rules, including telemarketing bureaus and other contact centers. The Order on Reconsideration amends the final rules adopted in the *TCPA Exemptions Order* affecting entities that make calls to residential lines pursuant to an exemption in the Commission’s rules. The Supplemental FRFA accompanying the Order on Reconsideration adopts by reference the description and estimate of the number of small entities from the IRFA in the *Traced Act NPRM* and FRFA in the *TCPA Exemptions Order*.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

62. In Section E of the FRFA in the *TCPA Exemptions Order*, the Commission described in detail the projected reporting, recordkeeping, and other compliance requirements for small entities arising from the rules adopted in the *TCPA Exemptions Order*. This Supplemental FRFA adopts by reference the requirements described in Section E of the FRFA. In the Order on Reconsideration, however, the Commission modifies rules adopted in the *TCPA Exemptions Order* to make clear that callers may obtain consent either orally or in writing to exceed the

numerical limits on artificial or prerecorded voice calls to residential telephone lines made under the exemptions contained in § 64.1200(a)(3)(ii) through (v) of the Commission’s rules. This action should significantly reduce any compliance requirements for small entities. As the Commission emphasized in the *TCPA Exemptions Order*, callers can use exempted calls to obtain consent if the calls satisfy other applicable conditions. Such consent may be obtained verbally on the call. The Commission stated that consumers who welcome the calls would be likely to give such consent. Because the TCPA only restricts calls initiated with an artificial or prerecorded voice to a residential telephone, callers can use a live agent to make such calls without running afoul of the TCPA.

F. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

63. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

64. The Commission considered feedback in response to the ACA Petition and ECAC Petition in crafting the Order on Reconsideration. We evaluated the comments with the goal of removing regulatory roadblocks and giving industry the flexibility to continue to make calls pursuant to any exemption previously carved out by the Commission, while still protecting the interests of consumers who do not want to receive unlimited calls from such entities and allowing consumers to opt out of future calls from such entities. For example, in the *TCPA Exemptions Order*, the Commission retained all existing exemptions for calls to residential numbers, concluding that such exemptions satisfy the TRACED Act’s requirements regarding the classes of parties that may make such calls and the classes of parties that may be called. In the Order on Reconsideration, the

Commission takes further action to give industry even more flexibility to make calls to consumers by amending § 64.1200(a)(3) of the rules to make clear that consent for informational, non-telemarketing calls to residential telephone lines can be obtained orally or in writing, consistent with longstanding Commission precedent. This should significantly minimize any compliance costs and burdens on small entities that are subject to the TCPA rules.

List of Subjects in 47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 617, 620, 1401–1473, unless otherwise noted; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

■ 2. Section 64.1200 is amended by revising paragraph (a)(3) introductory text to read as follows:

§ 64.1200 Delivery restrictions.

(a) * * *

(3) Initiate any telephone call to any residential line using an artificial or prerecorded voice to deliver a message that includes or introduces an advertisement or constitutes telemarketing without the prior express written consent of the called party, or that exceeds the applicable numerical limitation on calls identified in paragraphs (a)(3)(ii) through (v) of this section without the prior express consent of the called party. A telephone call to any residential line using an artificial or prerecorded voice to deliver a message requires no consent if the call:

* * * * *

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