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February 6, 2019

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20054

RE: Notice of Ex Parte Meeting Regarding the Rules and Regulations  
Implementing the Telephone Consumer Protection Act of 1991;  
CG Docket No. 02-278

Dear Ms. Dortch:

On February 5, 2019, Lauren Campisi of McGlinchey Stafford PLLC, counsel to SGS North America, Inc. (“SGS”), and Jeffrey Shapiro of Peck Madigan Jones met by telephone with Kurt Schroeder, Division Chief; John B. Adams, Deputy Division Chief; Daniel Margolis, Legal Advisor; and Karen Schroeder, Attorney Advisor, of the Consumer & Governmental Affairs Bureau of the Federal Communications Commission (the “Commission”) to discuss SGS’s Petition for Expedited Declaratory Ruling or, In the Alternative, Request for Retroactive Waiver filed on December 17, 2018 (the “Petition”).

In its Petition, SGS respectfully requests that the Commission clarify the meaning of “telemarketing” and “dual purpose” calls with respect to the prior express written consent requirements under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227. Specifically, SGS seeks confirmation that a call is subject to the Commission’s prior express written consent requirements only if it advertises the commercial availability or quality of any property, good, or service or encourages the purchase or rental of, or investment in, property, goods, or services within the four corners of the communication itself. In the alternative, given the confusion regarding the scope and meaning of “telemarketing,” SGS requests a retroactive waiver from the prior express written consent requirements with respect to any telephone call made to schedule, confirm, or otherwise discuss a motor vehicle inspection.

**The Commission’s limited guidance regarding “telemarketing” and “dual purpose” calls requires immediate clarification.** When the Commission created the prior express written consent requirement for calls that introduce an advertisement or constitute telemarketing in 2012, it made clear that the intent was not to discourage purely informational messages including, but not limited to, bank account balances, credit fraud alerts, package delivery alerts, school and university notifications, debt collection communications, airline notifications, research or survey

calls, and wireless usage notifications. As the Commission explained at that time, “this list of non-telemarketing calls is only illustrative and by no means captures all of the calls that would be considered non-telemarketing calls,”<sup>1</sup> and “[n]one of our actions change requirements for prerecorded messages that are non-telemarketing, informational calls.”<sup>2</sup> While the Commission acknowledged in the 2003 and 2012 Orders that calls may have a “dual purpose,” neither the statute nor the regulation implementing the TCPA defines “dual purpose” calls. Without such guidance, courts have taken the Commission’s references to the “purpose” and “intent” of the communication out of context to drastically expand the scope of the prior express written consent requirements without regard to the content of the communication. SGS urges the Commission to end this confusion and the resulting frivolous litigation by clarifying the meaning of “telemarketing” and “dual purpose” calls.

**The content of the communication must control the characterization of the call.** The Commission can easily end the confusion and inappropriate expansion of the TCPA’s prior express written consent requirement by clarifying the scope of “telemarketing” and “dual purpose” calls. The content of the communication itself must control this determination. SGS urges the Commission to confirm that a call is subject to the prior express written consent requirements only if it advertises the commercial availability or quality of any property, good, or service, or encourages the purchase or rental of, or investment in, property, goods, or services within the four corners of the communication itself. If the content of the communication does not satisfy, on its face, the definition of “advertisement” or “telemarketing,” there can be no “dual purpose,” and the inquiry must end. A court should not look outside the content of a communication to create a “dual purpose.” This clarification returns the prior express written consent requirement to its intended scope. It is also consistent with the intent and text of the TCPA, its implementing regulation, and past Commission Orders.

**Alternatively, the Commission should grant the retroactive waiver.** In the event the Commission declines to provide the requested clarification of “telemarketing” and “dual purpose” calls under the TCPA, given the clear confusion regarding these terms, SGS respectfully requests that the Commission grant a limited, retroactive waiver of the prior express written consent requirements for all calls made by SGS to schedule, confirm, or otherwise discuss a motor vehicle lease inspection to any consumer who provided his or her telephone number to the lessor or its agent in connection with the lease transaction.

Pursuant to Section 1.1206(b) of the Commission’s rules, SGS is filing this notice electronically in the above-referenced docket. Please do not hesitate to contact me directly with any questions.

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<sup>1</sup> *In the Matter of Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, CG Docket No. 02-278, Report and Order, 27 FCC Rcd. 1830, at 1841, ¶ 28, n. 76 (2012) (“2012 TCPA Order”).

<sup>2</sup> *Id.* at 1831, ¶ 3.

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Sincerely,

**McGlinchey Stafford**

A handwritten signature in black ink that reads "Lauren Campisi". The signature is written in a cursive style with a large, looping initial "L" and a long, sweeping tail on the "i".

Lauren E. Campisi

cc: Kurt Schroeder  
John B. Adams  
Daniel Margolis  
Karen Schroeder