

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

In the Matter of:

Consumers Banking Association’s Petition for	)	
Declaratory Ruling regarding the definition of	)	
“Called Party” under the Telephone Consumer	)	
Protection Act	)	CG Docket No. 02- 278
	)	
Rules and Regulations Implementing the	)	
Telephone Consumer Protection Act of 1991	)	

To: The Commission

**COMMENTS OF GENESYS COMMUNICATIONS LABORATORIES, INC.**

Genesys Communications Laboratories, Inc. (“Genesys”) strongly supports the petition filed by the Consumers Banking Association (“CBA” or “Petitioner”) requesting that the Federal Communications Commission (“Commission”) declare the definition of “called party” for purposes of the Telephone Consumer Protection Act’s (“TCPA”) statutory defense related to restrictions on certain automated calls, including prerecorded voice and text messages placed to mobile telephone numbers, refers only to the “intended recipient” of the call.<sup>1</sup>

Since our inception in 1990, Genesys has been a pioneer in advancing customer service. We are a leading provider of customer experience and contact center solutions. With over 3500 customers in 80 countries, Genesys orchestrates more than 100 million customer interactions every day. Genesys helps its clients power optimal customer experiences that deliver consistent, seamless and personalized experiences across all touch-points, channels and interactions.

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<sup>1</sup> *Consumer Bankers Association Petition for Declaratory Ruling* CG Docket No. 02-278 (September 19, 2014).

## **I. A SIMPLE SOLUTION IS URGENTLY NEEDED**

Genesys supports the arguments made by the CBA in its Petition. We join them in advocating a simple solution: clarification by the Commission that for purposes of TCPA calling restrictions “called party” means “intended recipient.” Such clarification would not alter the obligation of callers to obtain prior consent for every number they call. It would merely recognize the reality that telephone numbers are occasionally reassigned and, it is impossible for a caller to know with certainty whether any telephone number has been reassigned prior to calling it. Congress could not have expected the statutory defense it implemented to be rendered meaningless. Given the express direction provided by Congress, it would be unreasonable for the Commission to require callers to do the impossible. We also support the ACA Petition for Rulemaking that requests clarification of the Commission’s Rules regarding TCPA.<sup>2</sup>

## **II. THE BENEFITS OF TIMELY CUSTOMER COMMUNICATION**

We live in an era when good customer service means effective and timely customer communication – that is what consumers expect. Advances in communications technology and widespread use of social media and other tools have changed the communications paradigm. Widespread consumer acceptance and use of text and voice messaging to facilitate convenient communication between merchants and service providers and their consumers is obvious and all around us. Increasingly, those voice and/or text communications take place in the mobile environment and the expectation is that merchants and service providers, from national banks to neighborhood bakeries, will use these tools to enhance customer service and communication.

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<sup>2</sup> *ACA International Petition for Rulemaking* CG Docket No. 02-278 (January 31, 2014) requests a rulemaking to clarify the Commission’s rules regarding TCPA.

According to a 2013 report by the Pew Research Center 91% of the US adult population now owns some kind of cell phone, and 56% of all American adults are now smartphone adapters.<sup>3</sup> Furthermore, according to a recent government survey “Mobile phone users expressed significant interest in expanding the range of functions they could perform with their mobile phones... Consumers appear to be open to greater use of their phones as a tool to get best prices in their shopping: 25 percent indicate that they would like to receive and manage discount offers and coupons; and 19 percent would like to receive location-based offers. They also expressed an interest in using their phones to store gift cards or track loyalty/rewards points (15 percent) and to track their personal finances (28 percent).”<sup>4</sup> While all this bodes well for a future where effective and timely communication empowers consumers to make good purchasing decisions and receive a higher level of service and interaction, that vision will never be achieved unless the Commission can resolve this common sense definitional issue of who may properly be considered the “called party” in the context of TCPA prior express consent defense.

Genesys complies with all express consent and express written consent requirements as we strive to facilitate meaningful, responsible and desired consumer communication. Without action by the Commission on this simple definitional issue, businesses like ours will be unable to meet the realistic and legitimate expectations of their customers because the risk of litigation is overwhelming.

### **III. THE BURDEN OF PROBLEM LITIGATION**

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<sup>3</sup> *Pew Research Center, Smartphone Ownership – 2013 Update*, page 2.

<sup>4</sup> *Federal Reserve Board, “Consumer and Mobile Financial Services, 2014* page 17, available at [www.federalreserve.gov/publications/default.htm](http://www.federalreserve.gov/publications/default.htm).

Certainly the Commission cannot be faulted for failing to anticipate how the term “called party” might be applied in lawsuits so as to be misconstrued beyond reasonableness. As a result, the scope and intent of the term “called party” within the context of the statutory defense has been perverted. Instead of providing necessary ground rules and a meaningful deterrent to aggressive marketers, the term has been applied differently by different courts, and as a result has been a significant source of expensive litigation even to those businesses that obtain every required consent but unavoidably, occasionally call reassigned numbers.<sup>5</sup> The clarification sought by the Petitioner by the FCC as the expert agency would correct this unintended consequence. To be consistent with the Commission’s stated objective to ensure that callers have a reasonable opportunity to comply with TCPA rules while continuing to protect consumer privacy interests the clarification requested by the Petitioner is needed.

\* \* \*

For these reasons and those set forth in the Petition, Genesys respectfully requests that the Commission the declare the definition of “called party” is “intended recipient” for purposes of the statutory defense against liability for calls made with the prior express consent of the “called party” under the TCPA .

Respectfully submitted,

John Tallarico  
Vice President, Cloud Services  
2001 Junipero Serra Boulevard  
Daly City, California 94014  
781.897.2728 direct  
john.tallarico@genesys.com

Dated: November 13, 2014

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<sup>5</sup> *Comments of Wells Fargo to Petition for Declaratory Ruling of the Consumers Bankers Association*, CG Docket No. 02-278 (Oct. 29, 2014) at Attachment 1, pages 5-6 (citing the varying interpretations of “called party” of different federal courts analyzing this issue).