I submit this comment on behalf of Investor's Business Daily, Inc. ("IBD"), a news and information service that has been in business for more than 30 years. Like hundreds of other companies each year, IBD has found itself the target of professional plaintiffs lawyers who have transformed the TCPA into a class action litigation mint. IBD paid an outside firm $5,000 for a limited test-run text marketing campaign. The firm represented to IBD that it did not use an automatic telephone dialing system to contact consumers, and further represented that it would only contact consumers that had opted-in to receive text communications. As a result of the text campaign, IBD now faces a class action suit – brought by a single named plaintiff who purported received a single two-part text message – in which the lawyers are seeking millions of dollars in statutory penalties on behalf of a nameless class. The legislative intent of the TCPA was to create a small-claims remedy for truly aggrieved parties, not to open yet another gold mine for class action lawyers at the expense of American businesses. *See West Concord 5-10-1.00 Store, Inc. v. Interstate Mat Corp.*, No. 10-00356-C, 2013 WL 988621, at *4, 8 (Mass. Super. Ct. Mar. 5, 2013) (discussing legislative intent of TCPA to provide small-claims remedy, not class remedy).

I fear that the expansive definition of "automatic telephone dialing system" sought by some commenters (and apparently endorsed by the Ninth Circuit in the *Marks* decision) will only further increase the litigation burden on American businesses, particularly because most insurance companies except TCPA claims from their standard coverages. Many companies, like IBD, use outside marketing firms and depend on assurances by those firms that their marketing activities are TCPA-compliant. Companies should not face extortive class action litigation when those assurances turn out to be mistaken or are based on a reasonable interpretation of the statute prior to the *Marks* decision. The risk of such litigation will only increase if the Ninth Circuit's vague construction of ATDS in the *Marks* decision gains traction, which will cause significant uncertainty as to what constitutes an ATDS and, without doubt, will only foment more class action litigation in derogation of the TCPA's original intent.

In my view, the FCC should strictly construe the TCPA's plain text and enforce the "random or sequential number generator" condition that the *Marks* decision has seemingly read out of the statute. To the extent that the statutory text should be modified or expanded to address current technologies, that judgment should be made by Congress, which can appropriately consider the litigation consequences such a change would entail.

On behalf of IBD, I thank the Commission for the opportunity to present our views.

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