

September 6, 2019

Via Electronic Filing

Marlene H. Dortch
Secretary, Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Ex Parte Letter Regarding Petition for Emergency Declaratory Ruling of IHS Markit Ltd., CG Docket No. 02-278

Dear Ms. Dortch:

By this letter, the Association of Global Automakers, Inc. (“Global Automakers”) respectfully urges the Federal Communications Commission (“FCC” or “Commission”) to immediately grant the IHS Markit Petition for Emergency Declaratory Ruling (“Petition”). The Petition asks the Commission to confirm that “motor vehicle safety recall-related communications—including, for example, those made to address the Takata air bag recall—are ‘made for emergency purposes.’”¹

Applicable law and the record in this proceeding support immediate relief. The declaration sought by IHS is wholly consistent with the Telephone Consumer Protection Act (“TCPA”) and the Commission’s implementing rules and precedent. Moreover, grant of the Emergency Petition will advance the public interest by furthering vehicle safety and potentially saving lives. While much in the TCPA docket is complex, the IHS Petition is not. Accordingly—and given the fact that the vast majority of the record supports grant of the Petition—the Commission should act immediately to grant the Petition. Time is of the essence, especially in the case of the Takata recall.

Motor vehicle safety recall-related communications fit squarely within one of the TCPA’s exceptions. Pursuant to the emergency purposes exception, emergency calls are not subject to the general prohibition against calls to wireless telephones “using any automatic telephone dialing system or an artificial or prerecorded voice” that are made without consent.²

Indeed, motor vehicle safety recall-related calls and texts are the exact type of communications that the TCPA and its implementing rules seek to protect. The Commission defines calls made for “emergency purposes” to mean “calls made necessary in any situation affecting the health and safety of consumers.”³ Here, the rules are not vague: if *any* situation affects the health and safety of consumers, it serves as the basis for an emergency purpose call. The Commission’s long-standing and consistent precedent on the scope of the emergency purposes exception confirms this:

¹ See IHS Markit Ltd. Petition for Emergency Declaratory Ruling, CG Docket No. 02-278, at ii (filed Sept. 21, 2018) (“Petition”).

² 47 U.S.C. § 227(b)(1)(A).

³ 47 C.F.R. § 64.1200(f)(4).

- In 1992, the Commission, describing the emergency purposes exception as “broad,”⁴ held that “[s]ervice outages and interruptions in the supply of water, gas or electricity could in many instances pose significant risks to public health and safety, and the use of prerecorded message calls could speed the dissemination of information regarding service interruptions or other potentially hazardous conditions to the public.”⁵
- In 2016, considering calls from educational organizations, the Commission confirmed that the following calls “impact the health and safety”: “calls or messages relating to weather closures, incidents of threats and/or imminent danger to the school due to fire, dangerous persona, health risks (e.g., toxic spills) and unexcused absences.”⁶ The FCC determined that these calls fall within the emergency purposes exception because “they potentially affect the health and safety of students, faculty, and other school staff members.”⁷

Motor vehicles safety recall-related calls are no different. By definition, motor vehicle safety recalls involve unreasonable risk to vehicle safety. As the record shows, the risk posed by unrepaired vehicles—especially in the case of the Takata air bag recall—is “palpable and imminent.”⁸ Accordingly, the Commission should grant the Petition’s narrowly tailored request⁹ and make clear that motor vehicle safety recall-related calls and texts are made for emergency purposes.

Grant of the Petition also will serve the public interest. With safety recall calls and texts, the auto industry delivers information that could be life-saving. Take, for example, the Takata recall. As described in the record, “in the case of some defective Takata inflators, when a[n] [affected] vehicle is in an accident or even a minor fender bender in which the airbag deploys, the defective Takata inflator may rupture in some instances . . . rather than properly opening the airbag.”¹⁰ Already, there is “public data linking the airbags to at least 23 deaths and more than 300 injuries as of June 2018.”¹¹ Information provided in the Takata recall-related calls and texts can help to prevent additional injuries and deaths. Put simply, increased recall participation rates translate into lives saved.

The auto industry goes to great lengths to increase recall participation rates. In the case of the Takata recall, as of December 2018, “fourteen vehicle manufacturers have now piloted door-to-door canvassing in areas of high heat and humidity,” which, along with other efforts at effective outreach, has contributed to

⁴ See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CC Docket No. 92-90, 7 FCC Rcd. 8752, ¶ 51 (Oct. 16, 1992) (“1992 Report and Order”) (“Each of the circumstances described by the utilities is included within either the **broad exemption for emergency calls**, or the exemption for calls to which the called party has given prior express consent.” (emphasis added)).

⁵ *Id.*

⁶ See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Blackboard, Inc. Petition for Expedited Declaratory Ruling, CG Docket No. 02-278, 31 FCC Rcd. 9054, ¶ 21 (Aug. 4, 2016) (“*Blackboard Declaratory Ruling*”).

⁷ *Id.*

⁸ See Comments of Patrick A. Juneau, Settlement Special Administrator Appointed by the United States District Court for the Southern District of Florida, at 5 (filed Nov. 5, 2018) (“*Juneau Comments*”).

⁹ In the *Blackboard Declaratory Ruling*, the Commission explained that the emergency purposes exception is not so broad as to include “every automated call made by an educational organization,” but instead encompasses only calls made by such organizations that are “made necessary by a situation affecting the health and safety of students and faculty.” *Blackboard Declaratory Ruling* ¶¶ 18, 20. In line with this, IHS has asked for narrow relief only for “safety recall-related communications,” not all automated calls and texts from automakers. *Petition* at 14.

¹⁰ *Juneau Comments* at 2.

¹¹ Reply Comments of IHS Markit Ltd. at 6 (filed Nov. 20, 2018).

“significant, industry-wide advancements in tackling the Takata recalls.”¹² As the Takata Settlement Special Administrator has stated: “Outreach Programs aim to use as many available channels and methods of contacting consumers as possible because doing so promotes the goal of saving lives.”¹³ It is critical that no mode of communication—especially ones as effective as calls and texts—is foreclosed. The auto industry should be able to freely call and text consumers to deliver safety recall information and advance progress toward the aspirational goal of 100 percent safety recall participation. Moreover, the industry should be able to leverage modern communications technologies without the threat or fear of TCPA litigation.

There is nothing in the record that should give the Commission pause about granting the Petition. Commenters overwhelming agree that the Commission should grant the requested relief.¹⁴

Finally, time is of the essence. Despite the concerted efforts by industry in the Takata recall matter, NHSTA’s dynamic data indicates that as of June 7, 2019, 67% of affected airbags have been repaired, which means that **15,912,342 net air bags remain in use.**¹⁵

In closing, Global Automakers urges the Commission to swiftly grant the Petition. Both the law and policy point clearly to one result: confirmation that motor vehicle safety recall-related calls and texts fall under the emergency purposes exception to the TCPA’s prohibition on automated dialing. The TCPA, with its notoriously high liability risk, should not stand in the way of the auto industry’s safety recall efforts. Congress did not intend the TCPA to impede this life-saving work.

Respectfully Submitted,



John Bozzella

President & CEO

Association of Global Automakers, Inc.

¹² *The Independent Monitor of Takata and the Coordinated Remedy Program*: Update on the State of the Takata Airbag Recalls, Independent Monitor of Joyson Safety Systems, TK Global LLC (“Takata”) and the Coordinated Remedy Program (Dec. 21, 2018).

¹³ *Juneau Comments* at 4.

¹⁴ Comments of Reply Comments of Auto Care Association (filed Nov. 20, 2018); Comments of Experian Automotive (filed Nov. 5, 2018); Global Automakers, Inc. and Alliance of Automobile Manufacturers (filed Nov. 5, 2018); *Juneau Comments*; Comments of Motor & Equipment Manufacturers Association (MEMA) (filed Nov. 5, 2018). Only a single filer, Joe Shields, filed against the Petition. Comments of Joe Shields (filed Nov. 5, 2018).

¹⁵ <https://www.nhtsa.gov/equipment/takata-recall-spotlight#completion-rates>.