Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 Consumer and Governmental Affairs Bureau Seeks Comment on Request for Clarification Filed by Patrick Maupin	)	CG Docket No. 02-278

COMMENTS OF SIRIUS XM RADIO INC.
ON REQUEST FOR CLARIFICATION FILED BY PATRICK MAUPIN

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TABLE OF CONTENTS

EXECUTIVE SUMMARY

Sirius XM twice spoke with Patrick Maupin regarding the satellite radio subscription he purchased with his new vehicle before putting him on the company's do-not-call list. Annoyed by those two calls, Mr. Maupin asks the Commission to revisit its longstanding guidance—on the books since 2003—that a seller has an established business relationship ("EBR") with a purchaser whether or not the purchase occurs directly or through an intermediary such as a vehicle dealer or retail establishment. Mr. Maupin does not seek clarification at all, but rather reconsideration. The Commission should reject that request, which is procedurally improper and substantively meritless.

Although Mr. Maupin styles his filing as a request for clarification, it is anything but. There is nothing unclear about the rule Mr. Maupin purports to want clarified. To the contrary, Mr. Maupin himself appears to recognize that the Commission's guidance is clear that a seller and a buyer have an EBR. There is thus no controversy or dispute here for the Commission to resolve, and the Commission cannot and should not issue an advisory declaratory ruling. Instead, what Mr. Maupin seeks is reconsideration of basic principles upon which countless businesses rely every day. But that request is not only grossly untimely, it is also improper.

What is more, to the extent Mr. Maupin improperly asks the Commission to intervene to change the rule in the context of ongoing litigation, Sirius XM already has reached a settlement agreement with a nationwide class of consumers who received calls from Sirius XM based on their purchase or lease of vehicles with accompanying Sirius XM subscriptions.

Even if Mr. Maupin's request were procedurally proper, it would still be substantively meritless. The Commission has consistently defined—broadly and correctly—what counts as an EBR. Purchases give rise to EBRs, even when they occur through intermediaries. The analysis is the same when Sirius XM sells subscriptions as part of vehicle purchases.

Mr. Maupin is no longer receiving calls from Sirius XM. He has been placed on Sirius XM's permanent do-not-call list. And to the extent he has a complaint about two calls he received in the past, he can and should repair to the federal district court handling the nationwide class action, opt out of the settlement, and pursue his claims individually. Nothing in Mr. Maupin's request warrants the Commission's time or attention.

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Sirius XM Radio Inc. ("Sirius XM"), by its undersigned counsel, respectfully submits these comments in response to the Federal Communications Commission's ("FCC" or "Commission") request for comments on the request for clarification ("Request") filed by Patrick Maupin on June 21, 2019. In his Request, Mr. Maupin asks the Commission to "[c]larify that the purchase of an automobile at retail from a car dealer does not automatically create an [established business relationship ('EBR')] between the automobile purchaser and the third party provider of a radio subscription service."[1] That request is procedurally improper and substantively meritless.

Mr. Maupin styles his filing as a request for clarification, but it is instead a grossly untimely petition for reconsideration of the FCC's longstanding rules regarding the treatment of EBRs for purposes of the Telephone Consumer Protection Act ("TCPA"). The Commission's rules and decisions make clear that an EBR can arise not only from a direct purchase, but also from a purchase carried out through an intermediary, such as a vehicle dealer or retail establishment. Consequently, when Sirius XM sells subscriptions to consumers as part of vehicle purchases, it

[1] Request for Clarification of Patrick Maupin, CG Docket No. 02-278, at 4 (filed June 21, 2019) ("Request").

forms EBRs with those consumers. Mr. Maupin seeks to avoid that straightforward result by asking the Commission to revisit fundamental EBR principles set out more than 15 years ago—and by so doing, intervene to retroactively change its rule to impact nearly concluded class-action litigation. That untimely and inappropriate request for reconsideration should be summarily dismissed.

I. INTRODUCTION AND BACKGROUND

Mr. Maupin's request arises from a dispute with Sirius XM about "two unsolicited telephone calls" he received from Sirius XM.[2] Mr. Maupin has been a customer of Sirius XM, with two separate accounts: (1) a paid subscription for a portable radio for two years starting in 2003; and, more recently, (2) a three-month subscription beginning in January 2019 that Mr. Maupin purchased with the acquisition of a new automobile. As his Request acknowledges, information about the Sirius XM subscription as a component of the vehicle was featured prominently on the car's large, informational Monroney sticker—the window label that federal law requires to display key information about new vehicles.[3]

Mr. Maupin purchased a new vehicle that was sold with a three-month Sirius XM subscription in January 2019. Sirius XM's telemarketing vendors placed a total of three calls to Mr. Maupin related to his subscription. The first call, on March 22, 2019, was unanswered and went to voicemail. On the second call, on March 25, Mr. Maupin requested not to be called again. The agent, unfortunately, miscoded the call as "Callback – Hang Up Before Presentation" rather than adding Mr. Maupin to Sirius XM's internal do-not-call list—all contrary to Sirius XM's policies and the agent's training. On the third call, on March 27, Mr. Maupin, quite angry, again asked not to be called again. The agent correctly added Mr. Maupin to Sirius XM's company-

[2] *Id.* at 3.

[3] *See* Request at 3; *see also* 15 U.S.C. § 1232.

specific do-not-call list following that call. Mr. Maupin received no further calls from Sirius XM. Sirius XM has taken full responsibility for the erroneous third call, which would not have occurred had the agent with the vendor retained by Sirius XM correctly implemented the company's policies and training.

Mr. Maupin nonetheless proceeded to send Sirius XM and its lawyers a series of strident emails seeking "[his] pound of flesh."[4] He accused Sirius XM of "obnoxious conduct" and "misbegotten marketing strategies," and suggested that Sirius XM and its lawyers "will have to decide … how much trouble [he has] already made for [them], and how much additional trouble [he] might be able to make [for them]."[5] He compared counsel's communications with him to "raising a red flag in front of a bull."[6]

Mr. Maupin filed his Request on June 21, 2019. He asks the Commission for a "timely" response that could "alter the course of the *Buchanan v Sirius* class action."[7] Specifically, he asks the Commission to "[c]larify that the purchase of an automobile at retail from a car dealer does not automatically create an EBR between the automobile purchaser and the third party provider of a radio subscription service."[8] He also asks the Commission to "[c]larify" that Sirius XM "is not entitled to any safe harbor" and to "[c]larify" that Sirius XM must provide "per-consumer EBR proof" for millions of calls in a class action.[9]

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[4] Defendant Sirius XM Radio Inc.'s Memorandum in Opposition to Patrick Maupin's Motion to Intervene at 4, *Buchanan v. Sirius XM Radio Inc.*, Case No. 3:17-cv-00728-D (N.D. Tex.), ECF No 112.

[5] *Id.*

[6] *Id.*

[7] Request at 4.

[8] *Id.*

[9] *Id.* at 5.

Far from a request for clarification, what Mr. Maupin is really asking is for the Commission to intervene to retroactively change its rule to impact nearly concluded class-action litigation. The federal district court presiding over that litigation has preliminarily approved a settlement in the case and set a final approval hearing for November 2019. Mr. Maupin does not agree with the settlement, but rather than opting out, he seeks to abuse Commission process to disrupt the settlement process, presumably for his private benefit. The Commission should not permit its regulatory authority to be misused in this manner, and therefore Mr. Maupin's petition should be promptly dismissed.

II. MR. MAUPIN'S REQUEST IS PROCEDURALLY IMPROPER

The Commission should reject Mr. Maupin's request even before reaching its substance. To begin, the filing is not in fact a request for clarification. Mr. Maupin appears to recognize that the Commission's *2003 TCPA Order* already supplies the rule in these circumstances—he just disagrees with the outcome that results from applying that rule. His filing is thus a request for reconsideration—and a grossly untimely one at that. Mr. Maupin's request is also improper for the additional reason that the question Mr. Maupin wants answered (even assuming it has not been answered already) cannot be answered in the abstract, as EBRs can be formed in myriad ways through inquiry and transaction.

Mr. Maupin's stated goal is to use these proceedings to undo a carefully crafted nationwide class-action settlement that he does not agree with. He wants the Commission to change the existing EBR rules and apply them to past conduct. But it is not the Commission's role to step in to disrupt ongoing litigation, let alone a classwide settlement that has already garnered preliminary approval from a federal district court.

A. MR. MAUPIN SEEKS UNTIMELY RECONSIDERATION, NOT CLARIFICATION

1. There Is No Controversy or Uncertainty for the Commission to Terminate

By statute and regulation, the Commission may "issue a declaratory ruling terminating a controversy or removing uncertainty."[10] Where there is "no basis for any uncertainty," in contrast, the Commission may not issue such a ruling.[11] Such is the case where a request "seek[s] reversal of the Commission's prior ruling … rather than … clarification."[12]

Here, there is no uncertainty to terminate regarding the application of a nearly 16-year-old EBR rule. Ignoring the Commission's rules and procedures, Mr. Maupin does not seek clarification. Instead, as Mr. Maupin admits, he seeks reversal of a longstanding EBR regulation. Mr. Maupin acknowledges that footnote 382 of the *2003 TCPA Order* provides that a seller has an EBR with a purchaser even when the sale occurs through a retail store or an independent dealer.[13] He goes so far as to suggest that "this footnote might have been generally sensible" when it was written, before arguing that the Commission needs to update the approach long established in its rules for "today's climate."[14] Mr. Maupin further concedes that the Federal Trade Commission's ("FTC") current guidance, which Sirius XM had pointed to, "is a logical consequence of the

[10] *See* 5 U.S.C. § 554(e); 47 C.F.R. § 1.2(a).

[11] *E.g.*, *Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991*, Order, 30 FCC Rcd 8598, 8612 ¶ 22 (2015).

[12] *Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd 7961, 8016-17 ¶ 107 (2015).

[13] Request at 2 (citing *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014, 14083 ¶ 118 n.382 (2003) ("*2003 TCPA Order*")).

[14] Request at 2.

Commission's footnote [382]."[15] In other words, Mr. Maupin believes the Commission must revisit and reverse the approach it has taken, since 2003, to EBRs. But the request to overturn a clear rule does not seek resolution of any uncertainty or controversy that can be addressed through a declaratory ruling or clarification. That request is plainly improper under the relevant statute and regulation, and it should be dismissed.

Mr. Maupin tries to escape footnote 382 by contending that the Commission might have decided the question differently outside the cellphone context.[16] But Mr. Maupin clearly admits that the *2003 TCPA Order* applied footnote 382 more broadly. In his words, footnote 382 is "apparently … generally applicable."[17] Accordingly, Mr. Maupin is actually asking the Commission to reconsider a longstanding rule.

Nor can the Commission construe Mr. Maupin's request as a petition for reconsideration. Reconsideration petitions must be filed within 30 days of public notice of the action in question.[18] Petitions that "[a]re untimely" "plainly do not warrant consideration by the Commission" and should be "dismissed or denied by the relevant bureau(s) or office(s)."[19] Mr. Maupin's filing comes more than 15 years after the *2003 TCPA Order*, and so is fatally untimely if construed as a petition for reconsideration. It should be dismissed.

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[15] *Id.* at 3-4 (referencing letter from Sirius XM attorney Tyler Theis).

[16] *See* Request at 2.

[17] *Id.*

[18] 47 U.S.C. § 405(a) ("petition for reconsideration must be filed within thirty days from the date upon which public notice is given"); 47 C.F.R. § 1.429(d) ("petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of such action").

[19] *Id.* § 1.429(l)(9).

2. Mr. Maupin's Request Asks the Commission to Resolve an Abstract Question While Ignoring Important Aspects of the Problem

Mr. Maupin's request presents an improper abstract question for yet another reason. He asks the Commission to "[c]larify that the purchase of an automobile at retail from a car dealer does not automatically create an EBR between the automobile purchaser and the third party provider of a radio subscription service."[20] As an initial matter, Sirius XM is not a "third party provider"—it cobrands, packages, and sells the subscription service with the vehicles. Those sales bring Sirius XM within the scope of footnote 382 of the *2003 TCPA Order*.[21] But regardless, EBRs may be formed in a number of ways, *in addition to* the simple purchase of the satellite radio subscription along with the vehicle. For example, customer inquiries and online transactions may, depending on the circumstances in any particular case, provide independent grounds for EBRs. Mr. Maupin ignores these other factors and instead attempts to present a categorical, abstract question for the Commission's consideration. Not only does that framing oversimplify the issues, but it likely does not resolve any dispute or uncertainty in any given case because it ignores other relevant inquiries. And entertaining such an abstract, uninformed request would risk ignoring "important aspect[s] of the problem," contrary to the Administrative Procedure Act.[22]

B. MR. MAUPIN IMPROPERLY ASKS THE COMMISSION TO INTERVENE TO CHANGE THE RULE OF DECISION IN ONGOING LITIGATION

Not only does Mr. Maupin seek a rule change, but he seeks to apply that rule change to ongoing litigation. As Mr. Maupin admits, "[t]he Commission's response to [his] request will

[20] Request at 4.

[21] *See supra* n. 13 and accompanying text.

[22] *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

inform [his] actions, and, if provided in a timely fashion, may alter the course of the *Buchanan v. Sirius* class action."[23] That request is improper for a number of reasons.

Mr. Maupin declares that his "immediate concerns are narrow, and only relate to the dispute between him (and 14 million of his fellow [do-not-call list] compatriots) and Sirius."[24] He explains that he "has been negotiating with Sirius" regarding "two unsolicited telephone calls [he received] from Sirius XM."[25] And if the Commission responds "timely" to his Request, Mr. Maupin explains, that response "will inform [his] actions."[26] For the reasons explained above, however, Mr. Maupin's request does not seek to resolve an issue left uncertain for the past 15 years that would change the course of his private dispute. Instead, he is seeking a rule change to use as leverage in his dispute with Sirius XM. The Commission should not intervene in this manner. It should instead dismiss the Request.

In fact, Mr. Maupin does not seek clarification. Instead, he wants to supplant the class-action settlement agreement the parties have reached in *Buchanan v. Sirius XM Radio Inc.*[27] That settlement shows not only that there is no ongoing controversy on the subject of Mr. Maupin's Request nor a need for Commission intervention, but also that the experienced lawyers who represent the putative class have determined that settlement is the best course of action given the complexity of the litigation and the strength of Sirius XM's position.[28] It is improper for Mr.

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[23] Request at 4.

[24] *Id.*

[25] *Id.* at 3.

[26] *Id.* at 4.

[27] Class Action Settlement Agreement and Release, *Buchanan v. Sirius XM Radio Inc.*, Case No. 3:17-cv-00728-D (N.D. Tex.), ECF No 105-1.

[28] Motion for Order Preliminarily Approving Settlement and Conditionally Certifying the Rule 23 Settlement Class at 5-7, *Buchanan*, No. 3:17-cv-00728-D (N.D. Tex.), ECF No. 105. The

Maupin to come to the Commission to seek to undo that carefully crafted settlement, and it would be similarly improper and unwise for the Commission to issue an advisory opinion bearing on the issues in the settlement.

III. THE COMMISSION'S GUIDANCE ALREADY ANSWERS MR. MAUPIN'S PURPORTED REQUEST, AND ANY CHANGE WOULD UNDERMINE IMPORTANT POLICY INTERESTS IN THE BROAD EBR EXEMPTION

A. THE COMMISSION HAS BROADLY, AND CORRECTLY, DEFINED WHAT COUNTS AS AN EBR

Under the TCPA as well as the Commission's rules, calls to individuals on the National Do Not Call Registry ("DNC Registry") do not violate the TCPA if the parties have an EBR.[29] The governing regulation defines EBRs broadly to cover purchases of the caller's products, as well as "transaction[s]," "inquir[ies]," and "application[s] regarding products or services offered by the [caller]," "with or without an exchange of consideration."[30] As the Commission explained in its first order addressing the TCPA, the EBR "exemption [is] broad enough to encompass a wide range of business relationships."[31]

Consequently, the Commission has interpreted that regulation broadly and has often applied agency principles to the TCPA. Section 64.1200(f)(5) defines 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

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district court has already preliminarily approved the settlement, and a hearing on final approval will be held on November 7, 2019. Order Approving Issuance of Notice at 2, *Buchanan*, No. 3:17-cv-00728-D (N.D. Tex.), ECF No. 106.

[29] *See* 47 U.S.C. § 227(a)(4)(B); 47 C.F.R. § 64.1200(f)(14)(ii).

[30] 47 C.F.R. § 64.1200(f)(5).

[31] *Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991*, 7 FCC Rcd 8752, 8771 ¶ 34 (1992) ("*1992 TCPA Order*"); *see CE Design, Ltd. v. Prism Bus. Media, Inc.*, 606 F.3d 443, 451 (7th Cir. 2010) (quoting *1992 TCPA Order*, 7 FCC Rcd at 8771 ¶ 34) ("[T]he term 'business relationship' should be construed broadly ….").

> basis of the subscriber's purchase or transaction with the entity within the … (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.[32]

Footnote 382 of the *2003 TCPA Order* is one of the most straightforward applications of the EBR regulations. That footnote explains that "if a consumer purchases a seller's products at a retail store or from an independent dealer, such purchase would establish a business relationship with the seller, entitling the seller to call that consumer under the EBR exemption."[33] The footnote accords with the Commission's recognition that:

> the ability of sellers to contact existing customers is an important aspect of their business plan and often provides consumers with valuable information regarding products or services that they may have purchased from the company. For example, magazines and newspapers may want to contact customers whose subscriptions have or soon will expire and offer new subscriptions.[34]

The Commission reiterated the need for a broad EBR exemption in 2003 when it established the nationwide DNC Registry and extended the EBR exemption to calls placed to residential numbers on that list.[35] The Commission offered several examples: "magazines and newspapers [that] may want to contact customers whose subscriptions have or soon will expire and offer new subscriptions";[36] companies desiring "to make new offers to existing customers,

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[32] 47 C.F.R. § 64.1200(f)(5).

[33] *2003 TCPA Order*, 18 FCC Rcd at 14083 ¶ 118 n.382.

[34] *Id.* at 14043. As the Commission explained in its first TCPA order in 1992, the EBR regulation does not require "an exchange of consideration." *1992 TCPA Order*, 7 FCC Rcd at 8770 ¶ 33.

[35] *See 2003 TCPA Order*, 18 FCC Rcd at 14043 ¶ 42.

[36] *Id.*

such as mortgage refinancing, insurance updates, and subscription renewals," because customers may "benefit from calls that inform them in a timely manner of new products, services and pricing plans";[37] and companies looking to "'winback' or 'renew' [a] customer's business" where, "[f]or example, a consumer … once had telephone service with a particular carrier or a subscription with a particular newspaper."[38] In such instances, a consumer "could expect to receive a call from those entities."[39]

Notably, the entity that has the EBR with the call recipient need not take all relevant actions itself. Instead, the Commission has often applied "common law agency-related principles" in the TCPA context.[40] For instance, third-party "telemarketers may rely on the seller's EBR to call an individual consumer to market the seller's services and products."[41] Similarly, a caller may "obtain[] consent through an intermediary."[42] And agency principles undergird the Commission's recognition in footnote 382 of its *2003 TCPA Order* that "if a consumer purchases a seller's products at a retail store or from an independent dealer, such purchase would establish a business relationship with the seller, entitling the seller to call that consumer under the EBR exemption."[43]

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[37] *Id.* at 14078-79.

[38] *Id.* at 14080.

[39] *Id.*

[40] *Joint Pet. Filed by Dish Network, LLC, et al.*, 28 FCC Rcd 6574, 6590 ¶ 40, 6593 ¶ 48 (2013).

[41] *2003 TCPA Order*, 18 FCC Rcd at 14083 ¶ 118.

[42] *Mais v. Gulf Coast Collection Bureau, Inc.*, 768 F.3d 1110, 1123 (11th Cir. 2014) (quoting *GroupMe, Inc./Skype Commc'ns S.A.R.L. Pet.*, 29 FCC Rcd 3442, 3447 ¶ 14 (2014)).

[43] *2003 TCPA Order*, 18 FCC Rcd at 14083 ¶ 118 n.382; *see also Gene & Gene LLC v. BioPay LLC*, 541 F.3d 318, 322 (5th Cir. 2008) (recognizing that principal may have had an EBR with certain fax recipients for purposes of faxes made "through a third-party contractor"); *Zelma v. Conway*, No. 2:12-cv-00256, 2013 U.S. Dist. LEXIS 175668, at *2 (D.N.J. Dec. 11, 2013) ("[T]he fact that Plaintiff's wife may not have paid Prevention Magazine directly for the subscription is of no consequence."). These agency principles apply evenhandedly across the TCPA. That is because "the principles governing the scope of the TCPA's exemptions from

Accordingly, when a consumer purchases an automobile packaged and sold with a Sirius XM subscription, she purchases both the automobile and the packaged satellite radio service. That purchase gives Sirius XM an EBR with the consumer, as Mr. Maupin appears to concede. As footnote 382 of the *2003 TCPA Order* explains, a consumer's purchase of a seller's products at a store or from an independent dealer establishes an EBR between the seller and consumer.[44] That is exactly what happens when Sirius XM sells its subscriptions to consumers who purchase vehicles with those subscriptions.[45]

B. FOOTNOTE 382 CONTINUES TO MAKE SENSE

Mr. Maupin argues that the Commission's EBR rule "might have been generally sensible" in 2003, but it does not make sense now.[46] More specifically, he contends that the Commission recognized an EBR between a seller and a consumer, on a sale through a retail store or independent dealer, only because "the provider of a locked cellphone might be expected" to keep "provisioning service."[47] That argument is meritless for several reasons.

First, the Commission's categorical language applies across the board: "[I]f a consumer purchases a seller's products at a retail store or from an independent dealer, such purchase would

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liability by telemarketers and sellers should [not] differ from those governing the scope of the statute's consumer protections." *Joint Pet. Filed by Dish Network, LLC, et al.*, 28 FCC Rcd 6574, 6590 ¶ 39.

[44] *2003 TCPA Order*, 18 FCC Rcd at 14083 n.382.

[45] Under Sirius XM's agreements with automakers and dealers, dealer personnel act as Sirius XM's agents in communicating with prospective vehicle buyers and lessees. Materials throughout dealerships—including Monroney labels—and interactions with salespeople notify consumers that some vehicles come with subscriptions, that the dealer will share their contact information with Sirius XM, and that Sirius XM will reach out to them. And if opt-out requests occur, dealers honor them by not passing along the consumer's contact information.

[46] Request at 2.

[47] *Id.*

establish a business relationship with the seller, entitling the seller to call that consumer under the EBR exemption."[48] That language does not refer to locked cellphones, SIM cards, or provision of cellular service, contrary to Mr. Maupin's suggestion. Nor does the FTC's parallel language, as Mr. Maupin recognizes.[49] According to the FTC's guidance:

> 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 of the printer 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.[50]

Unsurprisingly, that guidance accords with the Commission's recognition in footnote 382 of the *2003 TCPA Order* that a seller has an EBR with a purchaser. Indeed, the Commission has repeatedly emphasized that "harmonization" with the FTC's regulations "to the greatest extent possible will reduce the potential for consumer confusion and regulatory burdens on the telemarketing industry."[51] In the EBR context, the Commission has stated that "consistency between the FCC rules and FTC rules is critical for both consumers and telemarketers."[52]

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[48] *2003 TCPA Order*, 18 FCC Rcd at 14083 n.382.

[49] *See* Request at 3-4.

[50] Federal Trade Commission, *Complying with the Telemarketing Sales Rule*, https://www.ftc.gov/tips-advice/business-center/guidance/complying-telemarketing-sales-rule#businessrelationship (last updated Mar. 2019).

[51] *2003 TCPA Order*, 18 FCC Rcd at 14059 ¶ 74.

[52] *Id.* at 14079 ¶ 113.

Second, the premise of Mr. Maupin's argument appears to be that an EBR exists only so long as a seller and a buyer continue to have regular interactions or transactions. As Mr. Maupin puts it, an EBR is created because the cellular service provider will "keep provisioning" service.[53] But that argument is inconsistent with the Commission's explicit time limits in its EBR regulations.[54] An EBR created "on the basis of the subscriber's purchase or transaction with the entity" lasts for "eighteen (18) months."[55] And an EBR created "on the basis of the subscriber's inquiry or application regarding products or services offered by the entity" lasts for "three months."[56] An EBR is not indefinite or interminable. To the contrary, the Commission already carefully calibrated the duration of an EBR to consumer expectations, and its rule accords with the FTC's.[57]

IV. CONCLUSION

For the foregoing reasons, the Commission should summarily deny Patrick Maupin's Request for Clarification. Entertaining Mr. Maupin's Request would be procedurally improper because it is a grossly untimely petition for reconsideration of established Commission EBR rules. Mr. Maupin's goal is to disrupt a nationwide class-action settlement that has already garnered a federal court's preliminary approval and that ensures compensation and injunctive relief. Yet even if Mr. Maupin's Request were properly before the Commission, it would be meritless, as the

[53] Request at 2.

[54] *Cf. Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 678-79 (2014) (laches cannot be invoked where Congress has provided a statute of limitations).

[55] 47 C.F.R. § 64.1200(f)(5).

[56] *Id.*

[57] *See 2003 TCPA Order*, 18 FCC Rcd 14079.

Commission in 2003 correctly defined the contours of an EBR in a way that continues to make sense.

Respectfully submitted,

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