

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

REPLY COMMENTS OF IHS MARKIT LTD.

IHS Markit Ltd. (“IHS Markit”) respectfully submits these Reply Comments in support of its Petition for Emergency Declaratory Ruling (“Petition”)¹ filed on September 21, 2018, regarding the applicability of the Telephone Consumer Protection Act (“TCPA”)² and the Federal Communications Commission’s (“FCC” or “Commission”) TCPA rules³ to non-telemarketing calls placed by IHS Markit to notify consumers about motor vehicle safety recalls.⁴ The Commission sought public comment on the Petition on October 4, 2018,⁵ and commenters overwhelmingly supported granting the Petition’s requested relief. As further discussed below, and as many commenters agreed, the Commission should confirm on an emergency basis that motor vehicle safety recall-related calls, which further important public safety objectives, are “made for emergency purposes”⁶ under the TCPA.

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

² 47 U.S.C. § 227.

³ 47 C.F.R. § 64.1200.

⁴ For purposes of the Petition and these Reply Comments, “calls” includes both voice calls and text messages.

⁵ *Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Emergency Declaratory Ruling Filed by IHS Markit Ltd.*, Public Notice, CG Docket No. 02-278 (Oct. 4, 2018).

⁶ 47 U.S.C. § 227(b)(1)(A).

I. MANY COMMENTERS AGREE THAT MOTOR VEHICLE SAFETY RECALL-RELATED CALLS ARE “MADE FOR EMERGENCY PURPOSES.”

Most commenters overwhelmingly agreed that IHS Markit’s requested declaratory ruling is consistent with the TCPA’s text and legislative history, as well as FCC precedent, regarding “emergency” communications – and should be granted expeditiously.⁷

The emergency to which the Petition responds is reflected in the efforts of commenters and other industry stakeholders to address critical motor vehicle safety recalls. These events are analogous in important ways to the types of emergencies bearing on consumers’ personal health and safety⁸ that have been the subjects of past FCC guidance. For example, as discussed at length in the Petition, the FCC has concluded that the TCPA “emergency purposes” exception applies to calls warning consumers of, *inter alia*, “[s]ervice outages and interruptions in the supply of water, gas or electricity;” “weather closures, incidents of threats and/or imminent danger to the school due to fire, dangerous persons, health risks (*e.g.*, toxic spills), and unexcused absences;” and other types of “informational” or “desirable” calls, such as certain healthcare messages, that the Commission does “not want to unnecessarily impede.”⁹

Given the public safety exigencies presented by motor vehicle safety recalls, the auto industry is working hard to maximize recall participation rates through a variety of new consumer search tools and outreach strategies, going so far as residential canvassing—“i.e.,

⁷ See, e.g., Com. of Ass’n of Global Automakers & All. of Auto. Mfrs. (“AGA/AAM Com.”) at 5-7; see also Experian Automotive Com. in Support of IHS Markit Pet. (“Experian Com.”) at 3-4; Com. of the Motor & Equip. Mfrs. Ass’n (“MEMA Com.”) at 2; Com. of Patrick A. Juneau, Settlement Special Admin. Appointed by S.D. Fla. (“Juneau Com.”) at 4-5.

⁸ The Commission’s implementing regulations explicitly define “emergency purposes” to refer to “calls made necessary in any situation affecting *the health and safety of consumers.*” 47 C.F.R. § 64.1200(f)(4) (emphasis added).

⁹ IHS Markit Pet. at 11-13 (citing *Rules & Regs. Implementing the Tel. Consumer Prot. Act of 1991*, 7 FCC Rcd. 8752 ¶ 51 (1992); *Rules & Regs. Implementing the Tel. Consumer Prot. Act of 1991*, 27 FCC Rcd. 1830 ¶ 21, 29 (2012); *Rules & Regs. Implementing the Tel. Consumer Prot. Act of 1991*, 31 FCC Rcd. 9054 ¶ 21 (2016)).

knocking on doors to help consumers become aware of life-saving notifications and information.”¹⁰

If these outreach efforts are to be successful in saving lives, they must be permitted to reach consumers that do not have landlines.¹¹ In IHS Markit’s experience administering motor vehicle safety and other recalls, automated calling technologies ensure more reliable, consistent communications to large numbers of affected owners’ mobile phones while also reducing human dialing errors.¹² Wireless calling also is imperative to reach the 52.5% of American households that have only mobile voice connections and no landlines.¹³

Moreover, studies show that communications regarding health and safety, including calls and texts regarding motor vehicle safety recalls, are desired. Although a single individual commenter asserts (without support) that “[c]onsumers get too many autodialed or prerecorded calls” generally,¹⁴ the extensive focus groups, interviews, and surveys cited in the Petition¹⁵ demonstrate that consumers as a group want to hear about motor vehicle safety recalls from their manufacturers/dealerships. For example, nearly half of the respondents surveyed as part of the report of the independent monitor appointed to oversee the Takata airbag recall indicated that “until they took action to have their vehicles repaired, they would be open to being contacted

¹⁰ AGA/AAM Com. at 3; *see also* Juneau Com. at 3 (as reflected in the Takata settlements, “the use of telephone and text messaging” channels to reach affected car owners is “commonsense and reasonable”).

¹¹ Experian Com. at 4; MEMA Com. at 2; Juneau Com. at 4; AFA/AAM Com. at 4.

¹² *See* Pet. at 7.

¹³ The State of Wireless 2018 at 8, CTIA, *available at* https://api.ctia.org/wp-content/uploads/2018/07/CTIA_State-of-Wireless-2018_0710.pdf; *see also* Pet. at 7 n.27 (discussing demographic information regarding mobile-only households).

¹⁴ Coms. of Joe Shields on Pet. (“Shields Com.”) at 2.

¹⁵ *See* Pet. at 13-14 (citing *The Independent Monitor of Takata and the Coordinated Remedy Program, the State of the Takata Airbag Recalls* (Nov. 15, 2017) (“Monitor Rpt.”), *available at* https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/the_state_of_the_takata_airbag_recall-report_of_the_independent_monitor_112217_v3_tag.pdf).

once a week or even more frequently.”¹⁶ Focus group participants similarly “indicated that such contact should occur at least weekly, while nearly two-thirds of survey respondents indicated that several notifications each month would be appropriate.”¹⁷ Most focus group participants further agreed that using multiple communications channels, including phone calls, emails, and postal mailings, is warranted given the recall urgency.¹⁸ A report issued by the U.S. Government Accountability Office likewise confirmed that consumers prefer such notifications to be provided by at least one electronic means, such as email or text message, in addition to postal mail.¹⁹ The experience of the Takata settlement administrator, reflected in his public comment, also has been that consumers are receptive to receiving texts regarding motor vehicle safety recalls.²⁰

In sum, calls and texts regarding motor vehicle safety recalls, which directly bear on consumers’ personal health and safety, reflect precisely the type of “desirable,” “informational” communications that the Commission has sought to facilitate rather than impede.²¹ Motor vehicle safety recall-related communications serve a recognized public safety objective and are not the type of harassing commercial robocalls that the TCPA was designed to restrict.

II. GRANTING THE PETITION ON AN EMERGENCY BASIS IS NECESSARY TO PROTECT THE PUBLIC INTEREST.

Many commenters also agreed that granting IHS Markit’s Petition on an emergency basis is necessary to protect public health and safety. As AGA/AAM points out, “all vehicle safety recalls by definition involve a risk to vehicle safety and need to be addressed and taken

¹⁶ Monitor Rpt. at 31.

¹⁷ *Id.* at 33, Fig. 21.

¹⁸ *Id.* at 36, Fig. 21.

¹⁹ See Pet. at 14 (citing *Auto Recalls: NHTSA Should Take Steps to Further Improve the Usability of Its Website*, U.S. GAO (Dec. 2017), available at <https://www.gao.gov/products/GAO-18-127>).

²⁰ Juneau Com. at 4.

²¹ See *supra* n.8.

seriously.”²² That is why it makes particular sense for the requested declaratory ruling to cover “motor vehicle safety recalls” identified by NHTSA and self-reporting manufacturers, as the Petition suggests.²³

One commenter baselessly asserts that “NHTSA acknowledges that there is no emergency when it comes to automotive recalls.”²⁴ While NHTSA promulgated a rule requiring at a minimum that notice of recalls be provided to consumers by mail within 60 days,²⁵ it did so recognizing explicitly the reality that “[i]n our experience, the process of identifying the owners of vehicles based on state registration data takes . . . a matter of weeks.”²⁶ But the time needed to find the owners does not undermine the emergency nature of the outreach. Elsewhere, NHTSA has issued multiple urgent warnings, including a “do not drive” advisory, regarding the emergency nature of the Takata airbag recalls.²⁷ In addition, NHTSA has emphasized in general guidance that “[i]t is critically important that owners be informed promptly of unreasonable risks to their safety and failures of their products to meet minimum safety standards,” even before a manufacturer has sufficient replacement parts or a remedy program in place.²⁸

Despite NHTSA’s repeated public warnings and automakers’ best efforts to reach consumers, many cars subject to motor vehicle safety recalls, including the Takata airbag recall,

²² AGA/AAM Com. at 3.

²³ See Pet. at 2-4; see also Experian Com. at 4.

²⁴ Shields Com. at 1.

²⁵ 78 Fed. Reg. 51,381 (Aug. 31, 2013) (codified at 49 C.F.R. § 577.7(a)(1)).

²⁶ *Id.* at 51,399.

²⁷ See Pet. at 17-18 (citing *Low Completion Rates on ‘Do Not Drive’ Warning*, NHTSA (May 7, 2018), available at <https://www.nhtsa.gov/press-releases/low-completion-rates-do-not-drive-warning>).

²⁸ *Safety Recall Compendium*, NHTSA, available at <https://www-odi.nhtsa.dot.gov/recalls/documents/recompendium.pdf>. For the same reason, it is illogical to argue that “there is no emergency that needs to be addressed,” simply because parts are “not available at the time [a] recall was issued.” Shields Com. at 1. Providing notice to consumers even before remedy programs are fully ready to execute indicates more, not less, exigency in connection with motor vehicle safety recalls (and as noted, in some cases the vehicles should not be used until the recall servicing).

remain on the road. Numerous commenters observed that only about 67% of vehicles recalled by major light vehicle manufacturers were remedied between 2010-2014, and that it is increasingly hard to reach owners of older vehicles.²⁹ In the case of the Takata recall, millions of dangerous airbags remain on the road despite years of recall efforts by nearly twenty manufacturers³⁰ and public data linking the airbags to at least 23 deaths and more than 300 injuries as of June 2018.³¹

It contravenes Congressional intent and “does not serve anyone’s interest” for automakers to be chilled from engaging broad efforts to reach these affected vehicle owners out of fear of unreasonable TCPA litigation.³² Notably, although the TCPA class action discussed in the Petition, *Ibrahim v. Am. Honda Motor Co., Inc.*, No. 1:16-cv-04294 (N.D. Ill. May 10, 2016) recently was dismissed with prejudice upon the stipulation of the parties,³³ numerous commenters voiced continuing concern about suits by later plaintiffs absent guidance from the Commission.³⁴ To facilitate life-saving warning calls and texts to the millions of consumers currently operating vehicles with Takata airbags—to say nothing of the lives saved by communications regarding other motor vehicle safety recalls—the Commission should act promptly to issue the requested guidance clarifying that such calls are “made for emergency purposes” under the TCPA.

²⁹ AGA/AAM Com. at 4; MEMA Com. at 2 (citing *Rpt. to Congress: Vehicle Safety Recall Completion Rates Report*, NHTSA (May 2017), available at https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/13376-recall_completion_rates_rtc-tag_final.pdf).

³⁰ Juneau Com. at 5.

³¹ *NHTSA Deputy Admin. King Urges South Fla. Drivers to Check Vehicles for Defective Airbags—Immediately*, NHTSA (June 7, 2018), available at <https://www.nhtsa.gov/press-releases/nhtsa-deputy-administrator-king-urges-south-florida-drivers-check-vehicles-defective>.

³² Experian Com. at 2.

³³ See *Ibrahim*, No. 1:16-cv-04294, Dkts. 124, 126 (N.D. Ill.) (Stipulation and Order).

³⁴ Experian Com. at 2; AGA/AAM Com. at 7-9, Juneau Com. at 4.

III. CONCLUSION.

For the foregoing reasons and those set forth in the Petition, IHS Markit urges the Commission to confirm that non-telemarketing calls related to motor vehicle safety recalls are “made for emergency purposes” under the TCPA.

Respectfully submitted,

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November 20, 2018