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Via Electronic Filing

Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Comments Relating to September 13, 2019 Petition
For Declaratory Ruling or Retroactive Waiver
CG Docket No. 02-278**

Dear Commission Secretary:

Tantillo Law PLLC (“Tantillo Law”) hereby files its comments on the issues that have been presented to the Federal Communications Commission (“FCC”) by the September 13, 2019 Petition for Declaratory Ruling or Retroactive Waiver (“Petition”) filed by Yodel Technologies, LLC (“Yodel”).

While Tantillo Law does not seek to repeat verbatim the arguments asserted by Yodel in its Petition, Tantillo Law does submit that these arguments are of utmost importance for the Commission’s careful consideration and deliberation because of the implications of a negative ruling on this Petition.

The technology that has given rise to the Petition, avatar or soundboard technology, is a technology that is not only prevalent in use today in call centers, but the technology, as applied, simply is not equivalent to a prerecorded call with the characteristics that have been expressly proscribed by Section 227(b)(1) of the Telephone Consumer Protection Act (“TCPA”) and the rules of the Commission that implement the TCPA.

Avatar or soundboard technology is an inherently interactive technology when applied to the dealings between the live caller and the recipient of the call. At the core of this technology is the ability of the live caller to listen to what the call recipient has to say during the conversation, whether when the recipient makes a comment or asks the caller a question, and respond in real time to those questions or comments so the recipient has a dialogue that is tailored to his or her situation. This dynamic is of course wholly unlike a call placed to a recipient in which during the entirety of the call, the recipient merely hears a prerecorded message and has no opportunity to respond, positively or negatively, or otherwise interact with the would-be caller. Tantillo Law recognizes that prerecorded non-interactive calls, unlike interactive calls using avatar or soundboard technology, pose issues and concerns that appropriately warrant policing by the Commission pursuant to the TCPA.

However, going beyond that scope would not only far exceed the historic guidance that the Commission has given on what type of prerecorded calls fall within the purview of the TCPA, but would deal a crippling blow to the use of avatar or soundboard technology if lumped together with non-interactive uses of prerecorded messages, and in turn impact the call center industry, an industry that is already regulated and mindful of the need to be transparent in dealings with the recipients of calls that are made from the call centers.

As stated above, the heart of the distinction cannot be overemphasized here. Avatar or soundboard technology uses live callers who stay on the call with the recipient throughout the call, and respond to the questions or comments from the call recipient. While the live caller may use prerecorded messages in response to those questions or comments to provide the necessary pertinent information to the recipient, the live caller is always on the call, and can get further involved to make sure the recipient's questions are answered or comments are addressed if the prerecorded messages that are used are not sufficient. Quite simply, the recipient is not left merely at the mercy of prerecorded messages, the precise concern that

motivated the TCPA's proscriptions the use of such messages in isolation.

Moreover, unlike situations in which the prerecorded messages are merely played in a rote manner to the call recipient as in the case of traditional prerecorded voice messages with no option for the recipient to voice objection other than by hanging up the call, avatar or soundboard technology gives the live caller the ability to control and tailor the prerecorded voice messages that might be played during the call based on how the conversation with the recipient is unfolding. The benefits of this technology to the recipient as well as the caller are telling and obvious. For the recipient, he or she knows that someone live is interacting with him or her in real time, and making sure the recipient understands what information is being provided during the call. For the caller, he or she knows that the statements or information made during the call have to be accurate and complete, and in turn the business on whose behalf the caller works will have the basis to monitor the manner and content of the interactive sharing of information with the recipient to ensure full compliance with all relevant telemarketing rules and regulations.

Finally, the Commission's endorsement of avatar or soundboard technology as sought by Yodel would be wholly consistent with both the Commission's past practices regulating the use of prerecorded voice messages, as well as case law that has endeavored to interpret the scope of proscription of the use of prerecorded voice messages. Historically, in the course of interpreting the TCPA, the Commission has strictly focused on the use of prerecorded voice messages in circumstances where the entirety of the call involved the use of prerecorded voice messages. In those circumstances, the Commission has said these calls are to be prohibited. Avatar or soundboard technology does not fit this rubric. Similarly, in *Moser v. F.C.C.*, 46 F.3d 970 (9th Cir. 1995), the Ninth Circuit held that the TCPA did not ban the use of prerecorded messages that are introduced to a call recipient by a live caller. This holding has not been reversed, nor has a contrary holding been made by a federal court in any other Circuit.

For the foregoing reasons, Tantillo Law submits that the Petition filed by Yodel should be granted and the use of avatar or soundboard technology should be fully endorsed as legal within the purview of the TCPA.

Very Truly Yours,

A handwritten signature in blue ink that reads "Brent Tantillo". The signature is written in a cursive, flowing style.

Brent Tantillo
Managing Shareholdet

