

May 15, 2017

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington DC 20554

RE: PETITION FOR DECLARATORY RULING OF ALL ABOUT THE MESSAGE, LLC

CG Docket No. 02-278

Ms. Dortch:

I write in opposition to the All About The Message, LLC Petition (“Petition”) which seeks a declaratory ruling that “ringless voicemails” are exempt from the requirements of the Telephone Consumer Protection Act (“TCPA”) 47 U.S.C. § 227 *et seq.*¹

There is no such thing as “ringless voicemail.” It is an oxymoron that suggests somehow a robo called voicemail message is not a “call” and not a major disruption to consumers. This Petition seeks to eviscerate both the letter and the spirit of the TCPA. In some respects, a voicemail call that is delivered without a ring is actually more of a nuisance than a ringing telephone. Sending a voicemail directly into a person’s cellular telephone still wastes that consumer’s time by now having to retrieve the voicemail and listen to it, instead of simply answering the phone and telling the caller to stop calling.

This Petition seeks to do an end-run around the TCPA. It is a wolf in sheep’s clothing. So-called ringless voicemail is a call to a cellular telephone—no different than any other. An electronic message is delivered to that telephone’s private voicemail system and the cellular handset thereafter alerts the consumer that she/he has received a voicemail. How is that any different than calling a phone? How is that any less of an inconvenience in now having to log into that voicemail system and check for the robo message that was left? How is it any less frustrating that suddenly robo messages are appearing on your cellular telephone, but the phone never rang? Would that not cause consumers concern about whether their cellular telephones were operating properly? Are the cellular carriers prepared for that onslaught of complaints and customer confusion?

The relief requested in this Petition would allow companies to pummel consumers with all sorts of unsolicited voicemail messages for which they’d have no escape. What kind of world is that? Americans have a right to control the unfettered access to their cellular telephones. They have a right to stop robo calls like those proposed by this Petition. “Ringless” voicemail is a brand-new kind of robo call that is an affront to common sense. Ask yourself: Is the FCC ready to permit companies to deluge voicemail systems, with limitless numbers of spam messages from these robo callers, so that they might shamelessly carve out a new business model for themselves in the nuisance-call-delivery industry? Does the FCC have the capacity to handle even more complaints from even more angry Americans whose privacy has been invaded by these robo messages?

This Petition ignores what it means to *call* a person’s cellular phone. Merriam-Webster defines “call” as “to get or try to get in communication with by telephone” and “to generate signals for (a telephone number) in order to reach the party to whom the number is assigned.” <https://www.merriam-webster.com>. No doubt, ringless voicemail squarely fits within both of these plain English definitions of what it means to be called on a cellular telephone. The voicemail system connected to a cellular service is inseparable from that service. Ringing or not, leaving a voicemail on a cellular telephone means *calling* a cellular telephone because it involves sending digital signals to a cellular telephone in an effort to reach that person.

Allowing ringless voicemail to evade the strictures of the TCPA is a distortion of the intent of Congress. We need to decide what we are willing to tolerate in our society in terms of invasions of privacy. Just because technology allows something, does not mean that the law does. Congress was clear in its mandate to eliminate unconsented robo calls and it has empowered the FCC to implement its will. Americans are not willing to let companies fill up their voicemail systems, force them to sort through potentially dozens of robo messages, only to find out that their child is sick at school—or that they have missed an important message about an elderly neighbor because they did not have the time, or patience, to sort through these aberrant messages. Americans are unwilling to waste their family time and their cellular telephone power on a flood of robo messages like those proposed by the Petitioner.

The American Public is sick and tired of robo calls. Don’t give these petitioners an unregulated avenue to deliver them. Rather than permitting a deluge of even more robo calls and messages like those in this Petition, which will *inevitably* lead to more litigation and more consumer frustration, the Commission ought to deny this Petition and declare that these types of prerecorded message robo voicemails are specifically regulated by the TCPA as calls. This Petition seeks to ignore the plain meaning of the word “call” and plays semantics with a consumer’s right to privacy. The words and meaning of Congress in implementing this important consumer protection law were clear. There is not a single shred of evidence for the proposition that Congress wanted a TCPA exemption for systems that can underhandedly deliver prerecorded voicemail messages into a cellular telephone’s voicemail.

Getting a voicemail is getting a call, and getting a robo voicemail is getting a robo call. Thank you for your consideration of this important issue.

Respectfully,


BARRY & HELWIG, LLC

Peter F. Barry, Esq.
Attorney at Law

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¹ I have been a consumer rights lawyer in Minneapolis for 20+ years and an adjunct professor of law teaching Consumer Rights Law at Mitchell Hamline School of Law for 15 years. I represent many consumers who are subjected to robo calls on their cellular telephones, both by original creditors and by third-party debt collectors collecting on others’ accounts. I have handled hundreds of cases involving original creditors over the past decade. I have appeared in state and federal courts in individual cases in 18 states. I am a current member of the National Association of Consumer Advocates and its 2005 Consumer Lawyer of the Year. I am currently representing several clients involving robo calls and robo messages by creditors without the clients’ prior express consent and after the creditors had been told to stop calling.