

**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)	
)	
Request for Clarification filed by Patrick Maupin)	

REPLY COMMENTS OF JOHN A. SHAW

INTRODUCTION

These comments are made in reply to the comments by Sirius XM Radio Inc. (Sirius) and by the Professional Association for Customer Engagement (PACE), both filed in response to the Commission’s Public Notice seeking comment on the request for clarification filed by Patrick Maupin to this docket.¹ Mr. Maupin requests that the Commission clarify that the established business relationship (EBR) exemption under the “do-not-call” provision of the Telephone Consumer Protection Act of 1991 (TCPA) “does not automatically create an EBR between the automobile purchaser and the third party provider of a radio subscription service, no matter how much the third party incentivizes either the car manufacturer or the dealer.”²

I commented to the original public notice in this matter. I comment as a telephone consumer only. I have no business relationship with automobile dealers or with companies providing services to automobile purchasers.

I support Mr. Maupin’s request for clarification.

¹ Request for Clarification filed by Patrick Maupin, CG Docket No. 02-278 (filed June 21, 2019) (*Request for Clarification*).

² *Request for Clarification* at 4.

REPLY TO SIRIUS COMMENTS

I disagree with the Sirius statement that “There is no controversy or uncertainty for the Commission to terminate.”³

There is enough uncertainty and controversy. For example, the Federal Trade Commission (FTC) guidance⁴ provides tests and examples, but no bright-line rule. This lack of a clear rule establishes that there is controversy and uncertainty that could be terminated by this request.

REPLY TO PACE COMMENTS

The example provided by PACE⁵ from the FTC guidance does not apply to the specific situation leading to Mr. Maupin’s request. The FTC guidance states that

The test for whether a subsidiary or affiliate can claim an established business relationship with a sister company’s customer is: would the customer expect to receive a call from such an entity, or would the customer feel such a call is inconsistent with having placed his or her number on the National Do Not Call Registry?

Factors to be considered in this analysis include the nature and type of goods or services offered and the identity of the affiliate. Are the affiliate’s goods or services similar to the seller’s? Is the affiliate’s name identical or similar to the seller’s? The greater the similarity between the nature and type of goods sold by the seller and any subsidiary or affiliate and the greater the similarity in identity between the seller and any subsidiary and affiliate, the more likely it is that the call would fall within the established business relationship exemption.⁶

When the goods or services of the trial subscription are not similar, or the identity of the trial subscription’s provider is not close to the intent of the seller of the goods or services purchased no EBR should be inferred.

³ Comments by Sirius XM Radio Inc. (Sirius Comments) at 5.

⁴ See, e.g., *infra* PACE comments.

⁵ Comments by the Professional Association for Customer Engagement (PACE comments). PACE quoted an example from the FTC’s publication *Complying with the Telemarketing Sales Rule*, available at <https://www.ftc.gov/tips-advice/business-center/guidance/complying-telemarketing-sales-rule#businessrelationship>, (last accessed July 31, 2019)

⁶ FTC, *Complying with the Telemarketing Sales Rule*, (available at <https://www.ftc.gov/tips-advice/business-center/guidance/complying-telemarketing-sales-rule#businessrelationship>) (last accessed July 31, 2019)

CONCLUSION

I request that the Commission adopt the clarification requested by Mr. Maupin in his petition and clarify that when goods or services are purchased that an EBR is not created with the provider of trial subscriptions bundled with the purchase.

Respectfully submitted,

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July 15, 2019