



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02-278; FCC 16-57]

Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) invites comment on proposed revisions to its rules under the Telephone Consumer Protection Act (TCPA) to implement a provision of the Bipartisan Budget Act of 2015 that exempts from the TCPA's prior-express-consent requirement autodialed and prerecorded calls "made solely to collect a debt owed to or guaranteed by the United States."

DATES: Comments are due on or before **June 6, 2016**. Reply comments are due on or before **June 21, 2016**.

ADDRESSES: You may submit comments identified by CG Docket No. 02-278 by any of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's web site: <http://apps.fcc.gov/ecfs/>. Filers should follow the instructions provided on the web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and CG Docket No. 02-278.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to

experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Kristi Thornton, Consumer Policy Division, Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554 by phone at (202) 418-2467 or by email at: Kristi.Thornton@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), Rules and Regulations Implementing the TCPA of 1991, CG Docket No. 02-278, FCC 16-57, adopted May 24, 2016, and released May 6, 2016. A copy of document FCC 16-57 and any subsequently filed documents in this matter will be available during regular business hours at the FCC Reference Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554, (202) 418-0270. The full text of document FCC 16-57 will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. A copy of document FCC 16-57 and any subsequently filed documents in this matter may also be found by searching ECFS at: <http://apps.fcc.gov/ecfs/> (insert CG Docket No. 02-278 into the Proceeding block).

Pursuant to 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using ECFS. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial Mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington, DC 20554.

Pursuant to § 1.1200 of the Commission's rules, 47 CFR 1.1200, this matter shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substances of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b). Other rules pertaining to oral and written ex parte presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

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 and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). Document FCC 16-57 can also be downloaded in Word or Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/policy>.

INITIAL PAPERWORK REDUCTION ACT OF 1995 ANALYSIS

Document FCC 16-57 seeks comment on proposed rule amendments that may result in modified information collection requirements. If the Commission adopts any modified information collection requirements, the Commission will publish another notice in the Federal Register inviting the public to comment on the requirements, as required by the Paperwork Reduction Act. Pub. L. 104-13; 44 U.S.C. 3501-3520. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. Pub. L. 107-198; 44 U.S.C. 3506(c)(4).

Synopsis of the Notice of Proposed Rulemaking

1. In the NPRM, the Commission seeks comment on implementation of the Bipartisan Budget Act of 2015 (Budget Act) amendments. Among other things, the Commission seeks comment on a number of implementation questions, such as which calls are covered by the phrase “solely to collect,” how it should restrict the number and duration of such calls, and how to implement such restrictions.

BACKGROUND

A. Covered Calls

2. At what point is a call to collect a debt a covered call? The Commission turns first to the phrase “solely to collect a debt” and seeks comment regarding the parameters of that phrase, including how the Commission should interpret “solely” and “collect.” The Commission’s proposal, to ensure that debtors do not receive non-consent calls before failing to make a timely payment, is to interpret “solely to collect a debt” to mean only those calls made to obtain payment after the borrower is delinquent on a payment. The Commission seeks comment on this proposal, including how the Commission should interpret “delinquent” for these purposes, and any alternative approaches. The Commission also seeks comment on the alternative that covered calls may only be made after the debtor is in default, how the Commission should define “default,” and whether it should distinguish between default caused by non-payment and a default resulting from a different cause under the terms of the debt instrument.

3. Are debt servicing calls covered? The Commission notes that debt servicing calls may provide a valuable service by offering information about options and programs designed to keep at-risk debtors from defaulting or becoming delinquent on their loans. Helping a debtor avoid delinquency or default can preserve the person’s payment history and credit rating, and help maintain eligibility for future loans. The potential value of these debt servicing calls, and the probability that servicing calls will create conditions for debtors that allow debts to be more readily collected by the United States, leads the Commission to propose that servicing calls should be included in covered calls. The Commission seeks comment on this proposal and, if adopted, how to ensure it does not result in the types of calls consumers would not want, such as marketing calls. The Commission seeks comment on what initiating event

should enable a creditor or entity acting on a creditor's behalf to begin making covered calls to convey debt servicing information. Its proposal, above, is that covered calls begin when a borrower is delinquent on a payment; should delinquency also be the initiating event for debt servicing calls, or should some other event trigger a caller's ability to make servicing calls under the exception? What should the trigger event be?

4. The Commission seeks comment on the definition of "servicing" that should guide its analysis in this regard. Should servicing calls include calls informing debtors how to reduce payment amounts; consolidate, modify, or restructure loans; change payment dates; or other matters indirectly related to seeking payment? The Commission proposes that permissible "servicing" calls only refer to calls made by the creditor and those entities acting on behalf of the creditor. The Commission seeks comment on this proposal.

5. "Owed to or guaranteed by the United States." The Commission seeks comment on the meaning of the phrase "a debt owed to or guaranteed by the United States." What is a debt "owed to" the United States and a debt "guaranteed by" the United States? Does the phrase "owed to or guaranteed by" include debts insured by the United States? Should the Commission look to or adopt the definition of "debt" in the DCIA? Why or why not?

6. The Commission also seeks comment on whether there are any circumstances under which a party other than the federal government obtains a pecuniary interest in a debt such that the debt should no longer be considered to be "owed to . . . the United States." Basic contract principles dictate that when an owner sells an item, it no longer belongs to the original owner, but to the purchaser. Likewise, the purchaser of a debt is owed the repayment obligation, not the prior obligee. For example, would a debt still be "owed to . . . the United States" if the right to repayment is transferred in whole or part to anyone other than the United States, or a collection agency collects the funds and then remits to the federal government a percentage of the amount collected? Are there specific types of debts that are covered or not covered by the phrase "debt owed to or guaranteed by the United States," such as federal

student loans, Small Business Administration loans, and federally guaranteed mortgages? Are there any other factors the Commission should consider in determining which types of debts should be included or excluded from this phrase for purposes of implementing the Budget Act amendments to the TCPA? If so, what are those factors? Consistent with the focus of the amended statutory language on debts “owed to or guaranteed by the United States,” should the Commission also require that the content of covered calls be limited to such debts, and that such calls not be permitted to include content concerning other debts or matters about which the caller may want to speak with the debtor? Similarly, can the Commission and should the Commission place any limits on a covered caller using or transferring (such as by sale) information (such as the debtor’s location or phone number) obtained during covered calls in order to collect other debts or to address other matters?

7. Who can be called? The Commission seeks comment on the person or persons to whom covered calls may be made. The Commission believes the most reasonable way to read the phrase “solely to collect a debt” is to include only calls to the person or persons obligated to pay the debt because it appears impossible that calls to non-debtors by their nature would directly result in collection from the debtor. The Commission believes this approach will ensure that a debtor’s family, friends, and other acquaintances will not be subject to non-consent robocalls seeking information about the debtor. The Commission seeks comment on this proposal and the related question of whether it should limit covered calls to the cellular telephone number the debtor provided to the creditor, e.g., on a loan application.

8. The Commission seeks comment on whether calls to persons the caller does not intend to reach, that is persons whom the caller might believe to be the debtor but is not, are covered by the exception. Parties seeking debtors’ current telephone numbers often use techniques such as skip tracing, which are not guaranteed to identify the debtor. The Commission proposes to exclude such calls from the exception to encourage callers to avoid robocalling unwitting individuals who have no connection to the debtor. Similarly, and consistent with its recent robocalls decision, the Commission proposes that calls to a wireless number a debtor provided to a creditor, but which has been reassigned unbeknownst to the caller, are not covered by the exception, but have the same one-call window the Commission has found to

constitute a reasonable opportunity to learn of reassignment. The Commission seeks comment on its proposals and any alternatives.

9. Who may call? The Commission next seeks comment on who may make the covered calls at issue. As amended, the relevant portion of the TCPA reads: “It shall be unlawful for any person . . . to make any call . . . using any [autodialer] or an artificial or prerecorded voice to any [wireless number] unless such call is made solely to collect a debt owed to or guaranteed by the United States.” This provision is not clear as to who may make calls covered by the exception. The Commission believes the most reasonable way to interpret this language is to include calls made by creditors and those calling on their behalf, including their agents. Is there a limiting principle to determining who should be deemed to be acting on behalf of the creditor? The Commission seeks comment on its interpretation and whether it should interpret the statute to include other callers and, if so, who. Alternatively, should the Commission interpret the statute to apply more narrowly to only the creditor or to the creditor and its agents acting within the actual scope of their authority?

10. The Commission notes that petitions pending before the Commission seek clarification regarding the meaning of “person” and whether the federal government or its agents are persons for purposes of the TCPA, among other things. The Commission seeks comment on whether the Budget Act amendments imply that the federal government is a person for TCPA purposes and whether the Commission must resolve these questions in order to complete this rulemaking. The Commission also seeks comment on whether and, if so, how the Supreme Court’s recent decision in Campbell-Ewald Co. v. Gomez should inform the implementation of the Budget Act amendments to the TCPA.

B. Limits on Number and Duration of Covered Calls

11. Need for restrictions. In considering the need for restrictions on covered calls, the Commission notes the volume of consumer complaints, as set forth above. These factors, along with Congress’ explicit statement that the Commission “shall prescribe regulations to implement the amendments made by” the Budget Act, and Congress’ authorization that the Commission “may restrict or

limit the number and duration of calls made to a telephone number assigned to a cellular telephone service to collect a debt owed to or guaranteed by the United States,” lead the Commission to propose that it does so here. The Commission seeks comment on its proposal and on what types of number and duration restrictions it should adopt for the covered calls. Apart from its specific proposals and questions below, the Commission seeks comment generally on what other actions it should consider to reduce unwanted debt collection robocalls to consumers.

12. If adopted, the nature of restrictions. The Commission seeks comment on how it should restrict or limit the number and duration of covered calls, including both collection calls and debt servicing calls. Consistent with the conditions the Commission has adopted when granting exemptions to permit certain free-to-end-user robocalls to be made without consent of the called party, and regardless of whether the caller leaves a prerecorded or artificial-voice message or whether the call is an autodialed call resulting in a live conversation, the Commission proposes to restrict the number of covered calls to three per month, per delinquency only after delinquency. The Commission believes three calls per month provides an adequate opportunity to convey necessary information about the debt, repayment, and other matters the caller wishes to communicate without the consent of the called party and, in any case, affords callers an opportunity to obtain the debtor’s consent to make additional calls beyond any limit the Commission adopts. The Commission proposes that the limit on the number of calls should be for any initiated calls, even if unanswered by a person, because many consumers may choose not to answer calls from unfamiliar numbers. These limits would apply to autodialed, prerecorded, or artificial voice calls to wireless numbers. In the case of autodialed calls, the limits apply whether they use a prerecorded or artificial voice or instead attempt to connect the called debtor with a live agent. The Commission sees potential value, however, in debtors hearing from a live agent to discuss the debt and potential servicing options and seeks comment on whether and how it should encourage that approach. The Commission seeks comment on these proposals. The Commission also seeks comment on the maximum duration of a voice call, and whether the Commission should adopt different duration limits for prerecorded- or artificial-voice calls than for autodialed calls with a live caller. Should there be a limit on the length of

text messages? What should that limit be? The Commission also seeks comment on how to count debt servicing calls for purposes of the proposed three-call limit per month or any other limit on the number of calls.

13. Should the Commission look to other standards or precedents for guidance? For example, should the Commission restrict calls to the hours of 8:00 a.m. to 9:00 p.m. (local time at the called party's location), similar to the rule that now applies to telemarketing calls? Should the Commission consider any limits on the number of calls pursuant to the Fair Debt Collection Practices Act if it adopts such limits here? How should the Commission take account of any limits adopted by the Consumer Financial Protection Bureau? Are there other standards or precedents, including restrictions that might exist under either federal or state debt collection laws, the Commission should consider? Are calls covered by the Budget Act exception subject to other laws and rules that more generally govern debt collection and, if so, how should the Commission harmonize any overlapping requirements?

14. Consumer ability to stop covered calls. The Commission has determined that an ability to stop unwanted calls is critical to the TCPA's goal of consumer protection. That right may be more important here, where consumers need not consent to the calls in advance in order for a caller to make the calls. The Commission proposes, therefore, that consumers should have a right to stop such calls at any point the consumer wishes. The Commission seeks comment on its proposal. For example, does the amended law allow the Commission to require that a caller limit covered calls to the first of (1) a specific number (perhaps within a set period of time) or (2) until the consumer says "stop"? The Commission proposes that stop-calling requests should apply to a subsequent collector of the same debt. The Commission seeks comment on this proposal and how it might ensure that a request to stop such calls be honored if later transferred to other collectors. Should the Commission require that callers making covered calls record any request to stop calling and provide a record of such a request to subsequent callers along with other information about the debt?

15. The Commission also proposes, so that consumers fully understand any right it adopts to stop calls, to require callers to inform debtors of their right to make such a request. The Commission seeks comment on this proposal and on when and how callers should provide such notice. For example, should the permissible ways to opt out of further calls under the TCPA—i.e., any reasonable method, including orally or in response to a text message—apply here? Should the Commission require callers making artificial- or prerecorded-voice calls to include an automated, interactive voice- and/or key press-activated opt-out mechanism for stopping future excepted calls?

C. Other Implementation Issues

16. Covered Calls to Residential Lines. The Commission noted that under its current rules, artificial- or prerecorded-voice calls to residential lines that are made for the purpose of collecting a debt are currently not subject to the prior express consent requirement. Although the TCPA allows for broad application of the prior express consent requirement to all non-emergency artificial- and prerecorded-voice calls to residential lines, the Commission has exercised its statutory exemption authority so as to apply the consent requirement only to calls that include or introduce an advertisement or constitute telemarketing. The Commission has also found that debt collection calls do not constitute telemarketing. Accordingly, the consent exception under the Budget Act currently does not appear to affect whether artificial- or prerecorded-voice calls to residential lines for the purpose of collecting a covered debt require prior express consent.

17. The Commission nonetheless proposes to revise its rule concerning artificial- or prerecorded-voice calls to residential lines to reflect the exception contained in the Budget Act. The Commission does not believe, however, that it is necessary at the present time to determine the exact contours of the statutory exception for covered calls to residential lines, including, for example, determining the specific impact of the somewhat different language in the Budget Act amendments with regard to covered calls to residential lines and to wireless numbers. The Commission seeks comment on these views, and on whether it should consider any additional issues concerning covered calls. For

example, should any limits on the number and duration of covered calls also apply to covered calls to residential lines, even though such calls would not have required prior express consent even before the Budget Act amendments to the TCPA?

18. Restrictions on Calls to Cellular Telephone Service. Congress authorized the Commission to “restrict or limit the number and duration of calls made to a telephone number assigned to a cellular telephone service to collect a debt owed to or guaranteed by the United States.” Yet, the amendment to the TCPA, authorizing calls made to collect a debt owed to or guaranteed by the United States, is broader, applying to “any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.” Considering the identical language in the prior delegation of authority in 47 U.S.C. 227(b)(2)(C), the Commission proposes that Congress delegated the Commission authority to limit the number and duration of all calls made pursuant to the debt collection exception in 47 U.S.C. 227(b)(1)(A)(iii).

19. Congress, in granting the Commission authority to limit the number and duration of calls, used identical language to the language it used in the separate delegation of authority in 47 U.S.C. 227(b)(2)(C). The identical language in these two delegations of authority indicates that Congress intended the two provisions to apply to the same services.

20. The Commission has interpreted 47 U.S.C. 227(b)(2)(C) to apply to all services mentioned in 47 U.S.C. 227(b)(1)(A)(iii). In so doing, it has interpreted “cellular telephone service” by asking whether services are functionally equivalent from the consumer perspective rather than on technical or regulatory differences, such as which spectrum block is used to provide the service. This avoids, for example, consumers receiving wireless voice service from being treated differently depending on which spectrum block their carriers use and callers having to determine which spectrum block is used for a particular consumer’s service in order to know which requirements apply.

21. Applying the canon of statutory construction that Congress knows the law, including relevant agency interpretations, at the time it adopts a statute, the Commission presumes that Congress knew of the Commission’s interpretation of this key language. Congress used the same language in the recent delegation of authority without taking any action to alter the Commission’s interpretation of identical language elsewhere in the same statute. The Commission therefore proposes that the authority delegated to it in the new 47 U.S.C. 227(b)(2)(H) added by the Budget Act applies to all services to which amended 47 U.S.C. 227(b)(1)(A)(iii) applies. The Commission seeks comment on this proposal.

22. Application of Other TCPA Restrictions to Covered Calls. The Commission believes the most reasonable interpretation is that calls must be in compliance with all other legal requirements—for example, the requirement that artificial- or prerecorded-voice calls contain certain identifying information—in order for the Budget Act consent exception to apply. The Commission seeks comment on this proposal, as well as on whether and how compliance with other legal requirements should affect the application of the Budget Act exception.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

23. As required by the Regulatory Flexibility Act of 1980, as amended, (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the NPRM. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided on the first page of this document. The Commission will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

A. Need for, and Objectives of, the Proposed Rules

24. The NPRM contains proposals regarding how to modify the Commission’s rules to align them with the amended statutory language of the TCPA enacted by Congress in the Bipartisan Budget Act of 2015 (Budget Act). The NPRM seeks comment generally on all entities that make autodialed or

prerecorded- or artificial- voice calls to collect debts owed to or guaranteed by the United States. The NPRM seeks comment on covered calls. Specifically, the Commission seeks comment on the parameters of the phrase “solely to collect a debt.” The Commission seeks comment on whether debt servicing calls are covered. The Commission seeks comment on the meaning of the phrase “owed to or guaranteed by the United States,” including the applicability of the exception to debt insured by or purchased from the United States. The Commission seeks comment on the person or persons to whom covered calls can be made and it seeks comment on who is entitled to make calls under the exception Congress created in the Budget Act.

25. The NPRM seeks comment on limits on the number and duration of covered calls. Specifically, the Commission seeks comment on the need for restrictions on covered calls, including types of number and duration restrictions. The Commission seeks comment on the nature of the restrictions, if adopted, including looking to other standards or precedents for guidance. The Commission seeks comment on the consumer’s ability to stop covered calls.

26. The NPRM seeks comment on other implementation issues. Specifically, the Commission seeks comment on the applicability of the exception to residential lines. The Commission seeks comment on whether the authority delegated to it in the new 47 U.S.C. 227(b)(2)(H) added by the Budget Act applies to all services to which amended 47 U.S.C. 227(b)(1)(A)(iii) applies. The Commission seeks comment on the application of other TCPA restrictions to covered calls. The Commission’s underlying concern is to protect small businesses by giving them ample opportunity to comment on the proposed rules under consideration.

27. The Commission’s rules restricting the use of automated telephone dialing equipment and artificial or prerecorded voice to call wireless numbers apply to a wide range of entities, including all entities that make such calls or texts to wireless telephone numbers to collect debts owed to or guaranteed by the federal government. Thus, the Commission expects that the proposals in this proceeding could

have a significant economic impact on a substantial number of small entities in a wide range of categories.

B. Legal Basis

28. The proposed and anticipated rules are authorized under sections 1-4, 201(b), 227, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151-154, 201(b), 227, 303(r); and the Bipartisan Budget Act of 2015, Pub. L. 114-74, 129 Stat. 584.

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

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

30. Collection Agencies. This industry comprises establishments primarily engaged in collecting payments for claims and remitting payments collected to their clients. The SBA has determined that Collection Agencies with \$15 million or less in annual receipts qualify as small businesses. Census data for 2007 indicate that 4,532 establishments in this category operated throughout that year. Of those, 4,288 establishments operated with annual receipts of less than \$10 million. The Commission concludes that a substantial majority of businesses in this category are small under the SBA standard.

31. Telemarketing Bureaus and Other Contact Centers. This U.S. industry comprises establishments primarily engaged in operating call centers that initiate or receive communications for

others-via telephone, facsimile, email, or other communication modes-for purposes such as (1) promoting clients products or services, (2) taking orders for clients, (3) soliciting contributions for a client, and (4) providing information or assistance regarding a client's products or services. The SBA has determined that Telemarketing Bureaus and other Contact Centers with \$15 million or less in annual receipts qualify as small businesses. U.S. Census data for 2007 indicate that 2,100 firms in this category operated throughout that year. Of those, 1,909 operated with annual receipts of less than \$10 million. The Commission concludes that a substantial majority of businesses in this category are small under the SBA standard.

32. Commercial Banks and Savings Institutions. Commercial banks are establishments primarily engaged in accepting demand and other deposits and making commercial, industrial, and consumer loans. Commercial banks and branches of foreign banks are included in this industry. Savings institutions are establishments primarily engaged in accepting time deposits, making mortgage and real estate loans, and investing in high-grade securities. Savings and loan associations and savings banks are included in this industry. The SBA has determined that Commercial Banks and Savings Institutions with \$500 million or less in assets qualify as small businesses. December 2013 Call Report data compiled by SNL Financial indicate that 6,877 firms in this category operated throughout that year. Of those, 5,533 qualify as small entities. Based on this data, the Commission concludes that a substantial number of businesses in this category are small under the SBA standard.

33. Credit Unions. This industry comprises establishments primarily engaged in accepting members' share deposits in cooperatives that are organized to offer consumer loans to their members. The SBA has determined that Credit Unions with \$500 million or less in assets qualify as small businesses. The December 2013 National Credit Union Administration Call Report data indicate that 6,687 firms in this category operated throughout that year. Of those, 6,252 qualify as small entities. Based on this data, the Commission concludes that a substantial number of businesses in this category are small under the SBA standard.

34. Other Depository Credit Intermediation. This industry comprises establishments primarily engaged in accepting deposits and lending funds (except commercial banking, savings institutions, and credit unions). Establishments known as industrial banks or Morris Plans and primarily engaged in accepting deposits, and private banks (i.e., unincorporated banks) are included in this industry. The SBA has determined that Other Depository Credit Intermediation entities with \$500 million or less in assets qualify as small businesses. Census data for 2007 indicate that 29 firms in this category operated throughout that year. Due to the nature of this category, the Commission concludes that a substantial number of businesses in this category are small under the SBA standard.

35. Sales Financing. This industry comprises establishments primarily engaged in sales financing or sales financing in combination with leasing. Sales financing establishments are primarily engaged in lending money for the purpose of providing collateralized goods through a contractual installment sales agreement, either directly from or through arrangements with dealers. The SBA has determined that Sales Financing entities with \$7 million or less in annual receipts qualify as small businesses. Census data for 2007 indicate that 2,267 firms in this category operated throughout that year. Of those, 1,806 operated with annual receipts of less than \$5 million. The Commission concludes that a substantial majority of businesses in this category are small under the SBA standard.

36. Consumer Lending. This U.S. industry comprises establishments primarily engaged in making unsecured cash loans to consumers. The SBA has determined that Consumer Lending entities with \$7 million or less in annual receipts qualify as small businesses. Census data for 2007 indicate that 3,234 firms in this category operated throughout that year. Of those, 2,969 operated with annual receipts of less than \$5 million. The Commission concludes that a substantial majority of businesses in this category are small under the SBA standard.

37. Real Estate Credit. This U.S. industry comprises establishments primarily engaged in lending funds with real estate as collateral. The SBA has determined that Real Estate Credit entities with \$7 million or less in annual receipts qualify as small businesses. Census data for 2007 indicate that 5,791

firms in this category operated throughout that year. Of those, 5,036 operated with annual receipts of less than \$5 million. The Commission concludes that a substantial majority of businesses in this category are small under the SBA standard.

38. International Trade Financing. This U.S. industry comprises establishments primarily engaged in providing one or more of the following: (1) working capital funds to U.S. exporters; (2) lending funds to foreign buyers of U.S. goods; and/or (3) lending funds to domestic buyers of imported goods. The SBA has determined that International Trade Financing entities with \$38.5 million or less in annual receipts qualify as small businesses. Census data for 2007 indicate that 125 firms in this category operated throughout that year. Of those, 118 operated with annual receipts of less than \$25 million. The Commission concludes that a substantial majority of businesses in this category are small under the SBA standard.

39. Secondary Market Financing. This U.S. industry comprises establishments primarily engaged in buying, pooling, and repackaging loans for sale to others on the secondary market. The SBA has determined that Secondary Market Financing entities with \$7 million or less in annual receipts qualify as small businesses. Census data for 2007 indicate that 105 firms in this category operated throughout that year. Of those, 74 operated with annual receipts of less than \$5 million. The Commission concludes that a substantial majority of businesses in this category are small under the SBA standard.

40. All Other Nondepository Credit Intermediation. This U.S. industry comprises establishments primarily engaged in providing nondepository credit (except credit card issuing, sales financing, consumer lending, real estate credit, international trade financing, and secondary market financing). Examples of types of lending in this industry are: short-term inventory credit, agricultural lending (except real estate and sales financing), and consumer cash lending secured by personal property. The SBA has determined that All Other Nondepository Credit Intermediation entities with \$38.5 million or less in annual receipts qualify as small businesses. Census data for 2007 indicate that 4,590 firms in this category operated throughout that year. Of those, 4,494 operated with annual receipts of less than

\$25 million. The Commission concludes that a substantial majority of businesses in this category are small under the SBA standard.

41. Mortgage and Nonmortgage Loan Brokers. This industry comprises establishments primarily engaged in arranging loans by bringing borrowers and lenders together on a commission or fee basis. The SBA has determined that Mortgage and Nonmortgage Loan Brokers with \$7 million or less in annual receipts qualify as small businesses. Census data for 2007 indicate that 17,702 firms in this category operated throughout that year. Of those, 17,393 operated with annual receipts of less than \$5 million. The Commission concludes that a substantial majority of businesses in this category are small under the SBA standard.

42. Other Activities Related to Credit Intermediation. This industry comprises establishments primarily engaged in facilitating credit intermediation (except mortgage and loan brokerage; and financial transactions processing, reserve, and clearinghouse activities). The SBA has determined that Other Activities Related to Credit Intermediation entities with \$7 million or less in annual receipts qualify as small businesses. Census data for 2007 indicate that 5,494 firms in this category operated throughout that year. Of those, 5,277 operated with annual receipts of less than \$5 million. The Commission concludes that a substantial majority of businesses in this category are small under the SBA standard.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

43. Under the current rules, all artificial or prerecorded voice calls to a wireless telephone number are prohibited without prior express consent. The NPRM contains proposals regarding how to modify the Commission's rules to align them with the amended statutory language of the TCPA enacted by Congress in the Budget Act, creating an exception that allows calls to wireless telephones made solely pursuant to the collection of a debt owed to or guaranteed by the United States.

44. The proposals under consideration could result in additional costs to regulated entities. If the Commission imposes restrictions on the number and duration of calls to wireless numbers as proposed for comment in the NPRM, then calling entities might incur some additional costs in tracking that information. For example, calling entities might need to modify software, develop tracking procedures, and train staff in order to keep within the restrictions on the number and duration of calls to wireless numbers. However, some calling entities may already track calls and call durations, and therefore, no additional compliance efforts would be required. Calling entities may also be relieved of tracking the consent of the called party, which could offset any new burdens.

45. If the Commission determines that a called party may stop future calls concerning collection of a debt owed to or guaranteed by the United States as proposed for comment in the NPRM, then calling entities might incur some additional cost in maintaining do-not-call lists for wireless numbers. Such costs could include software modification, development of procedures, and training. However, some calling entities may already have procedures in place for maintaining do-not-call lists, and therefore, no additional compliance efforts will be required.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

46. 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.

47. The Commission believes that any economic burden these proposed rules may have on carriers is outweighed by the benefits to consumers. The compliance costs identified in Section D are

small. The Commission seeks comment on how to minimize the economic impact of these proposals. For instance, the Commission seeks comment on the specific costs of the measures discussed in the NPRM and ways to mitigate any implementation costs. The Commission also seeks comment on the overall economic impact these proposed rules may have because it seeks to minimize all costs associated with these proposed rules. Finally, the Commission seeks comment on whether to consider the size of the calling entity or the type of debt being collected in determining the appropriate timeframes for implementation.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

48. None.

ORDERING CLAUSES

49. Pursuant to the authority contained in sections 1-4, 227, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151-154, 227, 303(r); and the Telephone Consumer Protection Act as amended by the Bipartisan Budget Act of 2015, Pub. L. 114-74, 129 Stat. 584, document FCC 16-**57** IS ADOPTED.

50. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of document FCC 16-**57**, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

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

FEDERAL COMMUNICATIONS COMMISSION.

Gloria J. Miles,

Federal Register Liaison Officer,

Office of the Secretary.

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

PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 is revised to read as follows:

AUTHORITY: 47 U.S.C. 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, 620, the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, and Sec. 301, Pub. L. 114-74, 129 Stat. 584 (47 U.S.C. 227) unless otherwise noted.

2. Section 64.1200 is amended by revising paragraphs (a)(1)(iii) and (a)(3)(v), and adding paragraph (a)(3)(vi) to read as follows:

§ 64.1200 Delivery restrictions.

(a) * * *

(1) * * *

(iii) To any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call, unless such call is made solely to collect a debt owed to or guaranteed by the United States.

* * * * *

(3) * * *

(v) Delivers a “health care” message made by, or on behalf of, a “covered entity” or its “business associate,” as those terms are defined in the HIPAA Privacy Rule, 15 CFR 160.103;

(vi) Is made solely pursuant to the collection of a debt owed to or guaranteed by the United States.

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