ITIF | INFORMATION TECHNOLOGY & INNOVATION FOUNDATION

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REPLY COMMENTS OF ITIF

to the

Federal Communications Commission

Washington, D.C.

In the Matter of: Petition for Expedited Waiver Filed by Club for Growth	)	CG Docket No. 02-278

October 19, 2026

INTRODUCTION AND SUMMARY

The Information Technology & Innovation Foundation (ITIF) appreciates the opportunity to comment on Club for Growth's (Petitioner's) Petition for Expedited Waiver, which also seeks an exemption.[1] The Telephone Consumer Protection Act (TCPA) and the Commission seek to protect consumers from unwanted robocalls. The petition would undermine these protections by opening the floodgates to unwanted political robocalls. It would also create an exemption based on the content of the calls. Such content-based distinctions are generally subject to strict scrutiny, a demanding legal standard under which the government must demonstrate that a restriction or exemption serves a compelling government interest and is narrowly tailored to achieve that interest. An exemption that fails this test would likely be struck down by a court in the event of a challenge by non-exempt parties. Because the petition would weaken consumer protections while creating significant constitutional risks, the Commission should deny it.

THE SAME STANDARD SHOULD APPLY TO AI AND NON-AI CALLS

Regardless of the Commission's decision as to the exemption and waiver, it should make clear that the same rules apply to AI-generated and non-AI-generated call content. The Commission can and should enforce existing rules and it should work within existing sector-wide regulations, rather than inventing bespoke rules or exceptions to rules for AI.[2] The policy judgments and legal rules do not change based on the way a call's content is generated, and the Commission should apply current law to the new tools enabled by AI rather than fashioning a bespoke standard that favors or disfavors content simply because it is the product of AI tools.

THE PETITION ASKS FOR A CONTENT-BASED EXEMPTION AND WAIVER, WHICH MUST PASS STRICT SCRUTINY

The petition cites *Barr v. American Association of Political Consultants, Inc.* for the proposition that a "TCPA robocall restriction that effected a content-based regulation of speech" was unconstitutional.[3] This formulation is correct as far as it goes, but it neglects the fact that the content-based restriction in question was created by the same kind of exemption Petitioner seeks here.[4] That is, *Barr* plurality held that a content-based exception converted other restrictions at the core of the TCPA into content-based restrictions subject to strict scrutiny which they could not pass. The Court severed the exemption as the remedy for the

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[1] Founded in 2006, the Information Technology and Innovation Foundation (ITIF) is an independent 501(c)(3) nonprofit, nonpartisan research and educational institute—a think tank. Its mission is to formulate, evaluate, and promote policy solutions that accelerate innovation and boost productivity to spur growth, opportunity, and progress. ITIF's goal is to provide policymakers around the world with high-quality information, analysis, and recommendations they can trust. To that end, ITIF adheres to a high standard of research integrity with an internal code of ethics grounded in analytical rigor, policy pragmatism, and independence from external direction or bias. For more, *see* "About ITIF: A Champion for Innovation," https://itif.org/about; Petition of Club for Growth for Expedited Waiver, CG Docket No. 02-278 (filed Aug. 31, 2026) ("Petition").

[2] Daniel Castro, "Ten Principles for Regulation That Does Not Harm AI Innovation," Center for Data Innovation, February 8, 2023, https://itif.org/publications/2023/02/08/ten-principles-for-regulation-that-does-not-harm-ai-innovation/

[3] Petition at 2.

[4] *Barr v. Am. Ass'n of Pol. Consultants, Inc.*, 591 U.S. 610, 618–21 (2020).

constitutional infirmity it created.[5] The rule of *Barr*, therefore, is that a content-based exemption from the TCPA will likely be unconstitutional.

Petitioner seeks a content-based exemption by specifying it is for "political calls." Whether a call is a "political call" depends on the call's content: Petitioner seeks exemption for calls that "deliver important information to potential voters in the lead-up to the midterm elections," and not for other noncommercial calls with different content, raising money for charity, for example. Since the exemption would be content-based, it invites strict scrutiny of restrictions on non-exempt calls, which it is unlikely to pass.

THE PETITIONED EXEMPTION AND WAIVER WOULD INVITE CHALLENGES TO REMAINING RESTRICTIONS THAT WOULD NOT PASS STRICT SCRUTINY

Because the exemption would result in content-based regulation of non-political speech, every other form of noncommercial robocall would have a strong case that its calls must also be allowed. For example, charities or schools could rightly argue that the exemption treats calls with political content more favorably than calls with nonpolitical content. This dynamic is precisely the one that prevailed in *Barr*: either the Commission must open the floodgates to all noncommercial calls regardless of their content or it must deny the petition. Even if the Commission grants the petition, *Barr* is still straightforwardly on point, and courts would quickly strike down the exemption for political calls based on *Barr*'s reasoning.

POLITICAL ROBOCALLS ARE RIGHTLY SUBJECT TO TCPA'S SAFEGUARDS

Americans are sick and tired of robocalls; as of 2020, most do not even answer their phones for unknown numbers, apparently assuming them to be not worth their time or suspecting they are scammers.[6] As Justice Kavanaugh put it in *Barr*, "Americans passionately disagree about many things. But they are largely united in their disdain for robocalls."[7] Thus, the petition asks for something harmful to consumers who don't want political robocalls.

The TCPA was designed to stop the behavior Petitioner seeks to undertake. The statute itself contains the finding that consumers "consider automated or prerecorded telephone calls, regardless of the content or the initiator of the message, to be a nuisance."[8] The Commission has rightly identified that robocalls are an annoyance and "more than an annoyance" to consumers and set "Stopping illegal robocalls" as its "top consumer protection priority."[9] The Commission does not serve consumers if its method of stopping illegal

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[5] *Ibid.*

[6] Colleen McClain, "Most Americans don't answer cellphone calls from unknown numbers," *Pew Research Center*, December 14, 2020, https://www.pewresearch.org/short-reads/2020/12/14/most-americans-dont-answer-cellphone-calls-from-unknown-numbers/.

[7] *Barr* at 618.

[8] Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, § 2(10), 105 Stat. 2394, 2394 (47 U.S.C. § 227 note).

[9] "Stop Unwanted Robocalls and Texts," FCC, https://www.fcc.gov/consumers/guides/stop-unwanted-robocalls-and-texts.

robocalls is to legalize them. Rather, the FCC should uphold the TCPA's policy objective and continue to help consumers avoid robocalls, not subject them to more.[10]

Thank you for your consideration.

Joe Kane
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[10] "'How-To'" Robocall Blocking Guide, FCC, https://www.fcc.gov/blockit.