

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
Rules and Regulations Implementing the Telephone )
Consumer Protection Act of 1991 ) CG Docket No. 02-278
Petition for Declaratory Ruling of All About the )
Message, LLC )

DECLARATORY RULING AND ORDER

Adopted: November 14, 2022

Released: November 21, 2022

By the Commission: Chairwoman Rosenworcel issuing a statement.

I. INTRODUCTION

1. In this Declaratory Ruling and Order, we find that “ringless voicemail” to wireless phones requires consumer consent because it is a “call” made using an artificial or prerecorded voice and thus is covered by section 227(b)(1)(A)(iii) of the 1991 Telephone Consumer Protection Act (TCPA).1 We therefore deny a request from All About the Message, LLC (AATM)2 to declare that ringless voicemail is not subject to section 227(b)(1)(A)(iii) of the TCPA and the Commission’s implementing rules. We also deny AATM’s alternative request for a retroactive waiver of our rules.

II. BACKGROUND

2. Congress enacted the TCPA to protect consumers from unwanted robocalls. The Commission has adopted rules and interpretations implementing the TCPA since 1991, and has taken enforcement action against numerous callers.3 The TCPA, codified in section 227 of the Communications Act of 1934, as amended (Act or Communications Act), addresses certain practices considered to be an invasion of consumer privacy and, in some instances, a risk to public safety.4 Section 227(b)(1)(A)(iii) prohibits making any non-emergency call using an automatic telephone dialing system (autodialer)5 or an

1 See 47 U.S.C. § 227; Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 92-90, Report and Order, 7 FCC Rcd 8752, 8753, para. 2 (1992) (1992 TCPA Order).

2 Petition for Declaratory Ruling of All About the Message, LLC, CG Docket No. 02-278 (filed Mar. 31, 2017) (Petition).

3 See, e.g., John C. Spiller et al, Forfeiture Order, 36 FCC Rcd 6225 (2021) (assessing a \$225,000,000 forfeiture for making one billion illegal spoofed robocalls); Scott Rhodes a.k.a. Scott David Rhodes, Scott D. Rhodes, Scott Platek, Scott P. Platek, Forfeiture Order, 36 FCC Rcd 705 (2021) (assessing a \$9,918,000 forfeiture for illegal spoofed robocalls); Kenneth Moser dba Marketing Support Systems, Forfeiture Order, 35 FCC Rcd 13415 (2020) (assessing a \$9,997,750 forfeiture for illegal spoofed robocalls).

4 See 47 U.S.C. § 227; 1992 TCPA Order, 7 FCC Rcd at 8753, para. 2.

5 The TCPA defines “automatic telephone dialing system” as “equipment which has the capacity--(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers.” 47 U.S.C. § 227(a)(1). The Supreme Court has clarified that “a necessary feature of an autodialer under

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artificial or prerecorded voice to a wireless telephone number without the prior express consent of the called party.<sup>6</sup> The Commission receives thousands of informal consumer complaints each year about unwanted calls, including robocalls.<sup>7</sup> Consumers find such calls intrusive and annoying, and scammers often use robocalls to defraud consumers.

3. AATM filed its petition on March 31, 2017, asking the Commission to find that delivery of a voicemail message directly to a consumer's cell phone voicemail is not covered by the TCPA and therefore that AATM does not need consumer consent for the messages. AATM argues that its ringless voicemail message is not a "call" and therefore the TCPA should not apply.<sup>8</sup> AATM states: "Our proprietary M7.7RVM software creates a landline to landline session directly to the telephone company's voicemail server"<sup>9</sup> without charge to the subscriber or appearing as a received call on a bill.<sup>10</sup> AATM's position is that the ringless voicemail service, and the process by which the ringless voicemail is deposited on a carrier's platform, is neither a call made to a mobile telephone number nor a call for which a consumer is charged and, therefore, is a service that is not regulated.<sup>11</sup>

4. The Consumer and Governmental Affairs Bureau (Bureau) sought comment on the Petition.<sup>12</sup> We received over 8,000 comments and replies, almost all opposed to the Petition. On June 20, 2017, AATM filed a letter seeking withdrawal of its Petition.<sup>13</sup> Because the Petition drew substantial attention from commenters<sup>14</sup> and members of Congress,<sup>15</sup> and the applicability of the TCPA to ringless

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§ 227(a)(1)(A) is the capacity to use a random or sequential number generator to either store or produce phone numbers to be called." *Facebook, Inc. v. Duguid*, 141 S.Ct. 1163, 1170 (2021). As noted in footnote 19 below, this definition is not at issue here.

<sup>6</sup> 47 U.S.C § 227(b)(1)(A)(iii); 47 CFR § 64.1200(a)(1)(iii). Prior express consent must be written for certain telemarketing calls to wireless numbers that introduce an advertisement or constitute telemarketing. See 47 CFR § 64.1200(a)(2).

<sup>7</sup> "Robocalls" include calls made either with an automatic telephone dialing system (autodialer) or with a prerecorded or artificial voice. See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Declaratory Ruling and Order, 30 FCC Rcd 7961, 7694, para. 1 n.1 (2015) (2015 TCPA Declaratory Ruling and Order), set aside in part by *ACA Int'l v. FCC*, 885 F.3d 687 (D.C. Cir. 2018) (*ACA International*).

<sup>8</sup> Petition at 7-11.

<sup>9</sup> *Id.* at 27 (Exhibit A) and 34 (Exhibit C). A different ringless voicemail technology, DirectDROP Voicemail (DDVM), used by another ringless voicemail entity, VoApps, was discussed in *Gurzi v. Penn Credit, Corp*, 449 F.Supp.3d 1294, 1296 (M.D. Fla 2020) (*Gurzi*) ("[T]he technology only makes a call between the [adaptive signaling technology] servers and the servers in the voicemail service provider's voicemail platform, each of which are owned by business operators. This call is a landline-to-landline connection, a business-to-business connection that VoApps pays for at business class rates . . .") (quoting the declaration of David King, the founder of VoApps). The district court held that voicemail messages delivered by VoApps' DDVM technology are "calls" subject to section 227(b)(1)(A)(iii) of the TCPA. See *id.* at 1298-1300.

<sup>10</sup> Petition at 3.

<sup>11</sup> *Id.* at 7.

<sup>12</sup> *Consumer and Governmental Affairs Bureau Seeks Comment on All About The Message, LLC Petition for Declaratory Ruling under the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Public Notice, 32 FCC Rcd 3090 (CGB 2017).

<sup>13</sup> Letter from Christian A. Petersen, attorney for All About the Message, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission (June 20, 2017) (June 20, 2017, Letter).

<sup>14</sup> Comments supporting the Petition were filed by the Republican National Committee, American Financial Services Association (generally supports the Petition but proposes that consumers should be able to block ringless

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voicemail technology has been the subject of considerable recent litigation,<sup>16</sup> we believe this declaratory ruling is necessary to resolve a controversy and remove uncertainty about ringless voicemail.<sup>17</sup>

### III. DISCUSSION

#### A. AATM's Ringless Voicemail Message is a Call Subject to the TCPA's Requirements

5. We find that, based on Commission precedent, AATM's ringless voicemail message is a call to the consumer's wireless number and prerecorded voice messages sent via this technology are, therefore, subject to the TCPA.

6. First, we find that AATM's ringless voicemail constitutes a "call" subject to the TCPA's protections for the same reasons the Commission found computer-generated text messages sent to a carrier's text server to be calls for purposes of the TCPA. We thus agree with commenter National

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messages), and the U.S. Chamber of Commerce. Among the thousands of comments opposed to the Petition are the comments, cited below, filed by commenters Frankel, Snyder, Holcombe, Lucas, Braver, Gordon, Dunn, Barry, Hansen, National Consumer Law Center et al Joint Comments, and the States of Massachusetts, New York, and Kentucky (State Joint Reply).

<sup>15</sup> See Letter from Senator Charles E. Schumer to Ajit Pai, Chairman, FCC (June 26, 2017) (*June 26 Ringless Voicemail Congressional*) (opposing the Petition); Letter from Representatives Daniel W. Lipinski, Danny K. Davis, Ro Khanna, Steve Cohen, Eleanor Holmes Norton, Mark Takano, Jackie Speier, Jamie Raskin, Carol Shea-Porter, Ted W. Lieu, Robert A. Brady, Brad Sherman, James P. McGovern, and Cheri Bustos, United States House of Representatives, to Ajit Pai, Chairman, FCC (June 21, 2017) (*June 21 Ringless Voicemail Congressional*) (opposing the Petition); Letter from Senators Edward J. Markey, Richard Blumenthal, Patrick Leahy, Jeffrey A. Merkley, Amy Klobucher, Bernard Sanders, Robert Menendez, Al Franken, Elizabeth Warren, Ron Wyden, and Margaret Wood Hassan, United States Senate, to Ajit Pai, Chairman, FCC (June 14, 2017) (*June 14 Ringless Voicemail Congressional*) (opposing the Petition).

<sup>16</sup> See, e.g., *Schaevitz v. Braman Hyundai, Inc.*, 437 F.Supp.3d 1237, 1249 (S.D. Fla. 2019) (*Schaevitz*) (the ringless voicemail, that is, a direct-to-voicemail message, is a "call" under the TCPA); *Picton v. Greenway Chrysler-Jeep-Dodge*, 2019 WL 2567971 (M.D. Fla 2019) (rejecting the argument that ringless voicemails are not subject to the TCPA); *Gurzi*, 449 F.Supp.3d at 1298 (direct-to-voicemail messages fall within the plain language of the TCPA); *Grant v. Regal Automotive Group*, 2020 WL 3250075 (M.D. Fla 2020) ("Several federal courts, including courts in this Circuit, have concluded that a ringless voicemail is a 'call' subject to the TCPA."); *Saunders v. Dyck O'Neal, Inc.*, 319 F.Supp.3d 907, 911 (W.D. Mich. 2018) (*Saunders*) ("Both the FCC and the courts have recognized that the scope of the TCPA naturally evolves in parallel with telecommunications technology as it evolves, e.g., with the advent of text messages and email-to-text messages, or, as we have here, new technology to get into a consumer's voicemail box directly."); *Caplan v. Budget Van Lines, Inc.*, 2020 WL 4430966 (D. Nev 2020) (ringless voicemail messages are still a nuisance delivered to the recipient's phone by means of the phone number; they are calls as defined by the TCPA).

<sup>17</sup> See 47 CFR § 1.2. Another ringless voice message company described above, VoAPPs, Inc., filed a similar petition for declaratory ruling and also sought withdrawal after comments were filed. See Petition for Expedited Declaratory Ruling of VoAPPs, Inc., CG Docket No. 02-278, filed July 31, 2014; Letter from Henry Goldberg, attorney for VoAPPs, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, June 11, 2015 (withdrawing petition). And we received another petition in 2021, raising the same issues, along with a subsequent withdrawal request. See Petition for Declaratory Ruling of Perdue for Senate, Inc., CG Docket No. 02-278 (filed July 2, 2021) (Perdue Petition); Letter from Scott D. Delacourt, Wiley, Rein, LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission (Nov. 18, 2021). The record received in response to the Perdue Petition overwhelmingly opposed the petitioner's request. We choose to address the AATM petition because of its more detailed description of the technology at issue but note that the other petitions raise the same legal questions as AATM. Thus, while the discussion below is based on AATM's petition and the record in that proceeding, this Declaratory Ruling would apply to any entity that provides ringless voicemail using the end user's mobile telephone number to direct the ringless voicemail message to a mailbox associated with the end user's mobile phone.

Consumer Law Center, for example, that ringless voicemail messages are calls for purposes of the TCPA even though they are not traditional handset-to-handset communications.<sup>18</sup>

7. The Commission first made clear in 2003 that text messaging is a call for TCPA purposes when initiated with an autodialer,<sup>19</sup> stating that the TCPA “encompasses both voice calls and text calls to wireless numbers including, for example, short message service (SMS) calls, *provided the call is made to a telephone number assigned to such service.*”<sup>20</sup> In the *2015 TCPA Declaratory Ruling and Order*, the Commission reiterated that finding and, more on point for the issue at hand, found that Internet-to-phone text messages, which are sent to a carrier’s server then routed to a consumer’s phone, are calls for purposes of the TCPA because callers address these computer-generated text messages to a consumer’s wireless telephone number.<sup>21</sup>

8. Although the Commission was primarily focused in the *2015 TCPA Declaratory Ruling and Order* on the definition of the term “dial,” it concluded that use of the wireless phone number (either as part of an email string or by entering the phone number on a web portal) satisfied the TCPA’s requirement that the call be “to any telephone number assigned to a [wireless] service” because the wireless telephone number is a necessary and unique identifier for the consumer.<sup>22</sup> Notably, the Commission concluded that “by addressing a message using the consumer’s wireless telephone number . . . and sending a text message to the consumer’s wireless telephone number, the equipment dials a telephone number and the user of such technology *thereby makes a telephone call* to a number assigned to a wireless service as contemplated in section 227(b)(1) of the Act.”<sup>23</sup>

9. In reaching its conclusion, the Commission stressed that, “[f]rom the recipient’s perspective, Internet-to-phone text messaging is functionally equivalent to phone-to-phone text messaging,” and that, “the potential harm is identical to consumers; unwanted text messages pose the same cost and annoyance to consumers, regardless of whether they originate from a phone or the Internet.”<sup>24</sup> The Commission reasoned that the mere fact that an extra step was involved in dialing a call—in that case merely adding a domain to the telephone number—was not enough to deprive mobile customers of the TCPA’s protections as “the effect on the recipient is identical.”<sup>25</sup> To hold otherwise “would elevate form over substance, thwart Congressional intent that evolving technologies not deprive

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<sup>18</sup> National Consumer Law Center et al. Joint Comments at 9-11 (citing *2015 TCPA Declaratory Ruling and Order*, 30 FCC Rcd at 8020, para. 114; *Joffe v. Acacia Mortgage Corporation*, 121 P.3d 831 (Az. Ct. App. 2006), *cert. denied*, 549 U.S. 1111 (2006); *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 954 (9th Cir. 2009) (*Satterfield*)).

<sup>19</sup> 47 U.S.C. § 227(a)(1); *2015 TCPA Declaratory Ruling and Order*, 30 FCC Rcd at 8016-17, para. 107 (the Commission rejected the argument that the TCPA does not apply to text messages and stated that the same consumer protections in the TCPA for voice calls apply to text messages); *2003 TCPA Order*, 18 FCC Rcd at 14115, para. 165. Our decision here does not implicate the autodialer definition recently addressed by the Supreme Court in *Facebook, Inc. v. Duguid* because ringless voicemail calls involve the use of “an artificial or prerecorded voice.” 47 U.S.C. § 227(b)(1)(A).

<sup>20</sup> *2003 TCPA Order*, 18 FCC Rcd at 14115, para. 165 (emphasis added).

<sup>21</sup> *2015 TCPA Declaratory Ruling and Order*, 30 FCC Rcd at 8020, para. 114.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* (emphasis added).

<sup>24</sup> *Id.* at 8020, para. 115.

<sup>25</sup> *Id.*

mobile consumers of the TCPA's protections, and potentially open a floodgate of unwanted text messages to wireless consumers."<sup>26</sup>

10. The record here supports our conclusion that AATM's ringless voicemail is identical in function to the Internet-to-phone texting the Commission in 2015 found subject to the TCPA. In the case of Internet-to phone text messaging, the telephone number assigned to the consumer serves as a necessary and unique identifier. Similarly, the telephone number assigned to a consumer's wireless phone and associated with the voicemail account is a necessary and unique identifier for the consumer in the ringless voicemail context. One expert states that the "steps involved in sending a [ringless voicemail] message are substantially the same as the technology used and steps involved in sending both mass text messages and text to email addresses text messages"<sup>27</sup> and that "[f]rom an engineering and technical perspective, this software delivery model that enables multiple remote customers to deliver [ringless voicemail] voice messages *en masse* to cellular subscribers is precisely the identical software delivery model that mobile messaging companies use to enable their customers to deliver text messages *en masse* to cellular subscribers."<sup>28</sup> Neither AATM nor any other commenter challenges the description of the technology used to deliver the ringless voicemail messages or the assertion that it is essentially identical to the technology used to deliver Internet-to-phone text messages.

11. Our finding is consistent with the ordinary meaning of "call." The TCPA does not define "call" and courts have turned to dictionary definitions to determine its meaning.<sup>29</sup> As the Ninth Circuit observed in *Satterfield*, Webster's Third New International Dictionary defines a call as "to communicate with or try to get into communication with a person by a telephone."<sup>30</sup> We find that ringless voicemails meet this definition by directing the messages by means of a wireless phone number and by depending on the transmission of a voicemail notification alert to the consumer's phone (causing the consumer to retrieve the voicemail message).

12. Our finding is also consistent with the legislative history and purpose of the TCPA. In adopting the TCPA, Congress specifically found that "automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call."<sup>31</sup> The Senate Report accompanying the TCPA stated that "automated calls fill the entire tape of an answering machine, preventing other callers from leaving messages."<sup>32</sup> That is a key consumer problem with ringless voicemail—unwanted messages, messages the consumer has no control over, crowd potentially wanted messages out of the consumer's

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

<sup>27</sup> Snyder Comments at Exhibit 1, para. 12.

<sup>28</sup> *Id.* at Exhibit 1, para. 34.

<sup>29</sup> See, e.g., *Satterfield*, 569 F.3d at 954 (observing that "Webster's defines 'call' in this context as 'to communicate with or try to get into communication with a person by a telephone,'" citing Webster's Third New International Dictionary); *Gurzi*, 449 F. Supp.3d at 1298 (citing *Satterfield*, 569 F.3d at 954, and noting that "the TCPA does not define 'call;' therefore, the term must be interpreted based on its ordinary meaning"); *Saunders*, 319 F. Supp.3d at 910-911 (citing *Satterfield*, 569 F.3d at 954, and stating that "[t]he TCPA was enacted in 1991; the equivalent act at that time could be considered a party recording a message directly on an answering machine's cassette tape without ever calling the number—an infeasible technological feat absent physical access to a consumer's answering machine"); *Fillichio v. M.R.S. Associates, Inc.*, 2010 WL 4261442 at 3 (S.D. FL 2010) (citing *Satterfield*, 569 F.3d at 954, and observing that the prohibition in the TCPA applies to phone calls placed to cellular telephone numbers even if the called party does not answer the calls; "it is the mere act of placing the call that triggers the statute").

<sup>30</sup> *Satterfield*, 569 F.3d at 954.

<sup>31</sup> Pub. L. 102-243 § 2(13) (1991).

<sup>32</sup> S. Rep. No. 178, Calendar No. 262, 102d Cong., 1st Sess. 2 (Sept. 19, 1991) (Sen. Hollings).

voicemail capacity. Even when their voicemail boxes are not full, consumers waste time listening to unwanted messages before deleting them<sup>33</sup> because there is no mechanism for consumers to stop unwanted ringless voicemail calls before they reach the voicemail box.<sup>34</sup> As the State Joint Commenters observe, ringless voicemails undermine the best defense consumers currently have against robocalls—using call-blocking apps on their cell phones.<sup>35</sup>

13. Consumers confirm these concerns.<sup>36</sup> G. Lohman, for example, represents the views expressed by thousands of commenting consumers:

Please DO NOT ALLOW ring-less voicemail. I have requested “Do Not Call” because I don’t want telemarketers bothering me with cold calls, though they do anyway in violation of the law. Ring-less voicemail is a similar intrusion that I should be able to exclude, either implicitly through my choice of “Do Not Call” or explicitly with a similar but separate opt out on my part. Telemarketers should NOT be allowed to fill up my voicemail mailbox with “junk calls[,]” . . . thereby possibly excluding the storage in that mailbox of important calls from family and friends that I DO want to receive.<sup>37</sup>

Congress intended the TCPA to protect consumers from the nuisance and invasion of privacy caused by such artificial or prerecorded voice messages.<sup>38</sup> To complete a “ringless robocall,” the originator of the call must direct the call to the voicemail associated with the wireless phone number. As the Commission did in the *2015 TCPA Declaratory Ruling and Order*, we find that the inclusion of additional information along with the wireless telephone number to route the call does not remove a consumer’s rights under the TCPA because “the effect on the recipient is identical.”<sup>39</sup> To do so would elevate form over function and is inconsistent with both the text and purpose of the TCPA.

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<sup>33</sup> Gordon Comments at 2.

<sup>34</sup> The American Financial Services Association, in support of the Petition, suggests that we require the voicemail message to include information on how to stop any further calls. American Financial Services Association Comments at 1.

<sup>35</sup> State Joint Reply at 1.

<sup>36</sup> National Consumer Law Center et al. Joint Comments at 4-6; Hansen Comments at 5-6; State Joint Reply at 2. Commenter Barry observed that “Americans are not willing to let companies fill up their voicemail systems, force them to sort through potentially dozens of robo messages, only to find out that their child is sick at school—or that they have missed an important message about an elderly neighbor because they did not have the time, or patience, to sort through these aberrant messages.” Barry Comments at 2.

<sup>37</sup> Lohman Comments at 1. The National Do Not Call Registry, mentioned in Lohman’s comments, protects consumers from unwanted calls made by a telemarketer; if these messages are not calls, then the Do Not Call Registry would not protect consumers from the unwanted messages. Other consumers echo these concerns in their numerous informal consumer complaints about ringless voicemail. For example, one complainant stated: “I’m starting to receive these ‘ringless voicemails’ . . . . Well, it is a phone call as far as I’m concerned[,] and I want them to stop. This is SPAM and unwanted, uncalled for, unsolicited.” Informal Complaint # 3757649. Another complainant explained: “I get a few spoofed calls and ringless voicemail drops every day. It’s rather annoying, the Do Not Call list doesn’t stop it. The messages are always about making 20k from home. Stop these ringless voicemails, they shouldn’t be legal.” Informal Complaint # 3819428. And another: “I am receiving unwanted calls that go directly to my voicemail. My phone does not ring[,] and no number displays under ‘Recent’ calls so I cannot block these. They are all solicitations and need to be stopped. No one should be allowed to circumvent the do not call list as my phone is private and only given to those who need it.” Informal Complaint # 3898486.

<sup>38</sup> Pub. L. 102-243 § 2(13) (1991).

<sup>39</sup> *2015 TCPA Declaratory Ruling and Order*, 30 FCC Rcd at 8020, para. 115.

14. We thus reject AATM’s argument that ringless voicemail is not a TCPA call because it does not “pass through consumers’ phone lines”<sup>40</sup> and that the TCPA protects only calls made directly to a wireless handset; there is no functional difference from the consumer’s perspective between AATM’s ringless voicemail and the Internet-to-phone texting that the Commission previously found subject to the TCPA. Yet AATM’s calls represent the harms the TCPA seeks to prevent—annoyance, time spent reviewing and deleting, and potential crowding out of wanted messages. And, as the Supreme Court has noted, section 227(b)(1)(A) prohibits artificial or prerecorded voice calls “irrespective of the type of technology used.”<sup>41</sup>

15. We find AATM’s reliance on the Commission’s discussion of call forwarding in the *2005 Second Order on Reconsideration*<sup>42</sup> misplaced.<sup>43</sup> The *2005 Second Order on Reconsideration* does not, as AATM contends, state that, “this section of the TCPA covers only calls made directly to wireless telephone lines.”<sup>44</sup> Rather, this precedent states that a call made *to a wireline number* does not fall under the Commission’s wireless call restrictions if a consumer forwards the wireline call to a wireless number.<sup>45</sup> In other words, the Commission in the *2005 Second Order on Reconsideration* simply held that a call “made” to a wireline number cannot be converted to a wireless call by an action of the consumer.<sup>46</sup> This analogy does not apply to the ringless voicemail calls in question here, which are made to the consumer’s wireless phone number.

16. We also reject AATM’s argument that ringless voicemail is non-invasive.<sup>47</sup> As the commenters and complainants explain, consumers cannot block these messages and consumers experience an intrusion on their time and their privacy by being forced to spend time reviewing unwanted messages in order to delete them.<sup>48</sup> The consumer’s phone may signal that there is a voicemail message<sup>49</sup> and may ring once before the message is delivered, which is another means of intrusion.<sup>50</sup> Consumers

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<sup>40</sup> Petition at 7, 13.

<sup>41</sup> *Facebook*, 141 S.Ct. at 1170 n.8.

<sup>42</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Second Order on Reconsideration, 20 FCC Rcd 3788, 3807, para. 48 (2005) (*2005 Second Order on Reconsideration*).

<sup>43</sup> Petition at 8.

<sup>44</sup> *See id.*

<sup>45</sup> *See 2005 Second Order on Reconsideration*, 20 FCC Rcd at 3807, para. 48.

<sup>46</sup> *See id.*

<sup>47</sup> Petition at 13. American Financial Services Association also contends that “[d]epositing a voicemail without dialing a customer’s cell phone may be less intrusive than a phone call.” American Financial Services Association Comments at 1.

<sup>48</sup> As the State Joint Reply Commenters explain: “Ringless voicemail is likely to be more intrusive, not less, because it can bypass some of the most common call blocking applications used by wireless subscribers. Ringless voicemail bypasses important lines of defense for consumers and threatens the efficacy of call blocking applications which can protect consumers from scams and unlawful calls.” State Joint Reply at 3.

<sup>49</sup> As Commenter Frankel explains, “most of the voicemail platforms will alert the subscriber in some way. This may be a “message waiting” symbol appearing on the user’s phone display, or a vibration and/or flashing light and/or audible tone.” Frankel Comments at 7.

<sup>50</sup> Commenter Frankel observes that on Apr. 24, 2017, AATM’s home page stated: “For most carriers, there will be absolutely no signal or ringing of their phone, however the carrier will sometimes ring a phone but this is just a signal not an actual call and cannot be answered. The message will be dropped into the end user’s Voice Mail box. Some carrier systems are more difficult to get into the Voice Mail boxes, however the transmission that creates the ring is not a phone call.” Frankel Comments at 9.

must also contend with their voicemail box filling with unwanted messages, which may prevent other callers from leaving important wanted messages. By contending that it is not placing calls, AATM would deny consumers the protection of the TCPA's consent requirement. For similar reasons, we reject arguments that we should not take action here due to regulatory or technology changes since 2017; the fact that other types of ringless voicemail may have developed since then does not change our analysis here nor our goal of applying TCPA protections to this type of ringless voicemail.<sup>51</sup> We thus find that, as a matter of both statutory interpretation and policy, such ringless voicemail calls are subject to the TCPA.

17. To the extent AATM argues the TCPA only applies when the consumer is charged,<sup>52</sup> we disagree. The restriction on autodialed or prerecorded calls to wireless numbers is separate from the restriction on calls to services for which the caller is charged.<sup>53</sup> But ringless calls can also result in charges on retrieval of the message, as commenters explain,<sup>54</sup> including where minutes used for voicemail retrieval are deducted from a limited plan.<sup>55</sup>

18. We also disagree that our conclusion unnecessarily and improperly restricts political speech.<sup>56</sup> We conclude that ringless voicemail messages are “calls” subject to the TCPA, irrespective of

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<sup>51</sup> See Letter from Leah Dempsey, Vice President and Senior Counsel, Federal Advocacy, ACA International to Marlene H. Dortch, Secretary, FCC (Feb. 25, 2022) (ACA 2/25/22 *ex parte*) at 2; Letter from Leah Dempsey, Vice President and Senior Counsel, Federal Advocacy, ACA International to Marlene H. Dortch, Secretary, FCC (Feb. 18, 2022) (ACA 2/18/22 *ex parte*) at 1-2 (arguing against adopting a “one-size-fits-all” to various ringless voicemail technologies because the record is “stale” and ringless voicemail technology “might have changed”). ACA neither describes any such new technology that might support its argument, nor presents any other new facts or arguments that might suggest the record is too stale for a decision here. Our Declaratory Ruling applies to any ringless voicemail technology that uses the end user’s mobile telephone number to direct the ringless voicemail message to the end user’s mobile phone and our analysis of consumer harm would apply to any technology that does so. We note further that the Bureau sought comment on a petition related to ringless voicemail as recently as last year and the comments received overwhelmingly opposed the petitioner’s request. See footnote 17 *supra*.

Further, while ACA notes that the Consumer Financial Protection Bureau has issued new debt collection call rules, see ACA 2/25/22 *ex parte* at 3; ACA 2/18/22 *ex parte* at 2-3, ACA does not indicate how such new regulations might impact the Commission’s interpretation of “call” for TCPA purposes or how clarification thereof may impact these new regulations.

<sup>52</sup> Petition at 10-11.

<sup>53</sup> 47 U.S.C. § 227(b)(1)(A)(iii) (unlawful to make non-emergency autodialed, artificial voice, or prerecorded voice calls without prior express consent to “any telephone number assigned to a . . . cellular telephone service . . . or any service for which the called party is charged for the call”) (emphasis added); see also Gordon Comments at 3.

<sup>54</sup> See, e.g., Slutsky Comments (charged fifty cents by voice service provider to retrieve each voicemail message); Frankel Comments at 9 (even those with unlimited plans can be charged roaming charges when accessing voicemail); Snyder Comments at 3 (in addition to paying for accessing voicemail messages and roaming fees, consumers pay to have greater capacity in their voicemail boxes); Braver Comments at 3 (observing that consumers would have to pay for additional voicemail capacity in their voicemail boxes); National Consumer Law Center et al Joint Comments at 5 (observing that when the consumer is roaming, leaving the message can trigger roaming charges and retrieving the message can trigger an additional roaming charge).

<sup>55</sup> See, e.g., National Consumer Law Center et al. Joint Comments at 4 (“Every call for these consumers [with limited minutes on their cell phone plan], even those to their own voicemail, counts against those precious minutes, reducing the available minutes for essential life tasks.”); State Joint Reply at 2 (consumers with prepaid cell phones or phone contracts with limited allotments of minutes will be charged for checking their messages); Lucas Comments at 4.

<sup>56</sup> Republican National Committee Comments at 3-4.

content; this interpretation does not restrict any particular type of speech. Furthermore, courts have found section 227(b)(1)(A)(iii) constitutional.<sup>57</sup>

19. We also find unpersuasive AATM's argument that the Commission lacks the authority to regulate voicemail service at all because it is an enhanced service.<sup>58</sup> AATM's technology involves placing calls, not providing voicemail service, and it is those calls that we address here.

20. Finally, we disagree with AATM that a Canadian regulator's choice not to regulate "voicemail broadcast for making telemarketing telecommunications" should drive us to conclude ringless voicemail is not subject to the TCPA.<sup>59</sup> Another country's construction of its laws does not bind our interpretation of the TCPA.<sup>60</sup>

#### **B. AATM's Request for Waiver**

21. We also deny AATM's request for waiver. AATM has not demonstrated good cause to grant such waiver. The Commission may waive its rules for good cause shown.<sup>61</sup> A waiver may be granted if, first, the waiver would better serve the public interest than would application of the rule and, second, special circumstances warrant a deviation from the general rule.<sup>62</sup> The Commission, or the Bureau through delegated authority, may waive Commission rules if the relief requested would not undermine the rule's policy objectives and would otherwise serve the public interest.<sup>63</sup>

22. In support of its request for a waiver, AATM argues that applying section 64.1200(a)(1)(iii) of the Commission's rules "would not serve the underlying purpose of the Legislature or the Commission's rules which, as noted, were designed only to regulate telephone calls to telephone lines."<sup>64</sup> We disagree. As discussed above, Congress intended the TCPA to protect consumers from unwanted calls. The Commission has applied the TCPA and implementing rules to calls and text messages. The voicemail messages AATM seeks to send to consumers' cell phone voicemail boxes are calls that pose the same consumer protection concerns that Congress contemplated when enacting the TCPA.

23. AATM further argues that special circumstances support a retroactive waiver, but the only support it offers for this argument is its assertion that "[a]pplying Section 64.1200(a)(1)(iii) to AATM's customers would not serve the underlying purpose of the [TCPA] or the Commission's rules."<sup>65</sup>

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<sup>57</sup> See, e.g., *Gomez v. Campbell-Ewald Co.*, 768 F.3d 871 (9th Cir 2014) (upholding constitutionality of section 227(b)(1)(A)(iii)), *aff'd on other grounds*, 577 U.S. 153 (2016); see also *2015 TCPA Declaratory Ruling and Order*, 30 FCC Rcd at 8020-21, paras. 117-19.

<sup>58</sup> Petition at 5-6.

<sup>59</sup> *Id.* at 10.

<sup>60</sup> According to AATM, the Canadian Radio-Television and Telecommunications Commission has declared that "[t]he use of voicemail broadcast for making telemarketing telecommunications is not currently regulated by the Commission." *Id.* That view is not relevant to our analysis of whether ringless voicemail is subject to the TCPA requirements, enacted by Congress to protect consumers in the United States.

<sup>61</sup> See 47 CFR § 1.3; *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (recognizing waivers as a "safety valve procedure" for "exemption based on special circumstances").

<sup>62</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>63</sup> *WAIT Radio*, 418 F.2d at 1157.

<sup>64</sup> Petition at 15.

<sup>65</sup> *Id.*

This bare assertion fails to identify any special circumstances that would warrant a waiver.<sup>66</sup> Nor is it clear why AATM believes the interests of its customers should prevail over the interests of consumers. We are not convinced that applying the TCPA to ringless voicemail messages would not serve the underlying purpose of the TCPA. On the contrary, one of the goals of the TCPA is to protect consumers from intrusive and unsolicited messages.<sup>67</sup> We therefore conclude that the TCPA should apply to this service for the reasons discussed above.

24. Finally, AATM contends that it is in the public interest to permit AATM to use its ringless voicemail technology.<sup>68</sup> AATM has not demonstrated why it cannot use its ringless voicemail technology while complying with the TCPA. Our decision does not prevent AATM from using ringless voicemail; rather, our decision clarifies that AATM must comply with the TCPA while doing so. A ringless voicemail to a wireless phone therefore requires consumer consent because it is a “call” made using an artificial or prerecorded voice and is covered by section 227(b)(1)(A)(iii) of the TCPA.

25. The TCPA contains “unique protections” for wireless consumers.<sup>69</sup> We are unconvinced that we should undermine the protections against robocalls that the statute provides to consumers by granting a waiver to AATM. It has not demonstrated any special circumstances that warrant a waiver or that a waiver of our rules is in the public interest. Thousands of commenters oppose the Petition for these reasons, and the public interest militates in denying the Petition. AATM is not precluded from using its ringless voicemail service, but it must do so in accordance with the TCPA. For the reasons discussed above, the waiver request is denied.

#### IV. ORDERING CLAUSES

26. **IT IS ORDERED** that, pursuant to sections 1-4 and 227 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 227, sections 1.2 and 64.1200 of the Commission’s rules, 47 CFR §§ 1.2, 64.1200, the Petition for Declaratory Ruling filed by All About The Message, LLC, on March 31, 2017, **IS DENIED**.

27. **IT IS FURTHER ORDERED** that, pursuant to section 1.3 of the Commission’s rules, 47 CFR § 1.3, the request for waiver **IS DENIED**.

28. **IT IS FURTHER ORDERED** that this Declaratory Ruling and Order shall be effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>66</sup> See *WAIT Radio*, 418 F.2d at 1157 (“When an applicant seeks a waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action.”) (quoting *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)).

<sup>67</sup> Pub. L. 102-243 § 2(13) (“While the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call. . . .”); *1992 TCPA Order*, 7 FCC Rcd at 8753, para. 2; *June 26 Ringless Voicemail Congressional* at 1; *June 14 Ringless Voicemail Congressional* at 1.

<sup>68</sup> Petition at 15-16.

<sup>69</sup> *2012 TCPA Order*, 27 FCC Rcd at 1839-40, para. 25.

**STATEMENT OF  
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Petition for Declaratory Ruling of All About the Message, LLC (November 14, 2022)

Maybe it has happened to you. A voicemail notification pops up on your phone and you think wait, did it even ring? Sometimes there is no ring at all because of something called “ringless voicemail.” It’s unbelievably annoying. It also doesn’t seem right that a call can make its way to your voicemail in-box without you having any way to stop it. On top of that, ringless voicemail can lead to the same kind of fraud that flourishes with scam robocalls. That’s why today the Federal Communications Commission is making it crystal clear that ringless voicemail is subject to the Telephone Consumer Protection Act and our rules prohibiting callers from sending this kind of junk without consumers first giving their permission to be contacted this way. After all, no one wants to miss important calls from family and friends because these garbage messages fill up their in-box.