

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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

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

Sirius XM Radio Inc. (“Sirius XM”) submits these reply comments in response to Patrick Maupin’s request (“Request”)<sup>1</sup> to revisit the well-established definition of “established business relationship” (“EBR”) for purposes of the Telephone Consumer Protection Act (“TCPA”).

As Sirius XM explained in initial comments, the Request is procedurally improper and substantively meritless.<sup>2</sup> The record now confirms these truths. There is no controversy or uncertainty for the Commission to resolve.<sup>3</sup> As the Professional Association for Customer Engagement (“PACE”) noted in its comments, the Request “stands in opposition to long-standing principles,” citing the Commission’s EBR definition and Federal Trade Commission (“FTC”) guidance.<sup>4</sup> Further, on the merits of the Request—which the Commission should not

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<sup>1</sup> Request for Clarification of Patrick Maupin, CG Docket No. 02-278, at 4 (filed June 21, 2019) (“Request”); Public Notice, *Consumer and Governmental Affairs Bureau Seeks Comment on Request for Clarification Filed by Patrick Maupin*, CG Docket No. 02-278, DA 19-601 (rel. June 28, 2019).

<sup>2</sup> See generally Comments of Sirius XM Radio Inc. on Request for Clarification Filed by Patrick Maupin, CG Docket No. 02-278 (filed July 29, 2019) (“Sirius XM Comments”).

<sup>3</sup> See 5 U.S.C. § 554(e); 47 C.F.R. § 1.2(a).

<sup>4</sup> Comments of the Professional Association of Customer Engagement, CG Docket No. 02-278, at 2-3 (filed July 29, 2019) (“PACE Comments”).

and need not address<sup>5</sup>—PACE explains that the 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.”<sup>6</sup> Moreover, the Request “would have deleterious consequences” for both affected businesses and consumers who could benefit from additional products or services those businesses offer.<sup>7</sup>

Although it would be an impossible task, Mr. Maupin does not even attempt to cure the procedural failures of the Request, but rather adds *yet another* procedurally prohibited ask of the Commission in his comments. Mr. Maupin now wants the Commission to assess more broadly whether automobile manufacturers have an EBR with the customers that purchase their automobiles.<sup>8</sup> But once again, Mr. Maupin conveniently ignores the Commission’s clear prior rulings and precedent on the issue,<sup>9</sup> while simultaneously ignoring all appropriate procedure that would involve a request to the Commission to change a longstanding rule.

Mr. Maupin also raises a new argument that apparently occurred to him after filing his Request. He now appears to suggest that footnote 382 of the *2003 TCPA Order*—the footnote of which he seeks reconsideration—is in conflict with the text of the *2003 TCPA Order*.<sup>10</sup> In doing

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<sup>5</sup> Sirius XM Comments at 4-9 (explaining that there is no controversy or uncertainty for the Commission to terminate and instead Mr. Maupin seeks a grossly untimely reconsideration of longstanding rules in order to disrupt a preliminarily-approved settlement).

<sup>6</sup> PACE Comments at 4.

<sup>7</sup> *Id.*

<sup>8</sup> Comments in Response to Public Notice About Request for Clarification Filed by Patrick Maupin of Patrick Maupin, CG Docket No. 02-278, at 2 (filed July 29, 2019) (“Maupin Comments”).

<sup>9</sup> *See, e.g.*, Sirius XM Comments at 9-10 (noting that the Commission has defined EBRs broadly to cover purchases of a caller’s products, among other things) (citing *Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991*, 7 FCC Rcd 8752, 8771 ¶ 34 (1992)).

<sup>10</sup> *See* Maupin Comments at 2.

so, Mr. Maupin points to Commission precedent that where a “conflict” exists between the text and a footnote in the same Commission order, the text controls. He then apparently concludes, without any explanation or analysis, that footnote 382 conflicts with text in the *2003 TCPA Order*.<sup>11</sup> Not only is this newfangled argument in direct contradiction of Mr. Maupin’s own words in his Request,<sup>12</sup> it is utterly baseless. Footnote 382 offers complementary guidance and clarification of a statement made in the text.<sup>13</sup> There is no conflict.

The only purported support for Mr. Maupin’s effort to ignore proper administrative procedures and upend a decade-plus of precedent comes from another individual commenter, John A. Shaw.<sup>14</sup> Mr. Shaw, like Mr. Maupin in his latest comment, even seeks to add an additional out-of-order rule change request in this proceeding.<sup>15</sup> Other than that misguided

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<sup>11</sup> *Id.*

<sup>12</sup> See Sirius XM Comments at 5 (“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. He goes so far as to suggest that ‘this footnote might have been generally sensible’ when it was written, before arguing the Commission needs to update the approach long established in its rules for ‘today’s climate.’”) (quoting Request at 2).

<sup>13</sup> *Compare Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order 18 FCC Rcd 14014, 14083 ¶ 118 (2003) (“*2003 TCPA Order*”) (sellers cannot rely on a contractual relationship with a third-party telemarketer and that telemarketer’s EBR with a consumer to indirectly create an EBR with the consumer) *with id.* ¶ 118 n. 382 (the purchase of a seller’s products at a retail store or from an independent dealer establishes an EBR directly with the seller).

<sup>14</sup> Comments of John A. Shaw, CG Docket No. 02-278 (filed July 15, 2019).

<sup>15</sup> *Id.* at 1 (“Also, I request that the Commission clarify that in all cases when a consumer purchases goods that include a trial subscription, no EBR is created with the provider of the trial subscription.”). Mr. Shaw then offers a non-sequitur regarding the Commission’s findings in the *2003 TCPA Order* that EBRs do not extend to marketing partners for purposes of joint offers, to the extent that the partner companies otherwise would not have an EBR with the consumer. *Id.* at 1-2 (quoting *2003 TCPA Order*, 18 FCC Rcd at 14083 ¶ 118). But trial subscriptions, including those offered by Sirius XM, are not joint offers, but rather clearly-branded offers and purchases provided through agents or intermediaries, consistent with Commission rules as well as FTC Guidance. See, e.g., Sirius XM Comments at 12, n. 45.

effort, he offers no analysis that would address the procedural and substantive failures of the Request.

Ultimately, nothing in the record saves Mr. Maupin's Request from its procedural impropriety nor its substantive fallacies. Nothing was filed in support of his request other than by himself and one other individual, and neither filing provides adequate support or justification for its position. The record confirms that granting Mr. Maupin's Request not only would run afoul of proper Commission procedure, but also would establish unwise policy. The Request therefore should be dismissed and denied at the Commission's earliest convenience.

Respectfully submitted,

SIRIUS XM RADIO INC.

By: /s/ Jennifer Tatel  
Jennifer Tatel  
Joshua M. Bercu

Wilkinson Barker Knauer, LLP  
1800 M Street, NW Suite 800N  
Washington, DC 20036  
202.783.4141

Its Attorneys

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