

STATEMENT OF  
COMMISSIONER AJIT PAI

*In the matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; SoundBite Communications, Inc. Petition for Expedited Declaratory Ruling, CG Docket No. 02-278*

In regulation, as in sports, it is good to have clear rules.<sup>1</sup> As I stated in a speech before the U.S. Chamber of Commerce back in September, ambiguities about what's prohibited and what's allowed under FCC rules interpreting the Telephone Consumer Protection Act have forced businesses to guess where their legal obligations lie.<sup>2</sup> The subject of today's order—the Act's application to opt-out confirmation texts—is case in point. In an effort to better serve consumers, many businesses send a confirmation text to consumers who opt out of receiving future communications from those businesses. This practice simply lets consumers know that their requests to opt out have in fact been received and processed.

Notably, our staff review shows that the Commission has not received a single complaint about this practice. (To the contrary, several consumers complained that they did *not* receive a confirmation text.) And yet, companies face class-action lawsuits for this innocuous conduct. These suits have threatened a host of companies across the country, from Twitter to American Express.<sup>3</sup> This state of affairs serves the interests of trial lawyers rather than consumers and the businesses trying to meet their needs.

No longer. Today's common-sense order ends the legal lacuna and the courtroom arbitrage it has inspired. Hopefully, by making clear that the Act does not prohibit confirmation texts, we will end the litigation that has punished some companies for doing the right thing, as well as the *threat* of litigation that has deterred others from adopting a sound marketing practice. And consumers want confirmation texts: They want the assurance that there will be no further intrusions on their privacy. In short, today's order is a win for consumers and for innovative companies alike. I am pleased to support it.

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<sup>1</sup> Cf. Walter Sobchak, *The Big Lebowski* (Polygram Filmed Entertainment 1998) (“Smokey, this is not ‘Nam. This is bowling. There are rules.”).

<sup>2</sup> See Opening Remarks of Commissioner Ajit Pai at the Telecommunications & E-Commerce Committee Roundtable of the U.S. Chamber of Commerce at 3 (Sept. 14, 2012), *available at* <http://go.usa.gov/gT6e>.

<sup>3</sup> See *Moss v. Twitter, Inc.*, No. 11-CV-906 (S.D. Cal.) (dismissed without prejudice); *Maleksaeedi v. American Express Centurion Bank*, Case No. 11-CV-790 (S.D. Cal.).