

February 7, 2024

VIA ECFS

Marlene Dortch
Secretary
Federal Communications Commission
45 L St. NE
Washington, DC 20554

Re: CG Docket No. 02-278; FCC-CIRC2402-02

Dear Ms. Dortch

ACA International, the American Bankers Association, America's Credit Unions,¹ American Financial Services Association, Edison Electric Institute, Mortgage Bankers Association, American Association of Healthcare Administration Management, and the National Council of Higher Education Resources ("Associations") appreciate the Federal Communications Commission's ("Commission") efforts to clarify rules regarding revocation of consent.² As we have previously explained, the members of the Associations make every effort to promptly honor reasonably relayed requests to stop further communications. The Associations appreciate the recognition, however, that prompt action on revocation requests is not always possible and applaud the Draft Revocation Order's proposed adoption of a 10-day time frame for honoring requests to revoke consent.³ The Associations also appreciate the Draft Revocation Order's proposal to provide more clarity on what constitutes a reasonable means of revocation by identifying specific mechanisms or key words that definitively constitute revocation.⁴ In certain key respects, however, the Draft Revocation Order fails to strike an appropriate balance resulting in potential harms to both consumers and businesses. The Associations recommend several revisions to the Draft Revocation Order to restore this balance.

The Draft Order Overall Does not Reasonably Address the Problem Confronting Businesses

The Associations' members provide important, sometimes critical, information to their customers through voice calls and text messages. These include suspicious activity alerts, utility outages, notices of data breaches, past-due alerts, multifactor authentication texts and notices of payments due. Moreover, consumers may have consented to a receive a number of different

¹ The America's Credit Unions was recently formed from merger of the Credit Union National Association and the National Association of Federally-Insured Credit Unions.

² *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order and Further Notice of Proposed Rulemaking, FCC-CIRC2402-02 ("Draft Revocation Order").

³ Draft Revocation Order at para. 19.

⁴ *Id.* at 11-12.

categories of information and companies may enable consumers to customize the alerts they receive. Attachment A provides an example of one bank’s offering to consumers to customize alerts.⁵ Under the Draft Revocation Order, businesses would be required to delete *all* of these customer-selected methods of communication if the customer revokes consent in response to one type of call or text message alert. Customers face harm if they do not receive these messages as a result of revocation requests that lead the company to opt the customer out of *all* categories of informational calls and text messages.

In the best of circumstances, the consumer seeking to stop further communications will utilize an available mechanized process and reply with the word STOP. In that circumstance, the consumer’s opt-out request can generally be quickly honored, at least with respect to the type of communication involved. In many cases, however, businesses receive a dizzying array of responses that must be manually assessed, interpreted, processed and acted upon. Sometimes, a deliberately verbose response is used in hopes of generating litigation.⁶

Verbose and cryptic responses are only one problem. Responses run the gamut from various misspellings of STOP (e.g., “srop”, “stoo”, “STOap”, “stfu”, “syop”, “STWOP”, “atop”) to expletives or highly offensive and derogatory comments to emojis. The following are examples of emojis received by one company in response to informational texts: “👁️”, “👉”, “👉👉”, “👤”, “👎”, “👍”, “👉👍”, “😄😄😄”, “❤️❤️❤️”, and “❤️❤️❤️❤️❤️❤️❤️❤️.” At times a response may simply be gibberish: “Skibidi skibidi toilet 😊”, “Dinner, wine, banana, chips, dessert 🍷. Eggs,” “Dgxjdidfdijdd.”

Reponses such as these generally cannot be acted upon using machine processes and if, received over a weekend or holiday, may not be acted upon quickly. Providing up to 10 business days to honor a request to revoke (assuming that is what the consumer intended) alleviates some of the problem but requiring a confirmation text to be sent within 5 minutes of receipt of such messages, as required by the Draft Revocation Order, is not workable when responses cannot be processed automatically.

The Draft Revocation Order generates two overarching concerns. First, it will harm consumers because callers will have limited ability to ensure that consumers do not inadvertently

⁵ The customer may customize the alerts he or she receives by account (e.g., checking, credit card), by method of communication (e.g., e-mail, voice call, and e-mail address), and by type of alert received (e.g., alerts regarding account balances, payment deadlines, or type of charge made to the customer’s credit card). These alerts are highly customizable. For example, the customer can request an alert when his or her account balance (or available credit) falls below a certain dollar amount specified by the customer.

⁶ See *Wright v. USAA Savings Bank*, 2020 WL 2615441 *5 (E.D. Cal. 2020) (“Moreover, based upon the court’s colloquy with counsel at oral argument, it clearly appears that the choice to send the letter to Las Vegas arose not from a genuine expectation that defendants would process Las Vegas correspondence, but rather from an attempt by counsel simply to create a record for litigation.”); *Epps v. Earth Fare, Inc.* 2017 WL 1424637 (C.D. Cal. 2017). Another litigation ploy is that a consumer will unsubscribe using a standard method, which will be quickly acted upon. The consumer will then ask to start receiving messages again only to quickly seek to opt out by using phrase rather than a one-word standard response. Failure to timely respond to the renewed revocation request or to send another message before honoring the opt out leads to a lawsuit.

opt out of critical messages. Second, the Draft Revocation Order encourages and facilitates frivolous or manufactured litigation by placing the burden of proof on companies to prove that a non-standard revocation is not reasonable. This is new. In previous orders, the Commission has not sought to allocate the burden of proving the effectiveness of a revocation. It has simply stated that a totality of the circumstances be used.⁷ The courts have held that consumers, not callers, bear the burden of proving the effectiveness of a revocation request.⁸ Additionally, the Draft Revocation Order imposes a requirement to honor revocation requests “as soon as practicable” but not more than 10 business days. Litigation regarding whether an opt out request was addressed as soon as practicable is likely to ensue.

To address the concerns, the trade associations recommend the following revisions of the Draft Revocation Order:

- Require that consumers that use a non-standard or non-conforming means of revocation to prove that the method used was reasonable in the event of a dispute;
- Provide that revocation will not be presumed to extend to specified informational messages such as fraud alerts, breach notifications, utility alerts, and multifactor authentications, absent a specific direction from the consumer;
- Replace the 5-minute response rule for confirmation texts with a next business day requirement; and
- Remove the “soon as practicable” requirement for honoring revocations.

These recommended revisions are further addressed below.

The Commission Should Revise the Burden of Proof that Non-Conforming Means of Revocation Are Reasonable.

As noted above, the Draft Revocation Order enhances consumers’ revocation rights by providing several examples of reasonable methods of revocation. The Draft Revocation Order proposes a new rule that “any revocation request made using an automated, interactive voice or key press-activated opt out mechanism on a robocall; via a response of stop or [quit, end, revoke, opt out, cancel or unsubscribe] sent in reply to an incoming text message, or submitted at a website or telephone number provided by the caller to process opt-out requests”⁹ constitutes definitive proof of revocation. Creating an irrebuttable presumption of reasonableness when using the identified means of revocation should create a powerful incentive for consumers to use these identified means and for callers or text senders to timely honor such a revocation.

⁷ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd 7961, 7996, n. 233 (2015) (“When assessing whether any particular means of revocation used by a consumer was reasonable, we will look to the totality of the facts and circumstances surrounding that specific situation, including, for example, whether the consumer had a reasonable expectation that he or she could effectively communicate his or her request for revocation to the caller in that circumstance, and whether the caller could have implemented mechanisms to effectuate a requested revocation without incurring undue burdens.”)

⁸ See note 12 below.

⁹ Draft Revocation Order at para. 11.

Having identified irrefutable reasonable means, the Draft Revocation Order continues, however, to allow consumers to use other “reasonable” but non-conforming means of revocation, such as different words or phrases in a text, without establishing further guidance on what constitutes reasonableness.¹⁰ Most problematic, the Draft Revocation Order imposes the burden on callers or text senders to prove by a preponderance of the evidence that the other means chosen by the consumer is not reasonable, should a dispute arise.¹¹

The Draft Revocation Order contains no explanation for imposing on the caller or text sender the burden of proving unreasonableness when a consumer chooses to use a means other than those conclusively identified as reasonable. The Commission has never before sought to instruct courts on which party bears the burden of proving the effectiveness of a revocation request. Placing the burden on callers to prove that a means of revocation is not reasonable is contrary to the holdings of courts that the burden is on the consumer to prove an effective revocation of consent.¹² To be sure, callers bear the burden of proving that consumers provided consent in the first instance, as consent is an affirmative defense to a TCPA action. But once callers have shown that the consumer has previously provided consent, courts hold that it is logical to place the burden on plaintiff/consumers to show that prior consent has been revoked.¹³ Moreover, shifting the burden to the caller to prove that a non-conforming means of revocation was not reasonable requires callers to prove a negative. As the Supreme Court long ago recognized, “as a practical matter it is never easy to prove a negative.”¹⁴ For that reason, “our legal system rarely requires a party to prove a negative.”¹⁵

Placing the burden of proof on the caller or text sender to prove unreasonableness is a prescription for litigation gameplaying and undermines the otherwise helpful specification of reasonable means contained in the Draft Revocation Order. The allocation of proof is not balanced. The Commission should not establish a framework where callers cannot dispute that consent was revoked when the consumer uses one of the identified means, but then must prove unreasonableness if the consumer uses another method. The Draft Revocation Order creates for

¹⁰ *Id.* at para. 13.

¹¹ *Id.* at para. 13, 15-16.

¹² *See, e.g., Samson v. United Healthcare Services Inc.*, 2023 WL 6793973 * 11 (W.D. Wash. 2023) (“Though United has the initial burden of proving prior express consent, ‘[l]ogic would dictate that ... plaintiffs have the burden to prove that such consent was revoked.’”) (quoting *Saulsberry v. Meridian Fin. Servs. Inc.*, 2016 WL 3456939 *11 (C.D. Cal. 2016); *Rando v. Edible Arrangements International LLC*, 2018 WL 1523858 * 6 (D. N. J 2018) (“In order to plead that [plaintiff] successfully revoked that consent, she must put forth factual allegations that would tend to show that her method of revocation was reasonable, given the totality of the circumstances.”); *Epps v. Earth Fare, Inc.* 2017 WL 1424637 * 5 (C.D. Cal. 2017) (“In sum, Plaintiff has not plausibly alleged that her revocation was effective.”); *Silver v. Pennsylvania Higher Education Assistance Agency*, 2020 WL 607054 *16 (N.D. Cal. 2020) (“Here, a revocation of such consent . . . is a factual issue that, under any ordinary showing of liability, plaintiff would bear the burden of proving as part of his prima facie case.”); *In re Runyan*, 530 B.R. 801, 807 (Bankr. M.D. Fla. 2015) (Once the caller has met the burden of showing consent, the consumer “had the duty to prove that Mr. Runyan effectively revoked his consent.”)

¹³ *Id.*

¹⁴ *Elkins v. United States*, 364 U.S. 206, 218 (1960).

¹⁵ *Walther v. Sec’y of HHS*, 485 F.3d1146, 1150 (Fed. Cir. 2007).

the consumer a “heads I win, tails you lose” framework for revocation, at least in the litigation context.

The Associations recommend that the Commission retain the legal status quo by requiring, in the event of a dispute, that the consumer bears the burden of showing that a non-conforming means of revocation was a reasonable method to effectuate a revocation. The consumer is in control of the method of revocation utilized and has been provided the opportunity to utilize easy, readily available methods that preclude any question of whether consent has been revoked. A consumer that fails to avail itself of those methods should “have the opportunity to explain” why the method chosen is reasonable in light of the totality of the circumstances.¹⁶

The Associations recommend the following revisions to the Draft Revocation Order and proposed rule:

13. “This does not preclude, however the use of other words or phrases to revoke consent. If the reply text contains words or phrases other than those listed above, and should any dispute on this point arise, ~~the text sender, who is responsible for processing the revocation request~~ the **consumer, who is responsible for choosing the method of revocation**, will have an opportunity to explain why the consumer’s use of alternative words or phrases ~~does not constitute a reasonable means to revoke consent~~ **constitutes a reasonable means to revoke consent**. [The remainder of the paragraph to remain as is].
15. [revise last sentence] For example, when the consumer chooses to use a method that has not been designated ~~by the caller to process revocation requests~~ **as definitively reasonable by this order**, ~~the caller~~ **the consumer** will have an opportunity to prove why the method used is ~~not~~ reasonable.
16. We also codify that, when a consumer uses a method other than those discussed above to revoke consent, ~~such as those made by voicemail or email to any telephone number or address at which the consumer can reasonably expect to reach the caller but which has not been designated by the caller as a method to revoke consent~~, doing so creates a rebuttable presumption that the consumer ~~has revoked consent~~, **has not used a reasonable means of revocation**, absent evidence to the contrary. As discussed above, in these instances when a caller disputes that the revocation request has been made using a reasonable method, the finder of fact will undertake a totality of circumstances analysis to determine if the method used is reasonable. ~~Callers~~ **Consumers** will have an opportunity to explain why any such request is ~~not~~ reasonable. In these instances, ~~callers~~ **consumers** will have an opportunity to make their case using the facts and evidence to demonstrate that the ~~calling party~~ **consumer** has ~~not~~ used a reasonable method to request revocation of consent. We disagree with commenters who argue this approach is inconsistent with consumers’ right

¹⁶ *Id.* at para. 13.

to revoke by any reasonable means. Our approach is a means to ascertain whether a consumer has used a reasonable method to revoke consent when the consumer has used a method of their own choosing rather than one **identified above as conclusively reasonable**. ~~established by the calling or texting entity.~~

§64.1200

- (11) The use of any other means to revoke consent not listed in paragraph (a)(10), ~~such as a voicemail or email to any telephone number or email address intended to reach the caller~~, creates a rebuttable presumption that the consumer **has not used a reasonable means of revocation** ~~revoked consent~~, absent evidence to the contrary. In those circumstances, a totality of circumstances analysis will determine whether the ~~caller~~ **consumer** can demonstrate that a request to revoke consent has ~~not~~ been conveyed in a reasonable manner.

To Protect Consumers from Inadvertently Stopping Critical Communications, the Commission Should Modify the Scope of Consent Framework

We appreciate the Draft Revocation Order's recognition that consumers may not intend to opt out of critical messages when responding to a telemarketing or unrelated informational message. The Draft Revocation Order's approach will not, however, ensure consumers continue to receive such messages.

The Draft Revocation Order provides that a consumer's revocation request will not extend to the types of communications, like fraud alerts, that are specifically exempted from the prior consent requirement by the Commission's rules set forth at 47 C.F.R. §64.1200(a)(3) and (a)(9) but only if the conditions for invoking the exemption are met.¹⁷ These conditions include ensuring that the call or text to cell phones must be free to the end user and that such a call or text may only be made to the wireless number provided by the customer of the financial institution. In light of these conditions, many companies do not rely on the exemption but instead obtain consent. The Draft Revocation Order does not protect consumers from inadvertently opting out of these critical messages in those circumstances. Moreover, the exemptions do not include multifactor authentication, which is critical in protecting consumers.

To protect consumers, the Commission should adopt a different approach. The Associations recommend that the Commission specifically identify a discrete and limited category of calls where consent to receive those calls will not be deemed to be revoked unless the revocation is specifically in response to a call or text involving one of those categories or the consumer has otherwise made his or her intent clear. With respect to financial institutions that list of calls should be the categories listed in 64.1200(a)(9), *i.e.*, messages involving fraud alerts, identify theft, breach alerts, and arranging for the receipt of pending money transfer. The list should also include multifactor authentication. Messages regarding these matters would not be deemed revoked regardless of whether the caller or text sender complies with the conditions set

¹⁷ Draft Revocation Order at para. 30.

forth in the Commission's consent exemption rules or sends these messages based on obtaining consent.

Providing that a revocation of consent would not be deemed to apply to these discrete categories will not undermine the Commission's overriding goal of ensuring consent is provided as required by the TCPA. Instead, a consumer's prior consent to receive a message regarding one of these categories will not be presumptively considered revoked absent a more direct indication of the consumer's intent to revoke such messages, such as a revocation sent in response to a fraud or breach alert or multifactor authentication.

The Associations recommend the following revisions to the Draft Revocation Order:

Add new paragraph 33:

We recognize that companies may communicate the same critical information without relying on the Commission's exemptions. Instead, companies may rely on affirmative consent. In those instances, the rule described above may not preclude the inadvertent revocation of critical messages such as fraud alerts because the caller did not rely on the exemption when sending the alert. We conclude that, absent direct evidence to the contrary such as an opt-out request in response to a fraud alert, a request for revocation will not be deemed to revoke prior consent provided by the consumer to receive any of communications identified in the exemptions rules, even if the conditions of the exemption are not met. For example, absent direct evidence of intent to revoke, revocation will not be presumed to extend to transactions and events that suggest a risk of fraud or identify theft; possible breaches of the security of customers' personal information; steps consumers can take to prevent or remedy harm caused by data security breaches; and actions needed to arrange for receipt of pending money transfers.¹⁸ Another example would be messages sent by health care providers for the purposes set forth in section 64.1200(a)(9)(iv). Finally, given the importance of multifactor authentication (MFA), companies need not assume that consent to receive an MFA text or call has been revoked unless the consumer specifically indicates he or she no longer wants to receive MFA texts or calls. Companies may not include any type of telemarketing, solicitation or advertising or debt collection content in such messages.

The Commission Should Eliminate the 5-Minute Rule for Confirmation Texts

The Draft Revocation Order, codifying the Commission's *Soundbite Declaratory Ruling*, authorizes a caller to send a one-time text confirming a consumer's revocation request and this confirmation text may include a request for clarification regarding the scope of the revocation. The Associations agree that businesses should be able to send such a confirmation text without fear of liability.¹⁹ The Draft Revocation Order, however, undermines the utility of the confirmation text by requiring, in all instances, that the text be sent within five minutes of receipt

¹⁸ These are the categories of informational texts messages set forth in section 64.1200(a)(9)(iii) of the Commission's rules.

¹⁹ Draft Revocation Order at paras. 25-26.

of the revocation request.²⁰ There are many instances when a company cannot immediately process a revocation request and will not be able to comply with the five-minute rule. Moreover, other statutes restrict times during which a consumer may be contacted. For example, the Fair Debt Collection Practices Act (FDCPA) generally bars a debt collector from communicating with a consumer between 9 pm and 8 am.²¹ A debt collector would violate the FDCPA by quickly sending a confirmation message in response to a revocation request received during those hours.

The basis for the five-minute rule derives from the *Soundbite Declaratory Ruling*, which predicated the time limitation on *Soundbite*'s statement that it can send confirmation texts within minutes given the automated system it used, and assumed that the revocation request was in the form of a STOP message or a list of specified key words.²² The Draft Revocation Order, however, does not limit the five-minute rule to similar circumstances. It appears to apply regardless of the means used to send the revocation request. As discussed above, the Draft Revocation Order allows consumers to utilize any reasonable means to revoke consent and establishes a 10-day outside time frame to process revocation requests "to ensure that entities, including smaller entities have a reasonable opportunity to process do not call and revocation requests."²³ The Draft Revocation Order does not provide the same reasonable opportunity when sending a confirmation text.

In light of the foregoing, the Associations recommend that the Commission eliminate the five-minute rule and instead provide that the text sender may send confirmation text by the next business day after receipt of a revocation request. This will provide companies some time to decipher cryptic requests or texts sent outside of business hours where the company does not utilize automated processes or otherwise requires human review of the text. Smaller companies, such as small credit unions which may have very small staffs, will need the additional time to receive and respond to revocation requests. Other businesses, like utilities, also need this time for hand-offs between vendors and business units, synchronization of different technologies and systems. A next business day requirement would avoid problems and costs associated with the scenario of revocation requests that come in on weekends and holidays or have been misdirected.

²⁰ Draft Revocation Order at para. 24 ("Consistent with the *SoundBite Declaratory Ruling*, if the confirmation text is sent within five minutes of receipt, it will be presumed to fall within the consumer's prior express consent. If it takes longer however, the sender will have to make a showing that such delay was reasonable, and the longer this delay, the more difficult it will be to demonstrate that such a message falls within the original prior consent.").

²¹ 15 U.S.C. § 1692(c),

²² *Rules and Regulation Implementing the Telephone Consumer Protection Act of 1991, Soundbite Communications, Inc.*, CG Docket No. 02-278, Declaratory Ruling, 27 FCC Rcd 15391, 15392, para. 4 & n. 11 (2012) ("*Soundbite*"). *Soundbite* stated that it sends confirmation texts in compliance with industry best practices when "STOP, or any of the opt-out key words" are used." *Id.* at n. 11. *See also* *SoundBite Communications Inc.*, Petition for Expedited Declaratory Ruling, CG Docket No. 02-278, filed Feb. 16, 2012, at 6 ("For the *SoundBite* system, when a consumer replies to a text with "STOP" or other appropriate opt-out keyword from their mobile device, the *SoundBite* system receives the stop request along with the mobile number from which it originated. The system is programmed to put the individual number on a separate list (a type of "do not text" list), with a one-time confirmation text message sent only to that number.") available at [7021860543.pdf \(fcc.gov\)](https://www.fcc.gov/7021860543.pdf).

²³ Draft Revocation Order at para. 21.

This requirement also would account for the brief time periods when businesses' technology systems are undergoing regular maintenance.

The Commission should also make clear that when a customer has consented to several categories of messages, a company's confirmation message may request clarification from the customer as to whether the revocation request was meant to encompass all such messages and/or may provide a link to a web portal that enables the text recipient to select (or-unselect) the categories of messages from the company that they desire to receive.

The Associations propose the following revision to paragraph 24 of the Draft Revocation Order and proposed rule:

24. ~~Consistent with the *SoundBite Declaratory Ruling*, If the confirmation text is sent within five minutes of receipt,~~ **by the next business day after receipt,** it will be presumed to fall within the consumer's prior express consent;

§ 64.1200

- (12) A one-time text message confirming a request to revoke consent from receiving any further calls or text messages does not violate paragraphs (a)(1) through (2) of this section as long as the confirmation text merely confirms the text recipient's revocation request and does not include any marketing or promotional information, and is the only additional message sent to the called party after receipt of the revocation request. If the confirmation text is sent **by the next business day after** ~~that is sent within five minutes of receipt,~~ it will be presumed to fall within the consumer's prior express consent. If it takes longer, however, the sender will have to make a showing that such delay was reasonable. To the extent that the text recipient has consented to several categories of text messages from the text sender, the confirmation message may request clarification as to whether the revocation request was meant to encompass all such messages **and/or may provide a link to a web portal that enables the text recipient to select (or un-select) the categories of text messages from the text sender that they desire to receive;** the sender must cease all further texts for which consent is required absent further clarification that the recipient wishes to continue to receive certain text messages.

The Commission Should Remove the Proposal to Require Honoring a Revocation Request As Soon As Practicable

As noted, the Associations applaud the Draft Revocation Order's proposal to allow companies up to 10 business days to honor a revocation request. The Draft Revocation Order, however, also requires companies to honor revocation requests as soon as practicable, noting that technological advances allow rapid processing of revocation requests that can be automated. The Draft Revocation Order therefore adds an "as soon as practicable" gloss to the 10 day timeframe.

The “as soon as practicable standard” is unnecessary, conflicts with the CAN-SPAM Act which the Draft Revocation Order cites for 10-business day standard,²⁴ and will invariably lead to litigation as plaintiffs’ lawyers file class action lawsuits claiming an opt out should have been honored more quickly. The “as soon as practicable standard” is unnecessary because the automated processes that the Commission cites as justification for that standard already processes opt out requests in virtual real time. In other circumstances, whether a revocation request is honored within 10 days but not as quickly as a consumer (or plaintiff’s counsel) believe should have occurred will become fodder for litigation that will do little to protect consumers but increase costs and burdens for callers seeking to comply with their TCPA obligations. Finally, the Draft Revocation Order cites the 10 business day standard from the CAN-SPAM Act for support. The CAN-SPAM Act, however, does not contain an “as soon as practicable” standard. It simply bars further transmissions “more than 10 business days after receipt” of a revocation.²⁵

The Associations propose the following revisions:

19. As proposed in the TCPA Consent NPRM, we require that callers honor company-specific do-not-call and revocation-of-consent requests for robocalls and robotexts that are subject to the TCPA within a specific timeframe. Specifically, we amend our rules to require that callers honor company-specific do-not-call and revocation-of-consent requests ~~as soon as practicable and~~ no more than 10 business days after receipt of the request.
21. ~~We establish an “as soon as practicable” standard in response to commenter concerns that the proposed 24-hour timeframe would not be feasible in many instances.~~⁴⁰ We are persuaded by the record, including comments from consumer organizations, that a longer timeframe is justified to ensure that entities, including smaller entities, have a reasonable opportunity to process do-not-call and revocation requests. The timeframe we adopt is supported by several commenters and is consistent with the timeframe that has been in place for decades to process revocation requests concerning commercial e-mail under our CAN-SPAM rules. We believe this outcome adequately balances the burdens on callers with the privacy protections afforded to consumers, with a “no longer than 10 business days” backstop to ensure that consumers have certainty about when they can expect unwanted communications to stop.
22. The Commission’s rules currently provide no specific timeframe for honoring revocation-of-consent requests for robocalls and robotexts made to residential or wireless telephone numbers. The Commission’s rules currently require callers making telemarketing calls or exempted artificial and prerecorded voice calls to residential telephone numbers and exempted package delivery calls and texts to wireless consumers to honor do-not-call requests within a reasonable time not to exceed 30 days from the date of

²⁴ Draft Revocation Order at para. 21.

²⁵ 15 U.S.C. 7704(a)(4)(A).

any such request. As a result, the ~~“as soon as practicable”~~ 10 business day timeframe adopted herein substantially reduces the maximum period allowed for honoring the revocation requests of consumers while allowing callers a reasonable opportunity to ensure that they can process requests made by any reasonable means. ~~We emphasize that the availability of automated means to process revocation requests means that “practicable” should be swift, especially as technology improves to make automation more simple and economical.~~

64.1200

- (10) All requests to revoke prior express consent or prior express written consent made in any reasonable manner must be honored ~~as soon as practicable and~~ no longer than ten business days from receipt of such request....

[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK]

Respectfully Submitted,

s//Leah Dempsey

Leah Dempsey
Counsel
ACA International
Brownstein Hyatt Farber Schreck, LLP
1155 F Street, NW, Suite 1200
Washington, DC 20004
(410) 627-3899

s//Amanda L. Smith

Amanda L. Smith
Senior Regulatory Affairs Counsel
America's Credit Unions
3138 10th Street, N.
Arlington, VA 22201
(703) 842-2212

s//James P. Bergeron

James P. Bergeron
President
National Council of Higher Education Resources
1050 Connecticut Avenue, NW, #65793
Washington, DC 20035
(202) 494-0948

s//Celia Winslow

Celia Winslow
Senior Vice President
American Financial Services Association
919 18th Street, NW
Washington, DC 20006
(202) 776-7300

s//Jonathan Thessin

Jonathan Thessin
Vice President/Senior Counsel
American Bankers Association
1333 New Hampshire Avenue, NW
Washington, DC 20036
(202) 663-5016

s//Aryeh Fishman

Aryeh Fishman
Assoc. General Counsel, Regulatory Affairs
Edison Electric Institute
701 Pennsylvania Avenue, NW
Washington, DC 20004-2696
(202) 508-5023

s//Alisha Sears

Alisha Sears
Director, Regulator Counsel
Mortgage Bankers Association
1919 M St., NW, 5th Floor
Washington, DC 20036
(202) 557-2930

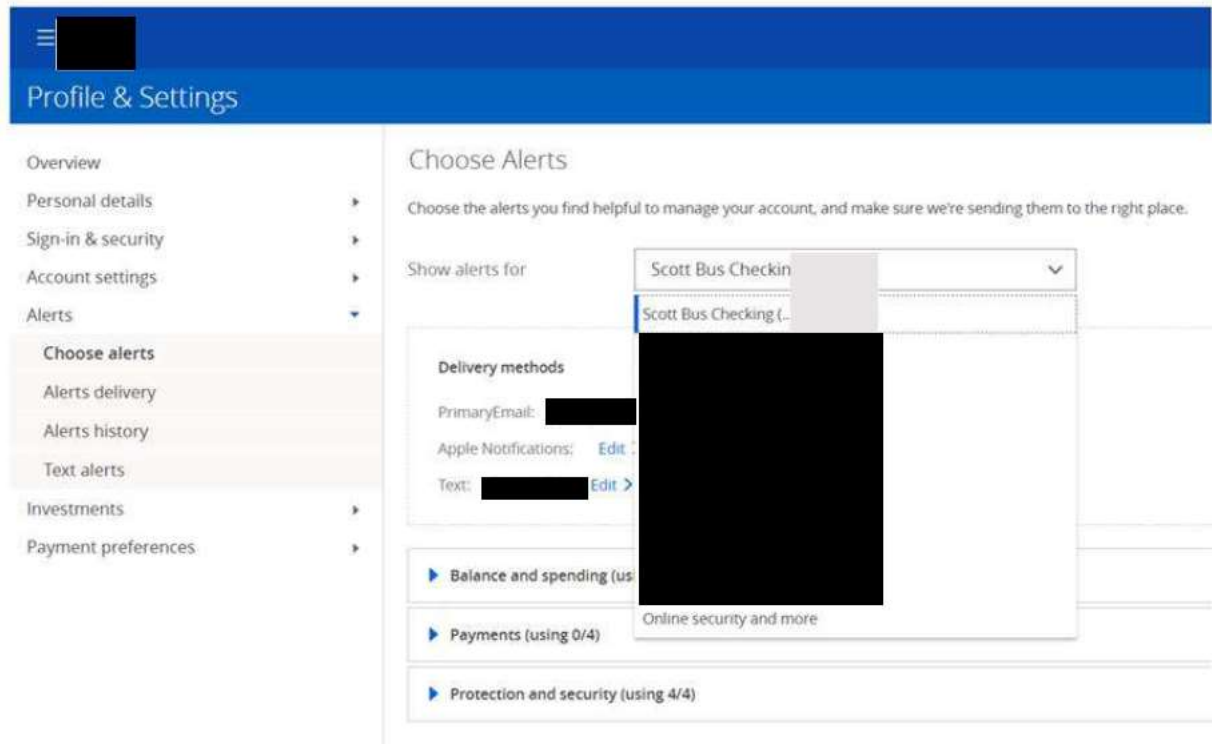
s//Lisa Laudeman

Lisa Laudeman, CRCE-I CRCE-P
National President
American Association of Healthcare
Administration Management
1120 JN-73, Suite 200
Mt. Laurel, NJ 08054
(703) 281-4043

cc: Carmen Scurato
Hannah Lepow
Arpan A. Sura
Hayley Steffen
Adam Cassady
Richard Smith
Mark Stone
Aaron Garza
Wesley Platt
Kristi Thornton
Alejandro Roark

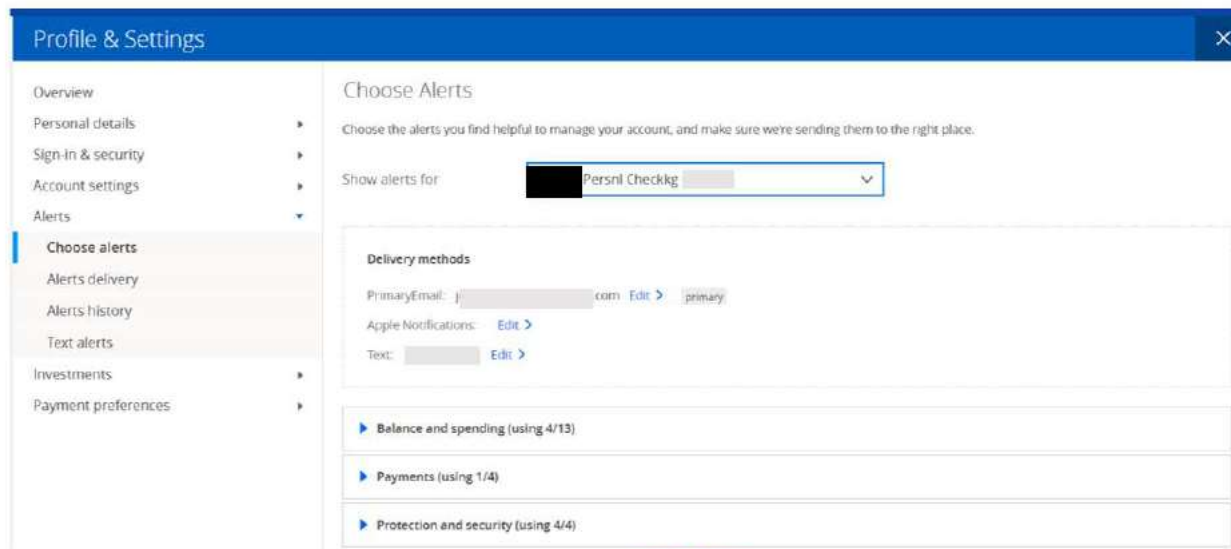
Attachment A

1. Shows choice of account in drop down:



2. Once account selected, Shows 3 groupings of alerts by type

- a. For this checking account example, I'm using 4 of 13 "balance and spending" alerts, 1 of 4 "payments" alerts and 4 of 4 "protection and security" alerts.



- b. For this credit card example, I'm using 2 of 5 "balance and spending" alerts, 1 of 3 "payments" alerts and 2 of 5 "protection and security" alerts.

The screenshot shows a web interface for 'Profile & Settings'. On the left is a navigation menu with items: Overview, Personal details, Sign-in & security, Account settings, Alerts, Choose alerts (highlighted), Alerts delivery, Alerts history, Text alerts, Investments, and Payment preferences. The main content area is titled 'Choose Alerts' and includes a dropdown menu for 'Show alerts for'. Below this is a 'Delivery methods' section with options for Primary Email, Apple Notifications, and Text. At the bottom, there are three alert categories: 'Balance and spending (using 2/5)', 'Payments (using 1/3)', and 'Protection and security (using 2/5)'. A red dashed oval is drawn on the page below the screenshot.

3. Individual Alert options for credit card account, by each grouping (as noted in bullet 2a, deposit accounts have even more alert types available to customers):

a. Alert inventory available under “Balance and spending” grouping:

▼ Balance and spending (using 2/5)

Alert me when a [redacted] is used. When you'll get it [?](#)

PrimaryEmail
 Apple Notifications

My available credit is less than \$ 2000.00 (USD) When you'll get it [?](#)

PrimaryEmail Dollar amount \$
 Apple Notifications
 Text

A balance transfer has been posted to this account When you'll get it [?](#)

PrimaryEmail
 Apple Notifications
 Text

My balance reaches \$ _____ (USD) When you'll get it [?](#)
(Your balance will be included in the alert message)

PrimaryEmail Dollar amount \$
 Apple Notifications
 Text

My rewards balance exceeds _____ When you'll get it [?](#)

PrimaryEmail Number of points
 Apple Notifications
 Text

b. Alert inventory available under “Payments” grouping:

▼ Payments (using 1/3)

A payment has been posted to this account When you'll get it ⓘ
[REDACTED]

PrimaryEmail
 Apple Notifications
 Text

My payment is due in _____ days When you'll get it ⓘ
[REDACTED]

PrimaryEmail Number of days:
 Apple Notifications
 Text

No payment was received for this account When you'll get it ⓘ
[REDACTED]

PrimaryEmail
 Apple Notifications
 Text

c. Alert inventory available under “Payments” grouping

▼ Protection and security (using 2/5)

More than \$ 0.01 (USD) is charged to my card for a single transaction When you'll get it ⓘ

PrimaryEmail Dollar amount \$

Apple Notifications

Text

An international charge has been posted to this account When you'll get it ⓘ

PrimaryEmail

Apple Notifications

Text

An online, phone or mail charge is authorized on my credit card When you'll get it ⓘ

PrimaryEmail

Apple Notifications

Text

A gas station charge is authorized on my credit card When you'll get it ⓘ

PrimaryEmail

Apple Notifications

Text

A credit is pending on my card account When you'll get it ⓘ

PrimaryEmail

Apple Notifications

Text