



August 08, 2019

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20054

Re: *In the Matter of P2P Alliance Petition for Clarification*; CG Docket No. 02-278;  
Opposition to Application for Review of Declaratory Ruling

Dear Ms. Dortch:

This filing responds to the July 24, 2020 Application for Review of Action Taken Pursuant to Delegated Authority submitted by the National Consumer Law Center and other groups (NCLC Application for Review).<sup>1</sup> The NCLC Application for Review asks that the Consumer and Governmental Affairs Bureau’s reconsider and reverse its recent ruling on P2P texting (“June 25<sup>th</sup> Ruling”), which refined the Telephone Consumer Protection Act’s “Automatic Telephone Dialing System” (ATDS or autodialer) definition.<sup>2</sup> The June 25<sup>th</sup> Ruling clarified “that the fact that a calling platform or other equipment is used to make calls or send texts to a large volume of telephone numbers is not determinative of whether that equipment constitutes an autodialer.” Instead, “whether the calling platform or equipment is an autodialer turns on whether such equipment is capable of dialing random or sequential telephone numbers without human intervention. If a calling platform is not capable of dialing such numbers without a person actively and affirmatively manually dialing each one, that platform is not an autodialer and calls made using it are not subject to the TCPA’s restrictions.”<sup>3</sup>

The Professional Association for Customer Engagement (“PACE”) supports eliminating illegal text messaging and recognizes that certain types of “spam” text messages have raised concerns about undermining the P2P communication medium, which is a highly effective and

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<sup>1</sup> ID# 10724588100006, available at <https://ecfsapi.fcc.gov/file/10724588100006/Consumer%20Groups%20Application%20for%20Review%20P2P.pdf>.

<sup>2</sup> Statutory definition located at 47 U.S.C. § 227 (a)(1). June 25<sup>th</sup> Ruling is ID# 10629526112567, DA 20-670, available at <https://www.fcc.gov/ecfs/filing/10629526112567>.

<sup>3</sup> Id. at Pg.3, ¶8.

personal way to communicate with consumers and others. The June 25<sup>th</sup> Ruling aligns with that goal and provides much of the clarity that PACE, businesses, and text originators have sought for purposes of complying with the letter and spirit of the TCPA.

It is premature, however, for the Commission to consider review of the June 25<sup>th</sup> Ruling. On July 9, 2020, the Supreme Court of the United States granted certiorari in *Facebook, Inc. v. Noah Duguid, et al.* (“*Facebook*”).<sup>4</sup> It is widely expected that the Court will provide clarification on the TCPA’s ATDS definition. Because the impending decision in *Facebook* is likely to resolve a Circuit Court split in interpretation of the ATDS definition, the *Facebook* decision could soon obviate or make obsolete any agency ruling regarding ATDS. PACE asserts that while a reconsideration is not warranted, if the Commission were to reconsider its June 25<sup>th</sup> Ruling, it would be best to defer reconsideration until after the *Facebook* decision. At the very least, PACE feels that the *Facebook* decision will provide useful guidance to interested parties that will allow for better-informed and more-focused comments.

Therefore, PACE respectfully requests that the Commission defer any reconsideration of the June 25<sup>th</sup> Ruling until after a decision is issued by the U.S. Supreme Court in *Facebook*, and until interested parties have a chance to digest the same for purposes of submitting comments.

Sincerely,



Michele A. Shuster, Esq.  
General Counsel,  
Professional Association for Customer Engagement  
Partner, Mac Murray & Shuster LLP

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<sup>4</sup> *Facebook v. Duguid*, 926 F. 3d 1146 (9th Cir. 2019), *cert. granted*, (U.S. July 9, 2020) (No. 19-511).