

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of the)
Rules and Regulations)
Implementing the Telephone) CG Docket No. 02-278
Consumer Protection Act of)
1991)

Reply Comments of Joe Shields on The Northstar Alarm
Services LLC Petition For Expedited Declaratory Ruling on
Soundboard Technology

The Commission has become a sword for those that violate the TCPA. Those TCPA violators cite Commissioner Pai's anti-consumer rhetoric in their attempts to quash proper law suits brought against them for violating the TCPA. The Commission is tasked with protecting consumers from unwanted and unauthorized calls live and prerecorded. The Commission was never tasked with protecting TCPA violators from proper consumer law suits class action or otherwise.

The Sound Board Association (hereinafter "SBA") states in its comments that a soundboard's: "...only function and purpose is to facilitate a **LIVE** two way dialogue between two humans." That statement of what a soundboard does is clearly flawed. A soundboard is a machine that delivers prerecorded messages, it does not engage in a **LIVE** two way conversation between two people. It cannot do so because **IT**

IS A MACHINE! What a soundboard really does is facilitate the delivery of prerecorded messages by those who want to circumvent the TCPA. Further, the SBA comments are irrational - a soundboard is definitely not an "enforcement tool" and the TCPA law suits are not leading to the "destruction of legitimate small businesses". I remind the Commission of Rich Tehrani's fear mongering that the implementation of the federal do not call list would "cause worldwide economic catastrophe."¹

For clarification the petition for certiorari is based on the issue of whether FTC staff advisory opinions should be subject to Judicial Review. The petition for certiorari does not address the legality of soundboard robocalls under the TSR or any other law.

The petitioner, Northstar, places a lot of reliance on Chairman Pai's anti-consumer rhetoric. Chairman Pai's misinformed personal opinions have little if any precedential value to the courts or to the Commission itself. What Northstar cites to are nothing more than misinformed personal opinions of Chairman Pai.

The American Consumer Communication Association (hereinafter "ACCA") more than likely represents its members and not consumers. ACCA more than likely does not

¹<http://www.tmcnet.com/call-center/0503/0503hp.htm>

have even one consumer as a member². Nevertheless, ACCA loudly proclaims that it protects: "...the privacy interest of consumers." To that end ACCA claims that prerecorded messages are not prerecorded messages as long as a human is pressing the "play the prerecorded message" button. Claiming that multiple prerecorded messages when delivered in a single call is not a violation of the TCPA is asinine. Delivering one **or more** prerecorded messages in one call is a violation of the TCPA.

The defense that a human being was available when the prerecorded message was delivered has been used for years by TCPA scofflaws. For example in one law suit I had filed for a sham survey free cruise prerecorded message call in 2014, the defendant stated in its 22nd Affirmative Defense that:

"Plaintiff's claims are barred because the telephone call about which Plaintiff complains was, at all times, monitored by a live human agent who was interacting with the called party during the telephone call and was available during the entire duration of the call."³

² There is a company in Virginia going by the name of American Customer Communication Association Inc. It was created on March 22nd, 2019. It was created a week after their comment was filed which makes its comments dubious.

³ Shields v Ultimate Vacation Group LLC et al, Cause No.: 3:14-cv-00285, (U.S.D.C. S.D. TX. Houston Div. filed 09/03/2014)

Of course none of that was true and not one shred of evidence to support that defense was ever produced. Nevertheless, it was an answer to my TCPA complaint.

In the same case, in response to plaintiff's Motion for Class Certification the same excuse with more detail was tried:

"Net Leads, and another company's marketing program used by Ultimate, involved telemarketing using an "Avatar"-type calling platform that has been described by the Federal Trade Commission as TCPA compliant.⁴"

The defendant then referenced the FTC's 2009 opinion letter which never once mentioned the TCPA⁵. Once again not one shred of evidence was ever produced that supported the argument that avatar technology was used in the sham survey free cruise robocall. Additionally, a corporate officer submitted a declaration stating that: "a program using Avatar Technologies, Inc." was used.

As one can see from this example attempts to circumvent the TCPA claiming avatar technology was used occurs frequently. See *Margulis v Eagle Health Advisors LLC*, Case No. 4:15-CV-1248 JAR, (U.S.D.C. E.D. Missouri, March 31st, 2016); *Fitzhenry v. ADT Corp.*, 2014 WL 6663379, at 6 (S. D. Fla. Nov. 3, 2014).

⁴ *Id*

⁵ The FTC has never stated that the avatar type calling platform is TCPA compliant.

If the Commission grants the petition the avatar defense will become commonplace. More importantly, if the Commission grants the petition TCPA scofflaws will begin delivering prerecorded messages in pieces, one sentence at a time, to a called party and claim that those kind of prerecorded message calls are exempt from the TCPA under the Northstar declaratory ruling.

The Commission must take affirmative action to reduce the tsunami of robocalls the public is besieged with. The Commission must firmly deny the petition and should respond with a citation!

Respectfully submitted.

/s/

Joe Shields
Texas Government & Public Relations Spokesperson for
Private Citizen Inc.
16822 Stardale Lane
Friendswood, Texas 77546