

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

	)	
In the matter of	)	
	)	
Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991	)	
	)	
Request for Clarification filed by Maupin	)	

**FINAL THOUGHTS IN RESPONSE TO  
PUBLIC NOTICE ABOUT  
REQUEST FOR CLARIFICATION  
FILED BY PATRICK MAUPIN**

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It is past the time for reply comments on this issue, and I fully understand that the Commission may ignore this reply, but I believe I can articulate a bright-line rule for the application of footnote 382. As the Commission knows, the full text of the footnote is:

382 See Nextel Reply Comments at 15-17. However, 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.

Sirius argues this footnote and the [FTC guidance](#) together prove that it has EBRs with nearly all consumers purchasing vehicles from dealers.

I believe the FTC guidance is partially correct: the consumer "may" have EBRs with third parties "as long as the customer has a contractual relationship with any of these entities" but is incorrect, in that the bare offer of a written warranty, without any action by the consumer, is insufficient to fully form such a contract.

I suggest that the idea of contract formation may likewise inform the interpretation of footnote 382 – that the interaction of a consumer with a store or dealer may cause a business relationship to be established between the consumer and a third party whom the consumer is not directly interacting with, but only if the consumer's voluntary, two-way interaction with the store or dealer actually causes the consumer to knowingly and willingly enter a contract (e.g. not a contract of adhesion, or a contract for something the customer doesn't want in order to get something the customer does want) with the third party.

The utility of this particular bright-line test is that courts are well-versed in interpreting and enforcing contracts.

Respectfully submitted,

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