

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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

Comment of Professional Association for Customer Engagement

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I. Introduction

The Professional Association for Customer Engagement (“PACE”)¹ submits these comments in response to the Request for Clarification filed by Patrick Maupin.² Mr. Maupin requests that the Commission clarify that “the purchase of an automobile at retail from a car dealer does not automatically create an [established business relationship] between the automobile purchaser and third-party provider of a radio subscription service.”³ Mr. Maupin’s requested clarification stands in opposition to long-standing principles of established business relationships (“EBR”) existing with businesses whose products come bundled with a primary product, such as a radio subscription service bundled with a vehicle. Accordingly, the Commission should deny Mr. Maupin’s requested clarification.

II. An EBR Exists with Providers of Bundled Products

The TCPA’s implementing regulations exempt from the requirement to scrub against the National Do-Not-Call Registry (“DNC Registry”) calls to called parties with whom the caller has an EBR. The regulations define an EBR as “a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber’s **purchase or transaction** with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber’s inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party.”⁴ The Federal Trade Commission’s (“FTC”) definition of an EBR under its Telemarketing Sales Rule (“TSR”) substantively mirrors the

¹ PACE is the only non-profit organization dedicated exclusively to the advancement of companies that use a multi-channel contract center approach to engage their customers, both business-to-business and business-to-consumer. These channels include telephone, email, chat, social media, web and text. Our membership is made up of Fortune 500 companies, contact centers, BPOs, economic development organizations and technology suppliers that enable companies to contact or enhance contact with their customers.

² Request for Clarification filed by Patrick Maupin, CG Docket No. 02-278 (filed June 21, 2019) (“Request for Clarification”).

³ Request for Clarification at 4.

⁴ 47 C.F.R. § 64.1200(f)(5) (emphasis added).

Commission's definition,⁵ and for good reason, since Congress instructed the Commission and the FTC to align their regulations related to implementation of the DNC Registry.⁶

As indicated in the EBR definition, an eighteen-month EBR is formed by the called party's "purchase or transaction" with the caller. The FTC, in guidance illuminating how an EBR would work in the context of a bundled product, further explained that a consumer may have an EBR with providers of secondary products that are bundled with a primary product:

If a consumer buys a computer with peripherals – printer, keyboard, speakers – from a local retail store, the consumer will have an established business relationship with that store for 18 months from the date of purchase. **In addition, the consumer may have an established business relationship with the computer manufacturer and possibly the manufacturer of the peripherals, as well as the operating system manufacturer, as long as the customer has a contractual relationship with any of these entities.** If the printer comes with a manufacturer's written warranty, the manufacturer has an established business relationship with the customer. If the operating system comes with a manufacturer's written warranty, the manufacturer of the system has an established business relationship with the customer, too.⁷

Logic dictates the FTC's interpretation. If the customer enters into a written agreement with a bundled product provider, such as a warranty or a terms of use, the customer has engaged in a transaction with such provider thereby forming an EBR.

Mr. Maupin specifically mentions that he is interested in obtaining the requested clarification because of calls he received from Sirius XM Radio Inc. ("SiriusXM") after having purchased a vehicle that included SiriusXM service.⁸ Without litigating the exact circumstances of Mr. Maupin's concern, PACE would note that SiriusXM service is subject to a Customer Agreement⁹ and, much like the manufacturer's warranty associated with the printer in the FTC's example, the Customer Agreement creates a contractual relationship with the consumer. Mr.

⁵ 16 C.F.R. § 310.2(q).

⁶ 117 Stat. 557, § 3.

⁷ Complying with the Telemarketing Sales Rule, FTC (available at: <https://www.ftc.gov/tips-advice/business-center/guidance/complying-telemarketing-sales-rule>) (last accessed July 26, 2019) (emphasis added).

⁸ Request for Clarification at 3.

⁹ *Customer Agreement*, SiriusXM (available at: https://www.siriusxm.com/pdf/siriusxm_customeragreement_eng.pdf?desktop=yes&intcmp=GN_FOOTER_NEW_CustomerAgreement) (last accessed July 26, 2019).

Maupin, by purchasing a vehicle with full knowledge that it was bundled with SiriusXM service, voluntarily entered into a transaction with SiriusXM creating an EBR.

The Commission should not create a carve-out to the general EBR rule that could disrupt many businesses' ability to communicate with their customers simply because the purchase of their product was bundled with the purchase of another product. In today's marketplace, where products and services are often sold together as part of a package, Mr. Maupin's requested clarification would unnecessarily and harmfully restrict communications with purchasers who could benefit from other products and services, or extensions of the already purchased product or service, from the same provider. Instead, the Commission should reiterate the long-standing principle articulated by the FTC that an EBR may be formed with a bundled product provider if the consumer enters into an agreement with such provider.

III. Conclusion

The Commission should not grant Mr. Maupin's requested clarification. Instead, it should reaffirm the principle that an EBR may be formed with a bundled product provider with whom the called party has engaged in a purchase or transaction, such as entering into a contract. Countless businesses in today's marketplace sell products and services in bundled packages, and removing the EBR exemption simply because the seller's product was not the primary product in the bundle would have deleterious consequences for not only the impacted businesses but also consumers who could benefit from other products or services from those businesses.

Respectfully submitted,



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