

November 20, 2018

VIA ECFS

Marlene H. Dortch
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation
CG Docket Nos. 18-152 & 02-278

Dear Ms. Dortch:

On November 19, 2018, on behalf of Sirius XM Radio Inc. (“SiriusXM”), Patrick L. Donnelly, Executive Vice President and General Counsel of SiriusXM, James S. Blitz, Vice President and Regulatory Counsel of SiriusXM, and Bryan Tramont and the undersigned, both outside counsel to SiriusXM, met separately with Zenji Nakazawa of Chairman Ajit Pai’s office; Commissioner Michael O’Rielly, Arielle Roth, and Kagen Despain of Commissioner O’Rielly’s office; Commissioner Brendan Carr and Jamie Susskind of Commissioner Carr’s office; and Travis Litman of Commissioner Jessica Rosenworcel’s office. During the meetings, we reiterated points made in SiriusXM’s comments and reply comments in response to the Commission’s public notice on interpreting and implementing the Telephone Consumer Protection Act (“TCPA”) in light of the D.C. Circuit’s *ACA International* decision,¹ as well as in SiriusXM’s comments in response to the Commission’s public notice seeking further comment in light of the *Marks v. Crunch San Diego LLC* decision.²

¹ Public Notice, Consumer and Governmental Affairs Bureau Seeks Comment on Interpretation of the Telephone Consumer Protection Act in Light of the D.C. Circuit’s *ACA International* Decision, CG Docket Nos. 18-152 & 02-278 (rel. May 14, 2018); Comments of Sirius XM Radio Inc., CG Docket Nos. 18-152 & 02-278 (filed June 13, 2018); Reply Comments of Sirius XM Radio Inc., CG Docket Nos. 18-152 & 02-278 (filed June 28, 2018).

² Public Notice, Consumer and Governmental Affairs Bureau Seeks Further Comment on the Telephone Consumer Protection Act in Light of the Ninth Circuit’s *Marks v. Crunch San Diego, LLC* Decision, CG Docket Nos. 18-152 & 02-278 (rel. Oct. 3, 2018); Comments of Sirius XM Radio Inc., CG Docket Nos. 18-152 & 02-278 (filed Oct. 17, 2018).

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Specifically, we explained that consistent with the plain text of the statute and the guidance in *ACA International*, the Commission must confirm that under the TCPA, the term “automatic telephone dialing system” (“ATDS”) includes only such equipment that can generate and automatically dial random or sequential numbers, and only to the extent such equipment is configured to do so at the time the call is made. We also explained that nothing in the *Marks* decision counsels otherwise, as the ATDS interpretation set forth in *Marks* leads directly to the result that the D.C. Circuit determined unlawful in *ACA International*. Finally, we noted that while none of SiriusXM’s telemarketing vendors use an ATDS, the company nevertheless has been subject to costly TCPA litigation.

Please do not hesitate to contact the undersigned with any questions.

Sincerely,

/s/ Joshua M. Bercu/
Joshua M. Bercu