

Before the
Federal Communications Commission
Washington, D.C.

In the matter of)	
)	
Rules and Regulations Implementing the)	
Telephone Consumer Protection Act of 1991)	CG Docket Number 02-278
)	
Yodel Technologies LLC's Petition for)	
Expedited Declaratory Ruling or)	
In the Alternative Retroactive Waiver)	

COMMENTS

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INTRODUCTION AND SUMMARY

This comment is in response to the Petition for Expedited Declaratory Ruling filed by Yodel Technologies, LLC (Yodel)¹, which I oppose, and the resulting Public Notice seeking public comment on the petition.²

At issue is whether the Telephone Consumer Protection Act of 1991 (“TCPA”)³ applies to “calls using recorded audio clips specifically selected and presented by a human operator in real-time, a tool generally referred to as ‘soundboard technology’.”⁴

I comment as a telephone consumer only. I am not employed by or otherwise connected with any business or organization that makes telephone calls to consumers or with any business or organization involved with soundboard or any other product used for telephone calls.

I previously commented to the related petition by NorthStar Alarm Services, LLC⁵ that also requested an expedited declaratory ruling clarifying that calls using recorded audio clips did not violate the TCPA.

ARGUMENT

The statutory text covers the use of soundboard technology.

The relevant portion of the TCPA is:

47 U.S.C. § 227(b) Restrictions on use of automated telephone equipment

(1) Prohibitions

It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States-

...

(B) to initiate any telephone call to any residential telephone line *using an artificial or prerecorded voice* to deliver a message without the prior express consent of the

¹ Petition for Expedited Declaratory Ruling filed by Yodel Technologies LLC filed Sept. 13, 2019, (“Petition”) (accessible at <https://ecfsapi.fcc.gov/file/1091320379447/Yodel%20Petition%20for%20Expedited%20Declaratory%20Ruling%20Or%20Waiver.PDF>).

² *Consumer and Governmental Affairs Bureau seeks comment on petition for expedited declaratory ruling by Yodel Technologies LLC*, DA 19-931 (September 19, 2019).

³ 47 U.S.C. § 227, P.L. 102-243, 105 STAT 2394.

⁴ NorthStar Petition, *infra*, at 1, *See generally* Petition at 2-3 (defining soundboard technology).

⁵ *See* Petition for Expedited Declaratory Ruling filed by NorthStar Alarm Services, LLC (NorthStar) filed Jan. 2, 2018, (“Northstar petition”) (accessible at <https://ecfsapi.fcc.gov/file/10103290733918/NorthStar%20FCC%20Petition.pdf>).

called party, unless the call is initiated for emergency purposes, is made solely pursuant to the collection of a debt owed to or guaranteed by the United States, or is exempted by rule or order by the Commission under paragraph (2)(B);⁶

The TCPA does not provide any exception for audio clips, “soundboard technology”, or individual words or phrases. It is prerecorded voices that are prohibited by the statute.

Likewise, the TCPA does not provide any exception for calls in which a person does more than initiate the call. The statute does not state or imply any exemption for a call in which a human continues to be involved in the call.

The TCPA does not state or imply that the message must be a uniform, singular message. Even if a message is made from individually recorded clips and a different message is delivered to each recipient, it is still a message.

The legislative history does not preclude coverage of soundboard technology.

There may not have been soundboard technology when the TCPA was passed, but it could have been reasonably anticipated that it would be possible to play individual sound clips as a part of a telephone call. But Congress did not include any provision in the TCPA that would allow for an exception for such technology.

The section on findings in the original Congressional act⁷ does not list any finding that would support the use of soundboard technology. One of these findings is:

Evidence compiled by the Congress indicates that residential telephone subscribers consider automated or prerecorded telephone calls, regardless of the content or the initiator of the message, to be a nuisance and an invasion of privacy.⁸

Congress has amended the TCPA several times since soundboard technology began to be used in telemarketing.⁹ Congress had ample opportunity to include an amendment to allow this technology but did not.

⁶ 47 U.S.C. § 227(b)(1)(B) (*emphasis added*).

⁷ P.L. 102-243, 105 STAT 2394, §2

⁸ *Id.* at §2(10)

⁹ *See, e.g.* P.L. 111-331 (2010), P.L. 114-74 (2015), P.L. 115-141 (2018)

Public policy does not support permitting calls using soundboard technology.

It is true that the use of soundboard technology provides numerous benefits to the industry. However, the purpose of the TCPA is to protect telephone consumers, not to benefit telemarketers.

Every purported advantage of the use of soundboard technology is also found when scripts are read by the caller. The use of prerecorded snippets allows calls to be outsourced to foreign countries and to callers who speak with a difficult-to-understand accent. When the recipient of such a call interrupts the recorded message, he then must speak to someone who may be difficult to understand.

RETROACTIVE WAIVER

Yodel requested that, in the alternative, pursuant to Section 1.3 of the Commission's rules,¹⁰ the Commission grant a retroactive waiver for the period prior to May 12, 2017, of application of those prerecorded call prohibitions under the TCPA to Yodel's use of soundboard technology.

That request is inappropriate.

According to the Commission's rules, the Commission may waive any provision "if good cause therefor is shown"¹¹ As discussed above, Yodel does not show good cause for the waiver.

Yodel has not shown that the requested waiver will further the public interest. As discussed above, the waiver will not further the policy of the TCPA; to deny the requested waiver will further the policy of the TCPA.¹²

¹⁰ 47 CFR 1.3.

¹¹ *Id.*

¹² See *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C.Cir.1969).

CONCLUSION

Soundboard technology uses prerecorded voice in direct violation of the clear and unambiguous text of the TCPA. I urge the Commission to deny the petition by Yodel, to deny the requested by Yodel, and to rule that calls using recorded clips or soundboard technology is covered by the TCPA.

Respectfully submitted,

/s/John A. Shaw