

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

In the Matter of	)	
	)	
IHS Markit Ltd. Petition for Emergency Declaratory Ruling	)	CG Docket No. 18-1023
	)	
Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991	)	CG Docket No. 02-278
	)	

To: The Commission

**COMMENTS OF PATRICK A. JUNEAU,**  
**SETTLEMENT SPECIAL ADMINISTRATOR APPOINTED BY**  
**THE UNITED STATES DISTRICT COURT**  
**FOR THE SOUTHERN DISTRICT OF FLORIDA**

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In my capacity as the Settlement Special Administrator appointed by Judge Federico A. Moreno of the United States District Court for the Southern District of Florida regarding several Settlement Agreements related to Multi-District Litigation 2599 - *In Re: Takata Airbag Products Liability Litigation*, I respectfully submit these comments in support of IHS Markit Ltd.'s Petition for Emergency Declaratory Ruling and its request that the Federal Communications Commission ("FCC") confirm, on an emergency basis, that calls and texts to consumers regarding motor vehicle safety recalls fall within the Telephone Consumer Protection Act ("TCPA") exception at 47 U.S.C. § 227(b)(1)(A)(iii) for communications "made for emergency purposes," such that those calls and texts are exempt from the "prior express consent" requirements of the TCPA.

To provide a brief background of the Takata inflator recall and my role relative to it, this is the largest and most complex vehicle safety recall in history. In the United States alone, this recall has involved 19 different vehicle manufacturers, with nearly 50 million defective Takata inflators in an estimated 34 million vehicles manufactured over a 15-year period between 2001 and 2016, with defective Takata inflators linked to at least 15 deaths and hundreds of injuries.

As to the basis of the recall itself, in a normal airbag deployment, an inflator fills the airbag with air to properly cushion the driver or passengers of the vehicle to prevent injury. However, in the case of some defective Takata inflators, when a 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, spraying metal fragments throughout the vehicle rather than properly opening the airbag.

Numerous automobile manufacturers used these Takata inflators in their production of vehicles. Subsequently, several of them were named as defendants in class action lawsuits in

which the plaintiffs alleged a variety of claims. These various lawsuits were ultimately consolidated in Multi-District Litigation No. 2599 - *In Re: Takata Airbag Products Liability Litigation*, before Judge Moreno in the United States District Court for the Southern District of Florida. Many of these automobile manufacturers eventually entered into Settlement Agreements with the plaintiffs' classes<sup>1</sup>. These Agreements were approved by the District Court, and I was appointed as the Settlement Special Administrator<sup>2</sup> charged with overseeing their implementation, including that of the Outreach Programs provided by the Settlement Agreements and as described in further detail below.

The Settlement Agreements provide for funding to be used in Outreach Programs to contact drivers of affected vehicles to inform them of the defective Takata inflator in their vehicles and to assist them in scheduling repair appointments. These Outreach Programs generally call for the use of traditional and non-traditional outreach efforts including but not limited to direct contact of affected drivers through various and multiple methods in order to increase repair rates. Notably here, the Settlement Agreements explicitly reference, amongst other channels, the use of telephone and text messaging to try to reach individuals to help them schedule Takata inflator repair appointments.

The use of these channels in the motor vehicle safety recall-related context is commonsense and reasonable. Motor vehicle safety recall-related calls and texts serve an easily-recognizable public safety purpose, of which the Takata inflator recall is a quintessential example for the reasons explained herein. Such communications serve the sole purpose of protecting the safety and lives of drivers and passengers of literally millions of vehicles on the road every single day.

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<sup>1</sup> See generally <https://autoairbagsettlement.com/en>, which provides information about the Settlement Agreements referenced herein, including relevant Court documents and the Settlement Agreements themselves.

<sup>2</sup> See *In Re: Takata Airbag Products Liability Litigation*, Master Case No. 1:15-MD-02599-FAM, Rec. Doc. 1802.

The 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. But an insufficient number of consumers are reachable by landline numbers alone since an increasingly high number of people rely solely on mobile telephone services. Moreover, communication via text to mobile numbers is an effective method to which affected consumers are receptive for purposes of notification of the risks associated with the Takata inflator recall<sup>3</sup>.

However, absent guidance from the FCC, parties could be exposed to unwarranted TCPA class action litigation as a result of these well-intentioned motor vehicle safety recall communications. This kind of meritless litigation has a chilling effect on the type of outreach being performed in relation to motor vehicle safety recalls, and specifically in relation to the Takata inflator recall, wherein parties attempting to contact individuals through all available means to help protect them from safety risks cannot reasonably do so.

For this reason, it is not surprising that the TCPA's legislative history, which focused on curbing "intrusive, nuisance calls to [consumers'] homes from telemarketers," supports the application of the "emergency purposes" exception at 47 U.S.C. § 227(b)(1)(A)(iii) to safety-related motor vehicle recall communications<sup>4</sup> like those pertaining to the Takata inflator recall. In fact, the communications issued under this recall contain no solicitation or telemarketing of any kind but instead are made solely to alert the affected consumer of the urgency and severity of the recall and to assist with the scheduling of a repair. Likewise, these communications

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<sup>3</sup> See "The Independent Monitor of Takata and the Coordinated Remedy Program: The State of the Takata Airbag Recalls" generally, including p. 36: "The focus groups and surveys in 2016 and 2017 indicated that there is no one medium of communication that is the 'silver bullet' for reaching affected vehicle owners. Survey respondents expressed preferences for various modes of communication, such as traditional first-class mail, email, text message and social media. Most focus group participants agreed that using multiple communications channels or platforms, including phone calls, emails and postal mailings, is warranted given the urgency of the situation." ([https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/the\\_state\\_of\\_the\\_takata\\_airbag\\_recalls-report\\_of\\_the\\_independent\\_monitor\\_112217\\_v3\\_tag.pdf](https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/the_state_of_the_takata_airbag_recalls-report_of_the_independent_monitor_112217_v3_tag.pdf)).

<sup>4</sup> 137 Cong. Rec. 18,781 (Nov. 27, 1991).

generally seek to emphasize that the Takata inflator repairs are performed at no charge to the consumer.

Consistent with this Congressional intent, prior guidance from the FCC also supports the application of the “emergency purposes” exception to motor vehicle safety recalls such as the Takata inflator recall. The Commission has consistently held that calls regarding issues of public health and safety fall within the TCPA’s “emergency purposes” exemption. Similarly, the Commission’s regulations on implementation explicitly define “emergency purposes” to refer to “calls made necessary in any situation affecting the health and safety of consumers.”<sup>5</sup>

To this point, the FCC issued a declaratory ruling in 2016 finding that school calls to parents alerting them of issues that could even “*potentially* affect the health and safety of students, faculty, and other school staff members” presented emergency circumstances sufficient to preclude the need for prior consent under the TCPA<sup>6</sup>. This is based in sound logic supporting the protection of the public. And whereas the school alerts there presented situations that had the “potential” to affect the safety of those involved, motor vehicle safety recalls, and the Takata inflator recall in particular, present even more palpable and imminent risks, further supporting that motor vehicle safety recall communications should fall within the “emergency purposes” exception of the TCPA.

In light of the foregoing, it is essential that the FCC issues a declaratory ruling on an emergency basis. Outreach to owners of vehicles affected by the Takata inflator recall is ongoing, and despite the significant and dedicated efforts of nearly 20 automobile manufacturers over the last several years, millions of these inflators remain on the road. Given the public safety risks presented by motor vehicle safety recalls, and specifically by the Takata inflator recall, I

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<sup>5</sup> 47 C.F.R. § 64.1200(f)(4).

<sup>6</sup> *Rules & Regs. Implementing the Tel. Consumer Prot. Act of 1991*, 31 FCC Rcd. 9054 ¶ 21(2016) (emphasis added).

fully support IHS Markit Ltd.'s Petition for Emergency Declaratory Ruling and its request that the FCC confirm, on an emergency basis, that calls and texts to consumers regarding motor vehicle safety recalls fall within the TCPA exception at 47 U.S.C. § 227(b)(1)(A)(iii) for communications "made for emergency purposes," such that those calls and texts are exempt from the "prior express consent" requirements of the TCPA.

/s/ Patrick A. Juneau  
Settlement Special Administrator,  
Multi-District Litigation 2599  
*In Re: Takata Airbag Products Liability  
Litigation*