

FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
 )  
Capital One Services, LLC's ) CG Docket Nos. 18-152 and 02-278  
Petition for Declaratory Ruling )  
 ) DA 19-1156  
In the Matter of Rules and Regulations )  
Implementing the )  
Telephone Consumer Protection Act )  
 )

Comments of

National Consumer Law Center  
on behalf of its low-income clients

and

Consumer Action  
Consumer Federation of America  
National Association of Consumer Advocates

Regarding the Petition for Declaratory Ruling  
Filed by Capital One Services, LLC

December 9, 2019

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## Comments

### I. Introduction and Summary

Pursuant to the Public Notice<sup>1</sup> issued by the Consumer and Governmental Affairs Bureau, the **National Consumer Law Center** (NCLC)<sup>2</sup> files these comments on behalf of its low-income clients and **Consumer Action, Consumer Federation of America** and **National Association of Consumer Advocates** to make recommendations regarding the requests made by **Capital One Services, LLC** (Capital One or Petitioner) in its petition.<sup>3</sup> As representatives of consumers who have been plagued with too many unwanted and unconsented-to texts and robocalls, we appreciate the consideration that Capital One is providing to customers' requests for texts to stop. In these comments, we explain that we generally support the direction of Capital One's requests; however, to ensure that both callers and the called parties are clear regarding whether consent for automated calls has been provided or revoked, we recommend a few important clarifications to the proposal.

In its petition, Capital One requests clarification of how it should respond to texts from its customers that say "STOP." Specifically, Capital One requests that "the Commission issue a declaratory ruling to confirm that, if the sender of a lawful informational text message transmitted through an automatic telephone dialing system ("ATDS") receives a valid opt-out request from the recipient in response to that message, and that informational message was part of a program in which the recipient had previously enrolled that transmits several categories of informational messages, then, pursuant to the Commission's ruling in *SoundBite*,<sup>4</sup> the sender may clarify in an opt-out confirmation message to the recipient the scope of the recipient's opt-out request without violating the Telephone Consumer

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<sup>1</sup> See Public Notice, Federal Communications Commission, Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Declaratory Ruling By Capital One Services, LLC, CG Docket Nos. 18-152 and 02-278 (Rel. Nov. 7, 2019), available at <https://ecfsapi.fcc.gov/file/11071215710328/DA-19-1156A1.pdf>.

<sup>2</sup> The National Consumer Law Center is a nonprofit corporation founded in 1969 to assist legal services, consumer law attorneys, consumer advocates and public policy makers in using the powerful and complex tools of consumer law for just and fair treatment for all in the economic marketplace.

<sup>3</sup> Petition for Declaratory Ruling by Capital One Services, LLC, CG Docket Nos. 18-152 and 02-278 (filed Nov. 1, 2019) (emphasis added), available at <https://ecfsapi.fcc.gov/file/110141644656/Capital%20One%20Petition%20for%20Declaratory%20Ruling%20-%20Nov%201%202019.pdf> [hereinafter Petition].

<sup>4</sup> See *SoundBite Communications, Inc. Petition for Expedited Declaratory Ruling*, CG Docket No. 02-278, Declaratory Ruling, 27 FCC Rcd 15391 ¶¶ 1, 7, 12 (2012) ("SoundBite").

Protection Act (TCPA)<sup>5</sup> or related Commission rules.”<sup>6</sup> Importantly (and critical to our support for this idea), the petition goes on to explain that, if there is no response from the recipient, the sender will cease sending any text messages.<sup>7</sup>

Pursuant to the TCPA, the Federal Communications Commission (FCC) and the courts have consistently held that automated calls to cell phones (which include automated texts), unless they relate to emergencies, are legal only with prior express consent. The content of the automated calls and texts must be limited to the scope of the consent that was provided by the called party. As consent can always be revoked, it follows that if consent has been granted for calls that cover a range of subject matters, called parties should have the right to revoke consent for some messages, while continuing to consent to receive others. And, if it is unclear whether the called party’s revocation relates to all or only some of the subjects, it is fitting for the caller to seek clarification with one subsequent message after a general revocation notice of “STOP,” in order to ask that follow-up question. However, if no further clarification is forthcoming from the consumer, it is then essential for the caller is to stop all future automated messages—just as proposed by Capital One (except for those messages related to an emergency or allowed by the FCC under the exemption for free-to-end user calls<sup>8</sup>). Further, just as callers must maintain records of consent, callers should also maintain records related to revocation of consent.

We agree with Petitioner that this request and the proposed solution is entirely consistent not only with the Commission’s prior decision in the *SoundBite* proceeding to allow senders of texts to issue confirmation of STOP requests, but also with the Commission’s ruling in the *Blackboard* proceeding. In the *Blackboard* proceeding,<sup>9</sup> the Commission reiterated the TCPA’s requirement that the content of automated telephone calls must be “closely related” to the transaction that gave rise to the consumer’s provision of a cell phone number.<sup>10</sup> Capital One’s proposed follow-up question will appropriately determine the scope of the withdrawal of consent for automated messages. This mechanism suitably

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<sup>5</sup> 47 U.S.C. § 227.

<sup>6</sup> Petition at 1-2 (internal cites maintained; emphasis added).

<sup>7</sup> Petition at 6, 9, Exhibit A.

<sup>8</sup> 47 U.S.C. § 227(b)(2)(C).

<sup>9</sup> *In re* Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991, Blackboard, Inc. Petition for Expedited Declaratory Ruling, Edison Electric Institute and American Gas Association Petition for Expedited Declaratory Ruling, CG Docket No. 02-278, Declaratory Ruling, 31 F.C.C. Rcd. 9054 (F.C.C. Aug. 4, 2016), available at <https://ecfsapi.fcc.gov/file/0804720522141/FCC-16-88A1.pdf>.

<sup>10</sup> *Id.* at 9064 ¶ 23.

furtheres the Commission’s intention to narrow the scope of topics for which consent is considered provided to only those topics that were covered when consent was initially provided.

Our approval of Capital One’s follow-up question in the confirmatory message is contingent on requiring that these confirmatory messages with a question about the scope of revocation are legal only if the recipient’s initial revocation is deemed to cover all automated messages should the recipient not respond to the follow-up question, and if this fact is explained in the confirmatory message (as it is in Capital One’s example<sup>11</sup>). In other words, the sender of the automated message must assume that the consumer’s “STOP” message in response to a message about one subject is intended to revoke consent for all messages from Capital One, unless there is further, clear clarification from the recipient.

## **II. Clarifying the Scope of a Revocation of Consent is Consistent with the TCPA**

### **A. Calls Must Be Closely Related to the Reason for Which Consent Was Provided**

Both the FCC and the courts have been clear that the subjects of calls and texts must be closely related to the subject matter about which the consent was provided.<sup>12</sup> In 2012, the FCC stated:

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<sup>11</sup> Petition at Exhibit A.

<sup>12</sup> *See, e.g.*, *Van Patten v. Vertical Fitness Grp.*, 847 F.3d 1037, 1044–1047 (9th Cir. 2017) (providing telephone number is consent to transaction-related contact, not consent to “any and all contact”); *Baisden v. Credit Adjustments, Inc.*, 813 F.3d 338, 343–344 (6th Cir. 2016) (stating that the context in which a debtor provides consent matters, but finding patient’s provision of cell phone number to hospital was consent to receive autodialed and prerecorded collection calls); *Hill v. Homeward Residential, Inc.*, 799 F.3d 544, 551 (6th Cir. 2015) (provision of cell phone number to initial creditor is consent to receive collection calls regarding that debt, “not on any topic whatsoever”); *Nigro v. Mercantile Adjustment Bureau, L.L.C.*, 769 F.3d 804 (2d Cir. 2014) (man’s provision of his cell phone number to utility company so that it could disconnect his deceased mother-in-law’s service was not consent to receive calls about her unpaid bill because he did not provide phone number in connection with transaction that created the debt); *Walintukan v. SBE Ent. Grp., L.L.C.*, 2018 WL 2357763 (N.D. Cal. May 24, 2018) (giving cell number when purchasing tickets for a nightclub performance does not create an ongoing relationship and is not consent to receive text messages about other events at the club); *Zeidel v. YM L.L.C. USA*, 2015 WL 1910456 (N.D. Ill. Apr. 27, 2015) (provision of telephone number to sales clerk is not carte blanche to receive automated messages of any kind but is limited by facts surrounding consent); *Toney v. Quality Res., Inc.*, 75 F. Supp. 3d 727, 735–736, 739 (N.D. Ill. 2014) (providing cell number for an explicitly limited purpose—“Questions about your order”—is not consent to receive telemarketing calls about other products, including upselling calls made on pretext of confirming order); *Zyburo v. NCSPlus, Inc.*, 44 F. Supp. 3d 500, 503 (S.D.N.Y. 2014) (patient’s provision of telephone number to medical office in context wholly divorced from debt collection does “not appear to be tantamount to even implied consent to be robo-called by a third party about one’s debt”); *Kolinek v. Walgreen Co.*, 2014 WL 3056813, at \*3 (N.D. Ill. July 7, 2014) (holding that plaintiff provided his phone number for identification purposes only and did not consent to receive phone calls, and that “turning over one’s wireless number for the purpose of joining one particular private messaging group did not amount to consent for communications relating to something other than that particular group”). *See also* *Payton v. Kale Realty*, 164 F. Supp. 3d 1050 (N.D. Ill. 2016) (scope of consent depends on context and purpose for which plaintiff gave cell phone number, but providing it in context of potential merger with caller’s business is consent to receive text messages two years later touting caller’s business as a good place to work).

One commenter . . . appears to suggest that oral consent is sufficient to permit any autodialed or prerecorded calls to wireless numbers. It argues that its customers may orally provide their wireless phone number as a point of contact and therefore those customers expect marketing and service calls. We disagree. Consumers who provide a wireless phone number for a limited purpose—for service calls only—do not necessarily expect to receive telemarketing calls that go beyond the limited purpose for which oral consent regarding service calls may have been granted.<sup>13</sup>

The FCC reiterated this position in a 2015 declaratory ruling:

By ‘within the scope of consent given, and absent instructions to the contrary,’ we mean that the call must be closely related to the purpose for which the telephone number was originally provided. For example, if a patient provided his phone number upon admission to a hospital for scheduled surgery, then calls pertaining to that surgery or follow-up procedures for that surgery would be closely related to the purpose for which the telephone number was originally provided.<sup>14</sup>

The calling industry’s appeal to the D.C. Circuit did not disturb this ruling.<sup>15</sup>

A Second Circuit case, *Nigro v. Mercantile Adjustment Bureau, LLC*,<sup>16</sup> provides an example of this rule about the limited nature of the scope of consent. There, a utility company told a man that it needed his cell phone number in order to comply with his request that it disconnect his mother-in-law’s utility service after she died. It then made seventy-two robocalls to his number to collect a \$68 bill she owed. The court held that the man had not provided his number during the transaction that resulted in the

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<sup>13</sup> *In re* Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991, Report and Order, 27 F.C.C. Rcd. 1830, 1840 ¶ 25 (F.C.C. Feb. 15, 2012) (emphasis in original). *Accord In re* Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991, Blackboard, Inc. Petition for Expedited Declaratory Ruling, Edison Electric Institute and American Gas Association Petition for Expedited Declaratory Ruling, CG Docket No. 02-278, Declaratory Ruling, 31 F.C.C. Rcd. 9054, 9064-65 ¶¶ 23-25 (F.C.C. Aug. 4, 2016) (when a parent has given a school only a cell phone number as a contact, the scope of consent does not extend beyond communications closely related to the school’s educational mission or to official school activities, and does not extend to communications about non-school events).

<sup>14</sup> Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991, 30 F.C.C. Rcd. 7961, 8029 ¶ 47 n.474 (F.C.C. July 10, 2015) *ruling upheld*, *ACA Int’l v. Fed. Comm’ns Comm’n*, 885 F.3d 687 (D.C. Cir. 2018). *But cf. id.* at 7991-92 ¶ 52 (stating that, “[f]or non-telemarketing and non-advertising calls, express consent can be demonstrated by the called party giving prior express oral or written consent, or in the absence of instructions to the contrary, by giving his or her wireless number to the person initiating the autodialed or prerecorded call”; this more general statement, made in the context of a different question, should be viewed as shorthand summary of consent requirements, not a repudiation of more specific statement in ¶ 47).

<sup>15</sup> *ACA Int’l v. Fed. Comm’ns Comm’n*, 885 F.3d 687 (D.C. Cir. 2018).

<sup>16</sup> 769 F.3d 804 (2d Cir. 2014). *See also* Letter from FCC Gen. Counsel to Clerk, Second Cir. Ct. of Appeals, in *Nigro v. Mercantile Adjustment Bureau*, 2014 WL 2959062, at \*5 (F.C.C. June 30, 2014) (“Although Nigro presumably consented to receive calls regarding the termination of service to the Thomas residence by providing his cell phone number to National Grid in connection with his request to terminate that service, under the ACA Order that consent did not extend to debt collection calls with respect to debts that did not arise ‘during the transaction’ in which Nigro provided his number”).

debt owed. Instead, he provided the number long after the debt was incurred, and he was not in any way responsible for the debt. The court reversed the district court's holding that the man had consented to receive the calls by providing his cell phone number.

### **B. The Right to Revoke Consent is Clear**

The FCC's 2015 declaratory ruling specifically reiterated that consent to automated texts and calls can always be revoked:

Consumers have a right to revoke consent, using any reasonable method including orally or in writing. We conclude that callers may not abridge a consumer's right to revoke consent using any reasonable method.<sup>17</sup>

The FCC's 2015 pronouncement followed on the heels of a similar conclusion by the Third Circuit.<sup>18</sup> The Third Circuit held that a 2012 FCC ruling<sup>19</sup> that a consumer may "fully revoke" her prior express consent by transmitting an opt-out request to the sending party was entitled to deference, and that Congress intended to use the common law concept of "consent," which is revocable.<sup>20</sup> The court noted that there is no indication in the legislative history that Congress intended the statute to limit a consumer's rights by imposing a temporal restriction on the right to revoke prior express consent. The Ninth Circuit,<sup>21</sup> the Eleventh Circuit,<sup>22</sup> and lower court decisions<sup>23</sup> have all followed the Third

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<sup>17</sup> Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991, 30 F.C.C. Rcd. 7961, 7996 ¶¶ 63, 64 (F.C.C. July 10, 2015), *ruling upheld*, ACA Int'l v. Fed. Comm'ns Comm'n, 885 F.3d 687 (D.C. Cir. 2018).

<sup>18</sup> Gager v. Dell Fin. Servs., L.L.C., 727 F.3d 265 (3d Cir. 2013).

<sup>19</sup> *In re* Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991, SoundBite Commc'ns, Inc., Declaratory Ruling, 27 F.C.C. Rcd. 15391, 15397 ¶ 11 n.47 (F.C.C. Nov. 26, 2012). *See also id.* at 15398 ¶ 7 (stating that consumer may "request that no further text messages be sent"); *id.* at 15398 ¶ 13 (noting that consumer may opt out of receiving voice calls after prior express consent has been given); *id.* at ¶ 15 (suggesting that, after consumer has received text messages, she may then send request for those messages to stop at any time).

<sup>20</sup> Gager v. Dell Fin. Servs., L.L.C., 727 F.3d 265, 270–272 (3d Cir. 2013).

<sup>21</sup> Van Patten v. Vertical Fitness Grp., 847 F.3d 1037, 1047–1049 (9th Cir. 2017).

<sup>22</sup> Osorio v. State Farm Bank, 746 F.3d 1242 (11th Cir. 2014). *Accord* Schweitzer v. Comenity Bank, 866 F.3d 1273 (11th Cir. 2017) (reiterating that consent can be revoked orally, and holding that it can be partially revoked).

<sup>23</sup> Tillman v. Hertz Corp., 2018 WL 4144674 (N.D. Ill. Aug. 29, 2018); Cartrette v. Time Warner Cable, Inc., 157 F. Supp. 3d 448 (E.D.N.C. 2016); King v. Time Warner Cable, 113 F. Supp. 3d 718, 726 (S.D.N.Y. 2015) (applying FCC's 2015 declaratory ruling; consumer's revocation, communicated to caller, was effective), *vacated and remanded on other grounds*, 894 F.3d 473 (2d Cir. 2018) (addressing definition of autodialer); Conklin v. Wells Fargo Bank, N.A., 2013 WL 6409731 (M.D. Fla. Dec. 9, 2013); Munro v. King Broad. Co., 2013 WL 6185233 (W.D. Wash. Nov. 26, 2013); Adamcik v. Credit Control Servs., Inc., 832 F. Supp. 2d 744 (W.D. Tex. 2011) (holding that consent is revocable and relying on common law meaning of "consent").

Circuit and the FCC.<sup>24</sup>

The D.C. Circuit's 2018 decision in *ACA International v. Federal Communications Commission* strengthens these conclusions. First, the D.C. Circuit repeated and confirmed the rule that consumers have the right to revoke consent. The court said:

It is undisputed that consumers who have consented to receiving calls otherwise forbidden by the TCPA are entitled to revoke their consent.<sup>25</sup>

Second, *ACA International* expressly upheld the FCC's ruling that callers cannot limit how consent can be revoked. It described the petitioners' concerns as "overstated," and held that the FCC was not required to establish standardized revocation procedures.<sup>26</sup> Nor, the court held, did the FCC go beyond its authority by mandating standardized revocation procedures for opting out of time-sensitive banking and healthcare-related messages that the Commission had exempted from the prior express consent requirement yet declining to do so for revocation of consent.<sup>27</sup> As the D.C. Circuit pointed out, "the default rule for non-exempted calls [i.e., calls other than time-sensitive banking and healthcare-related calls] is that they are disallowed (absent consent), such that the availability of an opt-out naturally could be broader. In that context, the Commission could reasonably elect to enable consumers to revoke their consent without having to adhere to specific procedures."<sup>28</sup>

### **C. Consumers May Partially Revoke Consent**

A 2017 Eleventh Circuit decision holds that just as a consumer can provide limited consent to receive robocalls, a consumer can also revoke consent partially.<sup>29</sup> In the case before the court, the consumer had attempted to revoke consent to receive debt collection calls during her working hours. The court held that she had the right to do so and remanded for a jury determination of whether her instructions to the creditor were clear enough. The court noted that the creditor had indicated it was technologically feasible (although perhaps more expensive) to program its software to place calls to a consumer only at certain times, and that the creditor was always free to decide just to stop calling if this made more practical and business sense.

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<sup>24</sup> See also *Blow v. Bijora, Inc.*, 855 F.3d 793, 803 (7th Cir. 2017) (quoting the FCC's ruling that consent can be revoked by any reasonable means).

<sup>25</sup> *ACA Int'l v. Fed. Comm'n's Comm'n*, 885 F.3d 687, 708 (D.C. Cir. 2018).

<sup>26</sup> *Id.* at 709.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 710 (emphasis in original).

<sup>29</sup> *Schweitzer v. Comenity Bank*, 866 F.3d 1273 (11th Cir. 2017).

#### **D. Confirmation Texts After Revocation Are Allowed**

Several decisions hold that consumers who revoke their consent to text messaging may be sent a final “confirmatory text message” confirming receipt of a recipient’s request to stop future calls or texts.<sup>30</sup> The FCC has also adopted this interpretation in the *SoundBite* proceeding.<sup>31</sup>

#### **E. Absent Specific Instructions, Callers Must Interpret a Revocation to Revoke Consent for All Automated Texts or Calls**

A key aspect of Capital One’s request is that it proposes to interpret a “STOP” request that is not subsequently clarified by the consumer as one that withdraws consent for all automated calls and texts. This is an important protection for consumers and is necessary to give full meaning to the TCPA’s requirement for consent. Consumers should not be required to use magic words to revoke consent, or even to provide further or repeated explanations to the caller or texter. A simple “STOP” should be sufficient to cause the cessation of all subsequent automated messages, regardless of content. Allowing the sender to request clarification with one subsequent message is consistent with this purpose, as that should not be any more burdensome than the confirmation texts currently permitted to be sent to consumers. However, the consumer’s failure to respond to that follow-up request must be interpreted as a complete revocation of consent for all future texts and calls to which the consumer has previously consented.

This mechanism differs, therefore, from some erroneous judicial interpretations of revocation of consent, in which the courts found that that a consumer who had revoked consent to be called by a debt collector regarding one debt could still be called by the same collector in relation to another debt.<sup>32</sup> It would be useful for the FCC to restate the rule in relation to these revocations: that when a

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<sup>30</sup> *Ibey v. Taco Bell Corp.*, 2012 WL 2401972 (S.D. Cal. June 18, 2012) (when consumer sent a text message in response to defendant’s invitation to complete a survey, then sent “STOP” message requesting that defendant cease sending him text messages, defendant’s “single, confirmatory text message did not constitute unsolicited telemarketing” and therefore was not “an invasion of privacy contemplated by Congress in enacting the TCPA”). *Accord Ryabyschuck v. Citibank* (S.D.), 2012 WL 5379143 (S.D. Cal. Oct. 30, 2012).

<sup>31</sup> *In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, *SoundBite Commc’ns, Inc.*, Petition for Expedited Declaratory Ruling, CG Docket No. 02-278, Declaratory Ruling, 27 F.C.C. Rcd. 15391 (F.C.C. Nov. 29, 2012) (allowing organizations that send text messages to consumers from whom they have obtained prior express consent to continue practice of sending a final, onetime text to confirm receipt of a consumer’s opt-out request).

<sup>32</sup> *See Michel v. Credit Prot. Ass’n L.P.*, 2017 WL 3620809 (N.D. Ill. Aug. 23, 2017). *Accord Mendoza v. Allied Interstate L.L.C.*, 2019 WL 5616961, at \*9 (C.D. Cal. Oct. 22, 2019); *Perez Alvarez v. Medicredit, Inc.*, 2018 WL 6430830, at \*10 (W.D. Tex. Aug. 2, 2018)..



consumer revokes consent for automated calls, in the absence of specificity from the consumer regarding which of several possible subjects for those calls, the caller must cease all automated calls.

After all, while a caller who is a debt collector may have the right to make automated calls because of the consent provided by the consumer to the original creditor, when a revocation of that consent is made to the collector, that revocation should be considered to revoke consent for all calls from that collector. The only exception should be in the situation where a collector has legitimately requested clarification and the consumer responded by limiting the revocation to certain calls or messages. Consumers should not have to know the exact magic words to revoke consent for all automated messages.

#### **F. Callers Must Maintain Clear Records**

As the FCC has previously stated, callers must maintain records that they have consent for their automated calls:

The well-established evidentiary value of business records means that callers have reasonable ways to carry their burden of proving consent. We expect that responsible callers, cognizant of their duty to ensure that they have prior express consent under the TCPA and their burden to prove that they have such consent, will maintain proper business records tracking consent. Thus, we see no reason to shift the TCPA compliance burden onto consumers and affirm that they do not bear the burden of proving that a caller did not have prior express consent for a particular call. . . .<sup>33</sup>

The FCC should reaffirm that as the TCPA requires callers to keep records to prove that they have consent for their automated calls and texts, that also means that callers have the obligation to maintain explicit records of the communications they receive from consumers about revocation.

### **III. Conclusion**

We support the request made in Capital One's petition to send a single confirmatory message after revocation, pursuant to *SoundBite*, subject to these limitations. Although a request to STOP should be considered an all-encompassing revocation request, absent instructions to the contrary, the confirmatory message may seek to clarify the called party's intended scope of the revocation, but only if these confirmatory messages meet all four of the following requirements. These requirements are interrelated and dependent upon one another for the legality of the confirmatory messages.

1. If a sender of automated calls receives an opt-out request from the recipient in response to an automated message, and that message was part of a program in which the recipient had

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<sup>33</sup> *In re* Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991, CG Docket No. 02-278, Declaratory Ruling and Order, 30 F.C.C. Rcd. 7961, 7998 ¶ 70 (F.C.C. July 10, 2015) (emphasis added), *ruling upheld*, *ACA Int'l v. Fed. Comm'n's Comm'n*, 885 F.3d 687 (D.C. Cir. 2018).

previously consented to receive automated calls, the sender may send one confirmatory message, as permitted by *SoundBite*, to clarify the scope of the recipient's opt-out request;

2. There must be only one question asked in the confirmatory message, which question is clear and unambiguous, and which can be answered by the recipient simply and easily, as illustrated by the text exchange in Exhibit A of Capital One's petition;
3. Should the consumer not respond to the sender's request for clarification, then the sender must cease all further automated calls, except for those related to emergencies, or those that have been permitted by the FCC under its authority to allow exemptions for free-to-end user calls; and
4. Senders must maintain complete records of the recipients' consent, the calls and texts made pursuant to that consent, and all correspondence related to revocations of consent.

Respectfully submitted, this the 9<sup>th</sup> day of December 2019, by:

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