

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

In the Matter of)	
)	
Blackboard Inc.)	
Petition for Expedited Declaratory Ruling)	CG Docket No. 02-278
)	
Rules and Regulations Implementing the)	
Telephone Consumer Protection Act of 1991)	
_____)	

REPLY COMMENTS OF BLACKBOARD INC.

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TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION AND BACKGROUND	1
I. ALL OF THE AUTOMATED MESSAGES TRANSMITTED BY BLACKBOARD’S EDUCATIONAL INSTITUTION CUSTOMERS SHOULD BE CONSIDERED AS MADE FOR EMERGENCY PURPOSES	2
II. THE “SOLUTIONS” SUGGESTED BY SOME COMMENTERS ARE NOT WORKABLE AND ARE NOT IN THE PUBLIC INTEREST	13
III. BLACKBOARD AND ITS EDUCATIONAL CUSTOMERS SHOULD NOT BE HELD LIABLE UNDER THE TCPA FOR SENDING AUTOMATED NOTIFICATIONS TO THE WIRELESS TELEPHONE NUMBERS THEY ARE PROVIDED	17
CONCLUSION.....	23

Declaration of Maribeth Luftglass, Fairfax County Public Schools

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Blackboard Inc. (“Blackboard”),¹ by its counsel, hereby respectfully submits these Reply Comments pursuant to the Public Notice issued March 23, 2015, by the Federal Communications Commission (“FCC” or “Commission”) in the above-referenced proceeding.²

INTRODUCTION AND OVERVIEW

The majority of commenters support Blackboard’s Petition for Expedited Declaratory Ruling (“Petition”) that the Telephone Consumer Protection Act of 1991 (“TCPA”)³ and the Commission’s implementing rules⁴ do not apply to informational, non-commercial, non-advertising, and non-telemarketing autodialed and prerecorded messages sent by Blackboard’s educational institution customers because those calls are made for “emergency purposes.” Nearly every commenter also supports Blackboard’s further request for the Commission to declare that the prior express consent that Blackboard’s educational institution customers obtain

¹ Blackboard Inc. files these Reply Comments on behalf of itself and its wholly owned subsidiary Blackboard Connect Inc. For convenience sake only, these separate and distinct legal entities hereinafter will be referred to as “Blackboard.”

² CG Docket No. 02-278, *Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Declaratory Ruling Filed by Blackboard, Inc.*, DA 15-364 (rel. Mar. 23, 2015) (“Public Notice”).

³ Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991) (“TCPA”), *codified at* 47 U.S.C. § 227.

⁴ 47 C.F.R. § 64.1200.

extends to: (1) the wireless telephone number provided to the educational institution even if, unbeknownst to the educational institution, the number has been reassigned by a wireless carrier to another user or (2) the recipient the educational institution intended to receive the call, not to the person who inadvertently receives the call. There were only two commenters that opposed the Petition,⁵ but they misconstrue the Petition and provide no legal or factual support for their objections. The comments overwhelmingly support Blackboard's position that the autodialed and prerecorded messages sent by Blackboard's educational institution customers serve the public interest and do not run afoul of the TCPA or Congress's objectives in enacting the legislation. Accordingly, Blackboard's Petition should be granted expeditiously to ensure Blackboard and its educational institution customers can continue to provide education-related informational messages that benefit the public without risking prosecution under the TCPA.

I. ALL OF THE AUTOMATED MESSAGES TRANSMITTED BY BLACKBOARD'S EDUCATIONAL INSTITUTION CUSTOMERS SHOULD BE CONSIDERED AS MADE FOR EMERGENCY PURPOSES

Calls made for "emergency purposes" are outside the scope of the TCPA; as such, no form of consent is required when autodialed or prerecorded calls are placed to wireless telephone numbers for emergency purposes.⁶ The legislative history of the TCPA demonstrates that Congress intended the term "emergency purposes" to be construed "broadly rather than

⁵ Mr. Snyder indicates that he has acted as an expert witness in numerous TCPA court cases. *See* Randall Snyder at 1. A quick search of the federal court database reflects that Mr. Shields has been a plaintiff in numerous TCPA court cases over the past three years. *See, e.g., Shields v. TIP Systems LLC and Mark A. Styron Individually*, No. 14:14-cv-03592, Complaint for Civil Damages and Permanent Injunctive Relief (S.D. Tx. filed Dec. 16, 2014); *Shields v. Wisam A Muharib Individually and d/b/a All Access Bail Bonds*, No. 14:14-cv-03455, Complaint for Civil Damages and Permanent Injunctive Relief (S.D. Tx. filed Dec. 2, 2014); *Shields v. Barclays Bank PLC*, No. 4:14-cv-02576, Complaint for Civil Damages and Permanent Injunctive Relief (S.D. Tx. filed Sept. 8, 2014); *Shields v. Sears, Roebuck and Company, et al.*, Complaint for Civil Damages and Permanent Injunctive Relief (S.D. Tx. filed Aug. 19, 2013); *Shields v. Pac-West Telecomm Inc. and John Does 1-10*, No. 4:13-cv-00518, Complaint for Civil Damages and Permanent Injunctive Relief (S.D. Tx. filed Feb. 26, 2013); *Shields v. Smiley Media Inc.*, No. 4:12-cv-01687, Complaint for Civil Damages and Permanent Injunctive Relief (S.D. Tx. Filed June 5, 2012).

⁶ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 27 FCC Rcd 1830, n.73 (2012) (citing 47 U.S.C. §§ 227(b)(1)(A), 227(b)(1)(B)).

narrowly.”⁷ For this reason, the Commission defines “emergency purposes” under the TCPA as “calls made necessary in any situation affecting the health and safety of consumers.”⁸ The Commission first adopted the “emergency purposes” definition in 1992,⁹ and reaffirmed the definition in 2012, when it adopted “an exception for autodialed emergency purpose calls” made to public safety answering points.¹⁰ The Commission determined it is “in the public interest to recognize an exception for autodialed emergency purpose calls which promote public safety,” based in part, on the “principles of the Communications Act, which includes promoting ‘the safety of life and property through the use of wire and radio communication services.’”¹¹

The Commission also has defined “emergency” in other contexts.¹² For example, the Commission’s rules require television stations to broadcast certain emergency information in situations “in which the broadcasting of information is considered as furthering the safety of life and property.”¹³ In addition to weather-related situations, the list of “emergency situations” also includes “school closing and changes in school bus schedules resulting from such conditions.”¹⁴ In response to suggestions regarding what situations should be covered by the rule, the Commission determined that “emergency information” should be defined “broadly to ensure that

⁷ Statement of Cong. Edward Markey, Chair, House Telecom. & Fin. Subcommittee, 137 Cong. Rec. H 11307-01 (Nov. 26, 1991); *see also Rules and Regulating Implementing the Telephone Consumer Protection Act of 1991*, 7 FCC Rcd 2736, ¶ 17 (1992).

⁸ 47 C.F.R. § 64.1200(f)(4).

⁹ *Rules and Regulating Implementing the Telephone Consumer Protection Act of 1991*, 7 FCC Rcd 8752 (1992) (“1992 TCPA Order”).

¹⁰ *Implementation of the Middle Class Tax Relief and Job Creation Act of 2012*, 27 FCC Rcd 13615, ¶ 27 (2012) (allowing the use of automatic dialing or robocall equipment to contact registered numbers for public safety answering points when such calls are made for an emergency purpose).

¹¹ *Id.* (citing 47 U.S.C. § 151).

¹² *See, e.g., Amendment of Parts 81, 83, 87, 89, 91, 93, and 97 of the Commission’s Rules to Provide a Common Emergency Frequency for Use by Single Sideband High Frequency Stations Licensed Under These Parts in the State of Alaska*, 44 F.C.C.2d 574, ¶ 11 (1974) (“Generally, the term [emergency communication] is considered to include communication directly related to the safety of life and property.”).

¹³ 47 C.F.R. § 73.1250(a).

¹⁴ 47 C.F.R. § 73.1250(a).

information that affects the safety of viewers is available.”¹⁵ In this vein, the Commission determined that emergency information should be defined as “information about a current emergency, provided to viewers that is intended to further the protection of life, health, safety, and property, *i.e.*, critical details regarding the emergency and how to respond to the emergency.”¹⁶

The Supreme Court has recognized the “special characteristics of the school environment” given “the schools’ custodial and tutelary responsibility for children.”¹⁷ Given the unique role of educational institutions, all of the education-related informational messages distributed by Blackboard’s educational institution customers should be treated as messages sent for “emergency purposes” because each of those messages affects the health and safety of the school community in some way.¹⁸ As outlined in Blackboard’s Petition, schools group education-related informational messages into four (4) categories: (1) attendance; (2) emergency; (3) outreach; and (4) simple survey.¹⁹ Each of these message types is used to transmit information for “emergency purposes.”

First, “attendance” messages are used to alert parents or guardians that a child did not arrive at school as expected, or did not stay at school. The vast majority of the automated

¹⁵ *Closed Captioning and Video Description of Video Programming*, 15 FCC Rcd 6615, ¶ 3 (2000) (“*Emergency Information Order*”).

¹⁶ *Emergency Information Order* ¶ 4.

¹⁷ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969); *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986); *Bd. of Educ. Of Indep. Sch. Dist. No. 92 of Pottawatomie Cnty. v. Earls*, 536 U.S. 822 (2002) (quoting *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646 (1995)).

¹⁸ *See, e.g.*, Fairfax County Public Schools at 7; Los Angeles Unified School District at 7; District of Columbia Public Schools at 2; Coalition of Higher Education Assistance Organizations at 1-2; *see also* Campus Safety Health and Environmental Management Association at 4 (“Given the various characteristics of individual universities and the inherent uncertain nature of emergency situations, the need for flexibility is clear. We request the Commission take a broad approach to allow educational institutions [to] provide effective and timely mass notifications.”).

¹⁹ Blackboard Petition at 8.

informational messages sent by Blackboard’s K-12 educational institution customers relate to attendance.²⁰ These “daily attendance reminders” (as Mr. Snyder refers to them)²¹ may seem routine and mundane, but those messages are “critical to child safety”²² as recent events have shown.²³ Indeed, under state and local laws, many schools are required to alert parents or guardians regarding an unexcused absence.²⁴ For example, Illinois state law requires schools to send an absentee notification to the telephone number previously provided by the parent or guardian within two hours after the child misses its first class.²⁵ Fairfax County Public Schools also are required to “notify the parent or guardian by phone or electronic communication” when students are absent without prior communication to the school.²⁶ Automated attendance

²⁰ CG Docket No. 02-278, Blackboard Notice of Ex-Parte Presentation, at 2 (Apr. 30, 2015) (“They explained that unexcused absences trigger the majority of the calls placed and, in many instances, are required by law to be made to ensure parents or guardians are aware their student did not arrive at school or stay at school.”).

²¹ Randall Snyder at 4.

²² Kecia Ray at 1.

²³ One school system recently changed its absence alert policy to ensure parents were notified as soon as possible when a child does not arrive at school as expected. See Alison Knezevich, *Perry Hall Middle School changes parent notification after alleged kidnapping*, BALTIMORE SUN (Nov. 18, 2014, 8:00 PM), <http://www.baltimoresun.com/news/maryland/baltimore-county/perry-hall/bs-md-co-perry-hall-school-changes-20141118-story.html> (“After the alleged kidnapping of a 12-year-old student as she walked to school last week, Perry Hall Middle School officials say they are calling parents in the morning to report when a child is absent.”); see also Baltimore County Public Schools Rule 5120, Students: Enrollment and Attendance, § V.A. (revised Dec. 16, 2014) (“Unless the parent has notified the school of their child’s absence, the parent will be notified, to the extent possible, by 10 a.m. of their child’s absence each day the child is absent . . . Notice of the student’s absence must be made via phone, e-mail, or text message.”), available at https://www.bcps.org/system/policies_rules/rules/5000Series/RULE5120.pdf.

²⁴ See, e.g., RCW 28A.225.020(1)(a) (requiring “a notice in writing or by telephone whenever the child has failed to attend school after one unexcused absence”); N.J.A.C. § 6A:16-7.6(a)(4) (requiring school districts to “[m]ake a reasonable attempt to notify the student’s parents of each unexcused absence”); O.R.S. § 339.071 (requiring each district school board to adopt “an attendance notification policy” that notifies parents or guardians “by the end of the school day on any day that the child has an unplanned absence”); Fla. Stat. § 1003.26 (requiring schools “to respond in a timely manner to every unexcused absence” by “contact[ing] the student’s parent to determine the reason for the absence”).

²⁵ 105 ILCS § 5/26-3b; see also *id.* (requiring school districts to obtain contact telephone numbers from parents and guardians at the time of enrollment).

²⁶ See, e.g., Fairfax County Public School Board Policy 2232.4, Special Services, Admissions, Residency, and Attendance, § III.B. (revised Aug. 1, 2011) (“When students are absent without prior communication between the parent or guardian and the school, school personnel will notify the parent or guardian by phone or electronic communication and take appropriate action based on the individual circumstances.”); Fairfax County Public School Regulation 2234.7, Special Services, Admissions, Residency, and Attendance, § IV (effective Aug. 16, 2011) (“All

notifications are made for “emergency purposes” as they directly affect the potential safety of the school community.

Second, “emergency” messages are used to alert the school community to an emergency situation, such as a threat situation or unplanned school closure. The Chicago Public School guidelines for utilizing the Blackboard Connect platform²⁷ indicate that the “emergency” category is used when it is “vital and essential to make immediate contact with parents, staff and/or community,” such as in incidents of immediate threat and danger to a school, location, or staff due to fire, shooter or dangerous person, health risk (toxic spill, outbreak), severe weather risk, or a facilities issue (loss of power, sewer back-up).²⁸ An “emergency” message may also be used for “rumor control” to clarify information related to rumors about actions, health, safety and weather-related matters.²⁹ There is no question that the automated messages distributed by Blackboard’s educational institution customers regarding these types of emergency situations fall under the Commission’s definition of “emergency purposes.”³⁰

Third, “outreach” messages are used to provide critical education-related information to the school community. These include information regarding parent-teacher conferences, report card pick-up, changes in lunch menus, notice of an overdue library book, and general scheduling

schools shall establish a system for administrative follow-up of absences. In elementary schools, follow up with parents or guardians, via telephone or other communication, should occur within the first hour of the school day. Parents or guardians of secondary school students should be notified of unexcused absences or need for follow up as early in the day as possible.”). Both of these documents are *available at* <http://www.fcps.edu/dss/ips/ssaw/attendance/>.

²⁷ Chicago Public Schools has adopted “Communications and Blackboard Connect Guidelines” to govern its distribution of messages (hereinafter, “CPS Guidelines”). The CPS Guidelines are available at <http://cps.edu/Pages/BlackboardConnect.aspx>.

²⁸ CPS Guidelines at 3.

²⁹ CPS Guidelines at 3.

³⁰ *See, e.g.,* Kecia Ray at 1; Randall Snyder at 3; Joe Shields at 3.

changes all of which “are critical for child health and safety.”³¹ While Mr. Snyder and Mr. Shields attempt to dismiss the “emergency” nature of some types of education-related messages,³² the “emergency” nature of the message must be viewed from the perspective of a parent or guardian.³³ For some, a message regarding a simple schedule change “can lead to crisis” and certainly would be considered an “emergency” for that particular parent.³⁴ A seemingly innocuous message regarding a change in lunch menus may trigger health related issues, and for those dependent on federally-funded free and reduced lunches, cancellation of school may eliminate the only healthy meal some children receive in a day.³⁵ An overdue library book or outstanding cafeteria balance may result in fines a parent or guardian is unable to pay or the inability of a child to purchase food, both of which places that family in an “emergency” situation. To protect the health and safety of students, Baltimore County Public Schools recently used automated outreach messages to alert the school community that all field trips into Baltimore City were cancelled or postponed in the wake of the recent Baltimore riots.³⁶

³¹ Kecia Ray at 1; *see also* Coalition of Higher Education Assistance Organizations at 1 (stating that education-related messages “provide time sensitive information . . . that are beneficial to the consumer and that consumers wish to receive”).

³² Randall Snyder at 3-4; Joe Shields at 3.

³³ Kecia Ray at 1-2; *see also* Campus Safety Health and Environmental Management Association at 2 (explaining that institutions of higher education are required to send certain emergency notifications and timely warnings, and that each institution interprets what constitutes an “emergency” differently).

³⁴ Kecia Ray at 2. The importance of receiving education-related messages can be seen in recent Massachusetts legislation that would exempt “robocalls” from “school districts to students, parents or employees” from the ban on robocalls. *See* Mass House Bill No. 273; Mass House Bill No. 193.

³⁵ The Chicago Public School system reports that 86.02% of its student body for the 2014-2015 school year is economically disadvantaged and eligible for free or reduced breakfast and lunch. *See* Chicago Public Schools, School Data, Demographics, Limited English Proficiency, Special Ed, Low Income, IEP Report for School Year 2014-2015, *available at* <http://cps.edu/SchoolData/Pages/SchoolData.aspx>.

³⁶ Liz Bowie, *City schools close, others cancel Baltimore field trips, citing violence*, THE BALTIMORE SUN (Apr. 27, 2015), <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-freddie-gray-schools-20150427-story.html> (“Baltimore County sent an alert to staff Monday afternoon saying that field trips are canceled or postponed through this week, and possibly longer.”).

Outreach messages are “an essential part of [schools’] educational role,”³⁷ and fall within the Commission’s definition of “emergency purposes.”

Fourth, “simple survey” messages are used to allow recipients to provide input on important school and educational issues. For example, schools in Everett, Washington use the survey category to query whether children will be returning to school in the fall and ensure the school system has accurate enrollment information.³⁸ Fairfax County Public Schools reports that the use of such messages is “infrequent” and the messages are used to obtain parent or community input on critical educational questions, such as whether to adopt full-day Mondays in elementary schools³⁹ and whether children have access to the Internet in their home.⁴⁰ Similarly, Chicago Public Schools limits these message types to “no more than two to three messages per month.”⁴¹ Survey messages seek parental input on issues affecting the health and safety of the school community.

The overwhelming majority of automated messages sent by Blackboard’s educational institution customers meet the “emergency purposes” definition because they are used to provide information “affecting the health and safety” of the school community. While every “simple survey” message may not be made for “emergency purposes,” many of them are made for such

³⁷ District of Columbia Public Schools at 1.

³⁸ Everett Public Schools Communications System Guidelines for Use, at 7 (revised August 2010), *available at* <http://docushare.everett.k12.wa.us/docushare/dsweb/Get/Document-30586/Connect-ED%20Guidelines.pdf>. The example given states: “We would like to ensure an accurate and smooth start to the school year. Press 1 if your student is returning in the fall; Press 2 if you are moving to another Everett district school; Press 3 if you are moving out of the area.”

³⁹ Fairfax County Public Schools at 3.

⁴⁰ Annie Gowen, *Without ready access to computers, students struggle*, THE WASHINGTON POST (Dec. 6, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/12/05/AR2009120501746.html> (noting that “a recent survey by the school system” revealed that “more than 90 percent of Fairfax households with children have home computers”); *see also* Statement of FCC Commissioner Jessica Rosenworcel on Pew Research Center Homework Gap Findings (Apr. 20, 2015) (noting the importance of reliable broadband access at home to children’s success in school).

⁴¹ CPS Guidelines at 5.

purposes and it would be impractical to attempt to separate the minimal number of non-emergency purposes survey messages from the other three message categories, all of which squarely fall within the “emergency purposes” rubric.

Treating all education-related informational messages distributed by Blackboard’s educational institution customers as messages made for “emergency purposes” is consistent with Commission precedent in other contexts. For example, the Commission has permitted spectrum otherwise designated for public safety services to be used on a secondary basis by commercial operations.⁴² In response to complaints that Section 337 of the Communications Act expressly forbids any use of the public safety spectrum for commercial services, the Commission determined that the definition of “public safety services” was flexible and did not foreclose a secondary, preemptible commercial use of the spectrum. Under the statute, “public safety services” are defined as services “the sole or principal purpose of which is to protect the safety of life, health, or property.”⁴³ The Commission determined that allowing “secondary preemptible commercial operations does not impair or materially detract from that statutorily mandated ‘principal purpose.’”⁴⁴

After numerous waiver requests were filed in connection with the use of the public safety spectrum, the Commission decided to seek further comment on the interpretation of Section 337 and what “uses” would comply with the terms of the statute.⁴⁵ The Commission concluded that it had the discretion to determine “what types of activities a communications service must support in order to satisfy the requirement that the sole or principal purpose of the service is the

⁴² *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, et al.*, 22 FCC Rcd 15289, ¶¶ 419-421 (2007) (“*Second 700 MHz Order*”).

⁴³ 47 U.S.C. § 337(f)(1); *Second 700 MHz Order* ¶ 420.

⁴⁴ *Second 700 MHz Order* ¶ 420.

⁴⁵ *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, et al.*, 26 FCC Rcd 10799, ¶¶ 2-5 (2011) (“*Fourth 700 MHz Order*”).

safety of life, health, or property.”⁴⁶ Emergency communications clearly qualified “as having the requisite safety purpose,” but the Commission also found that “many types of routine communications uses would qualify” as well.⁴⁷ For example, given that transportation departments are generally responsible for the safety of motorists and passengers on public transportation, the safety of public highways, and the safety of travelers, the Commission determined that the communications of these entities had a direct relationship with the “safety of life” and “safety of property” prongs of the statute, and would therefore qualify.⁴⁸ The communications of other “governmental functions” that “protect the safety of life, health, or property that are not provided by traditional ‘public safety’ entities” also qualified under the statute.⁴⁹ The Commission found that, given “the clear-cut public safety character of the work” performed by these entities, the communications supporting that work had the requisite “protective safety character” to meet the requirements of the statute.⁵⁰

The same is true for America’s educational institutions. In addition to the education of our children, they are expected to protect the safety and health of the children entrusted to their care.⁵¹ There is no question that educational institutions engage in work that falls within the “public safety” and “protective safety” characteristics described by the Commission, and thus all of the communications made by those educational institutions to support their work should be deemed to be made for “emergency purposes” under the TCPA. The negligible number of messages that may fall outside the “emergency purposes” category should not detract from the

⁴⁶ *Fourth 700 MHz Order* ¶ 26.

⁴⁷ *Fourth 700 MHz Order* ¶ 26.

⁴⁸ *Fourth 700 MHz Order* ¶ 26.

⁴⁹ *Fourth 700 MHz Order* ¶ 28.

⁵⁰ *Fourth 700 MHz Order* ¶ 28.

⁵¹ *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 665 (1995) (describing a school system’s responsibilities as “guardian and tutor of children entrusted to its care”).

principal purpose of the vast majority of messages sent by Blackboard’s educational institution customers.⁵²

In addition, commenters’ concerns that Blackboard’s request is too “broad” or that “consumers could become accustomed to emergency messages and ignore them” are misplaced.⁵³ Blackboard’s educational institution customers understand that “message fatigue” may occur with the receipt of too many messages.⁵⁴ For this reason, Fairfax County Public Schools specifically advises its schools to limit the number of messages to avoid dissemination of non-essential information.⁵⁵ Further, to the extent a consumer no longer wishes to receive education-related messages on its wireless device, it has every opportunity to “opt-out” of receiving them altogether (except for those messages required by law) or “opt-out” of receiving them on a wireless device. Indeed, Mr. Snyder himself notes that he has been “provided the opportunity to opt-out of [the] calls” he receives from his child’s school district if he determines “they become too bothersome or [he is] no longer interested in receiving them.”⁵⁶ Classifying all education-related informational messages as messages made for “emergency purposes” in no way changes an individual’s right to opt-out of receiving messages *not otherwise required by law* (such as attendance notifications) or to modify the way in which the individual receives school-

⁵² Similarly, the Commission has determined that a *de minimis* amount of intrastate traffic on a private line does not change the jurisdiction of the private line. 47 C.F.R. § 36.154(a) (classifying as interstate all private lines that carry exclusively interstate traffic as well as private lines carrying both state and interstate traffic if the interstate traffic on the line involved constitutes more than ten percent of the total traffic on the line). The *de minimis* number of messages falling outside the “emergency purposes” definition does not change the classification of all education-related informational messages as made for emergency purposes.

⁵³ Randall Snyder at 9; Joe Shields at 2.

⁵⁴ See, e.g., Saint Paul (Minnesota) Public Schools Blackboard Connect 5 Guidelines (revised Aug. 13, 2014), available at https://www.spps.org/uploads/connect_5_guidelines_-_2014_v1-2.pdf.

⁵⁵ Fairfax County Public Schools at 4.

⁵⁶ Randall Snyder at 3.

initiated messages.⁵⁷ Blackboard’s website states that recipients should contact the sending institution to stop receiving messages,⁵⁸ and the comments demonstrate that Blackboard’s educational institution customers have established policies that give parents the ability to opt-out of future communications (with the possible exception of those messages a school is required by law to send) or to change their preferred contact methods.⁵⁹

Finally, it is important to reiterate that Blackboard and its educational institution customers do not utilize the Blackboard Connect platform to engage in marketing activities.⁶⁰ The messages distributed by Blackboard’s educational institution customers “must be associated with instructional or school operational goals and only for the direct benefit of the students.”⁶¹ The Blackboard Partnerships Program⁶² cited by Mr. Shields has no relation to the Blackboard Connect platform used by educational institutions to distribute mass notifications to their constituencies.⁶³ As noted in Blackboard’s Petition, educational institutions have strict guidelines on the type of notifications they may transmit.⁶⁴ The comments filed by the District

⁵⁷ Cf. Randall Snyder at 3.

⁵⁸ Blackboard’s website states: “If you are a recipient of Blackboard Connect messages and either believe you are receiving messages in error or no longer want to receive messages, contact the sending institution.” See <http://www.blackboard.com/Platforms/Connect/Support/Support-for-Blackboard-Connect.aspx>.

⁵⁹ See, e.g., Fairfax County Public Schools at 5 (stating that “FCPS also provides parents the ability to opt-out of phone or electronic mail messages”); Los Angeles Unified School District at 4 (“Recipients also have the ability to change those options at any time by contacting LAUSD.”).

⁶⁰ Cf. Joe Shields at 3-4. Moreover, it is the educational institution, not Blackboard, that determines the content of the message and how it is to be distributed. See Los Angeles Unified School District at 2-4; see also Blackboard Petition at 2-3.

⁶¹ Los Angeles Unified School District at 4.

⁶² As explained on Blackboard’s website, the Blackboard Partnerships Program is designed to encourage software and application developers to design new content or technology that could be integrated with Blackboard’s platforms. See <http://www.blackboard.com/Partnerships/Partnerships-Program.aspx>.

⁶³ Joe Shields at 4.

⁶⁴ Blackboard Petition at 3, 8, 11. For example, the CPS Guidelines specify that CPS “is responsible for the content management” of messages and “[e]nsuring that all student information records are current and complete.” Each individual school/principal in the CPS system is required to address situations of “bad contact information” and make “all reasonable attempts to acquire new and current information” within five (5) days of any bounce

of Columbia Public Schools and Fairfax County Public Schools demonstrate that the informational messages distributed by educational institutions do not qualify as solicitation or marketing.⁶⁵ The mass notification process is not used for marketing; it is “the only cost-effective means of communicating critical information to parents, using the phone numbers the parents provide to the school for the very purpose of receiving such information.”⁶⁶

II. THE “SOLUTIONS” SUGGESTED BY SOME COMMENTERS ARE NOT WORKABLE AND ARE NOT IN THE PUBLIC INTEREST

The alternative “solutions” proposed by Mr. Shields and Mr. Snyder are not workable and are not in the public interest. For example, both Mr. Shields and Mr. Snyder suggest that Blackboard and its educational institution customers rely on the Wireless Emergency Alert (“WEA”) system or Commercial Mobile Alert System (“CMAS”) established by the Commission pursuant to the Warning, Alert, and Response Network (“WARN”) Act for the transmission of emergency information.⁶⁷ The WARN Act, however, was intended only to encourage commercial mobile service providers to transmit emergency alerts to the public; it is not mandatory for all commercial mobile service providers.⁶⁸ Providers may “elect” not to participate, and thus there is a very significant possibility that not all potential recipients in a particular school community will receive the emergency alert on their wireless device. Further,

backs. In addition, the CPS guidelines specify the type of “informational” messages permitted to be sent by a school (attendance, emergencies, testing reminders, event cancellation, parent-teacher conference information, etc.) and the type of messages that are not allowed to be sent: fundraising or solicitation of any kind, political messages or campaigning, messages from non-CPS organizations, commercial event or product promotion, weekly status updates, and community messages unrelated to CPS.

⁶⁵ District of Columbia Public Schools at 2 (“The messages we send, however, are not the unwanted telemarketing the TCPA was intended to eliminate. Our informational messages are sent for non-commercial purposes, and do not contain any type of solicitation.”); Fairfax County Public Schools at 3 (“The automated notifications sent by FCPS are non-telemarketing, informational messages under the Commission’s rules.”).

⁶⁶ Kecia Ray at 2.

⁶⁷ Joe Shields at 3; Randall Snyder at 3.

⁶⁸ *The Commercial Mobile Alert System*, 22 FCC Rcd 21975, ¶ 1 (2007) (noting that the WARN Act requires the Commission to “enable commercial mobile service alerting capability for providers that elect to transmit emergency alerts”).

only pre-authorized national, state or local governments may send emergency alerts regarding public safety emergencies using the WEA system.⁶⁹ Requiring a school district (or even an individual school) to coordinate with a governmental entity to have an “emergency” message sent would defeat the purpose of utilizing a school-administered mass notification system - “to reach some number of parents as quickly as possible to relay very important information in the most cost-effective method possible.”⁷⁰

In addition, the WEA system allows for the transmission of only three (3) types of alerts: (1) alerts issued by the President; (2) alerts involving imminent threats to safety or life; and (3) Amber Alerts, and participating commercial mobile providers may allow subscribers to block all but Presidential alerts.⁷¹ Educational institutions may face numerous types of “emergency” situations that would not fall within the categories of alerts permitted under the WEA system. For example, an individual school may need to close early due to a water main break or loss of electricity. While that certainly is an “emergency” for the parents of the children in that school, it would not rise to the level of imminent threat to safety or life needed to trigger the WEA system. The messages received via the WEA system cannot be a substitute for the critical, targeted, public safety and education-related messages Blackboard’s educational institution customers distribute to their school community.

⁶⁹ Federal Communications Commission, Wireless Emergency Alerts (WEA), <https://www.fcc.gov/guides/wireless-emergency-alerts-wea> (“Pre-authorized national, state or local government may send emergency alerts regarding public safety emergencies, such as evacuation orders or shelter in place orders due to severe weather, a terrorist threat or chemical spill, to WEA. Alerts from authenticated public safety officials are sent through FEMA’s IPAWS to participating wireless carriers. Participating wireless carriers push the alerts from cell towers to mobile devices in the affected area. The alerts appear like text messages on mobile devices.”); *see also* Federal Emergency Management Agency, Frequently Asked Questions: Wireless Emergency Alerts, <https://www.fema.gov/frequently-asked-questions-wireless-emergency-alerts> (“What are WEA messages? Wireless Emergency Alerts (WEA) are emergency messages sent by authorized government alerting authorities through your mobile carrier.”).

⁷⁰ Kecia Ray at 3.

⁷¹ Federal Communications Commission, Wireless Emergency Alerts (WEA), <https://www.fcc.gov/guides/wireless-emergency-alerts-wea>.

Use of the reverse 911 system to deliver emergency information also is impracticable.⁷² Reverse 911 is used by public safety entities to communicate with large groups of people in a defined geographic area based on address, and is often limited only to wireline (landline) telephone numbers in the specified geographic area unless a consumer has specifically registered its wireless or Voice over Internet Protocol number.⁷³ Using the reverse 911 system may not alert all of the necessary parties of a school emergency if wireless users are not registered in the system or if families live outside of the traditional school geographic boundary. There is no practical way to isolate only those telephone numbers belonging to parents and guardians of children attending a particular school. A notification sent via the reverse 911 system would be received by a significantly larger number of people than a targeted school-initiated message delivered only to those recipients who have asked to receive such notifications.

Similarly, implementation of a so-called “technology solution” is not a realistic solution in the educational context.⁷⁴ It would be cost-prohibitive and time-consuming for a school to implement and continuously utilize such a technology each time an education-related message needs to be sent. Such technology may be feasible for a for-profit mobile marketing company (as Mr. Snyder suggests), but does not make sense in the context of public education where every dollar is needed to support the education and welfare of America’s children.⁷⁵ In addition, it is unclear whether there is such a “technology solution” that would solve the problem. While Mr.

⁷² Joe Shields at 3.

⁷³ *Review of the Emergency Alert System*, 20 FCC Rcd 18625, n.31 (2005) (“Reverse 911 is a term that describes a calling system that places calls generated by a public safety call center to a specific audience.”); *see also* What is Reverse 911? *available at* <http://www.sammamish.us/files/agenda/6103.pdf>; Emergency Cell Phone & VoIP Notification System *available at* <http://www.logan911.com/FAQ.html>.

⁷⁴ Randall Snyder at 8.

⁷⁵ Randall Snyder at 8-9. Mr. Snyder intimates that Blackboard has the means and resources to implement such a technology solution, *see id.*, but Blackboard has no control over or access to the database of telephone numbers utilized by school for the distribution of messages.

Snyder did not identify any specific “technology solution,” Blackboard is aware of the service offered by Neustar. However, as Twitter points out, Neustar itself has admitted to the Commission that it “is not aware of any telecommunications industry databases that track all disconnected or reassigned telephone numbers,” and that Neustar’s service “is not a silver bullet for TCPA compliance.”⁷⁶ No database can reflect each and every telephone number change that may occur throughout a school year due to parent/guardian use of disposable wireless phones or continuous changes in foster care arrangements (and thus changes in contact information), and educational institutions cannot be expected to expend valuable resources to query a database each time they seek to send an education-related informational message.

Allowing consumers to “opt-in” to only the messages they want to receive also is unworkable.⁷⁷ As noted above, there are certain types of messages school districts must send by law (such as attendance notifications), and schools would be required to send those messages regardless of whether a consumer has “opted-in” to receive those types of messages. The better approach would be to allow consumers to “opt-out” of those messages they do not want to receive (to the extent permitted by law). It is the consumer that provides the school with a telephone number for contact purposes and elects how they would like to receive information from the school (text, email, phone call, etc.).⁷⁸ Unless a school is otherwise notified, the school can assume that a parent or guardian providing its wireless telephone number for the purposes of

⁷⁶ Twitter at 9; *see also* CG Docket No. 02-278, Neustar Ex Parte Letter (dated Feb. 5, 2015).

⁷⁷ Joe Shields at 3. Contrary to Mr. Shields’ characterization, Blackboard does not “broadcast” messages and it is incorrect to say that “Blackboard’s system makes the calls in question.” *See* Joe Shields at 3, 4. Blackboard does not “take the steps necessary to physically place a telephone call.” *The Joint Petition Filed by DISH Network, LLC, the United States of America, and the States of California, Illinois, North Carolina, and Ohio for Declaratory Ruling Concerning the Telephone Consumer Protection Act (TCPA) Rules, et al.*, 28 FCC Rcd 6574, ¶ 26 (2013) (“*DISH Declaratory Ruling*”) (“We conclude that a person or entity ‘initiates’ a telephone call when it takes the steps necessary to physically place a telephone call, and generally does not include persons or entities, such as third-party retailers, that might merely have some role, however minor, in the causal chain that results in the making of a telephone call.”).

⁷⁸ District of Columbia Public Schools at 1.

being contacted by the school seeks to receive messages from the school via that telephone number.⁷⁹

III. BLACKBOARD AND ITS EDUCATIONAL CUSTOMERS SHOULD NOT BE HELD LIABLE UNDER THE TCPA FOR SENDING AUTOMATED NOTIFICATIONS TO THE WIRELESS TELEPHONE NUMBERS THEY ARE PROVIDED

“No school sets out to send mass notifications to random phone numbers.”⁸⁰ Each educational institution commenter explains how it obtains prior express consent to send education-related informational messages to recipients that request to receive such messages on their wireless devices.⁸¹ The consent Blackboard’s educational institution customers receive is far more robust than the consent the Commission found acceptable in the debt collection context.⁸² Parents and guardians are not simply providing a wireless telephone number as part of paperwork for another purpose such as loan or credit application; Blackboard’s educational institution customers expressly request that parents or guardians provide their preferred contact information for the specific purpose of receiving messages from the school. The form completed by parents and guardians in the Chicago Public Schools system explicitly states that the information will be used to contact the parent/guardian, that the school district communicates via phone calls, and that the parent/guardian should immediately notify the school in writing if there

⁷⁹ Los Angeles Unified School District at 5 (“When a recipient designates a wireless number as the preferred contact method, LAUSD has no choice but to send messages to that number.”).

⁸⁰ Kecia Ray at 3; *see also* Campus Safety Health and Environmental Management Association at 3 (“wireless telephone numbers are provided by the student, employee or individual for the purpose of receiving information”).

⁸¹ *See, e.g.*, Fairfax County Public Schools at 5-6; District of Columbia Public Schools at 1-2; Los Angeles Unified School District at 5.

⁸² The Commission has determined that autodialed and prerecorded messages sent to wireless numbers in connection with an existing debt are made with the “prior express consent” of the called party. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 23 FCC Rcd 559, ¶ 9 (2008) (“2008 Declaratory Ruling”). In this respect, when a consumer provides its cell phone number to a creditor as part of a credit application, there is reasonable evidence that the consumer provides prior express consent to be contacted at that number regarding the debt. *See id.* ¶ 9.

is a change in the contact information.⁸³ Similarly, the form used by Baltimore County Public Schools allows the parent/guardian to check a box indicating what telephone number should be called and whether it is permissible to send a text message to that telephone number.⁸⁴ Educational institutions require parents/guardians to complete these forms at the beginning of each academic year, and periodically update and verify the information throughout the school year.⁸⁵ The consent given by parents and guardians is significantly more “express” than the level of consent permitted and acceptable in the debt collection context.

In today’s wireless age, however, obtaining prior express consent may not prevent Blackboard or its educational institution customers from being sued under the strict liability provisions of the TCPA when a wireless telephone number is reassigned, forwarded, or otherwise entered incorrectly without the institution’s knowledge.⁸⁶ Blackboard and its educational institution customers should not be liable under the TCPA when education-related messages are sent to “someone’s cell phone in error when the school believed in good faith it was calling the person who had given consent. Concluding otherwise would run counter to good public policy and common sense.”⁸⁷ Educational institutions are dependent on the contact information provided by parents and guardians,⁸⁸ which may change throughout the school year

⁸³ An example of the form utilized by Chicago Public Schools is available at <http://impact.cps.edu/downloads/reqemerghealthinfo.pdf>.

⁸⁴ An example of the form utilized by Baltimore County Schools is available at http://fortgarrisons.bcps.org/UserFiles/Servers/Server_142453/File/pdfs/Forms/Office/Emergency%20Contact%20Form.pdf.

⁸⁵ See, e.g., Los Angeles Unified School District at 4; Fairfax County Public Schools at 5.

⁸⁶ See, e.g., Fairfax County Public Schools at 6-7; Twitter at 9; see also, e.g., CG Docket No. 02-278, United Healthcare Services, Inc. Petition for Expedited Declaratory Ruling (dated Jan. 16, 2014); CG Docket No. 02-278, Rubio’s Restaurant, Inc. Petition for Expedited Declaratory Ruling, at 6-7 (dated Aug. 11, 2014).

⁸⁷ Kecia Ray at 2; see also Campus Safety Health and Environmental Management Association at 3 (“Institutions have to take on ‘good faith’ that the telephone numbers are accurate.”).

⁸⁸ District of Columbia Public Schools at 2 (“we cannot send a message without being provided the wireless telephone number to be used”); see also Washington University in St. Louis at 2 (“Records management of contact information is left to the individual student or employee of the [institution of higher education].”).

due to the increased use of disposable wireless phones, changes in foster care arrangements, or the lack of long-term, permanent living arrangements that many children in today's society face.⁸⁹

The Commission should resolve this controversy by issuing a declaratory ruling that the term "called party" in the TCPA and the Commission's implementing rules means the intended recipient of an automated informational message that previously gave prior express consent to receive the message.⁹⁰ As Twitter explains, such an interpretation is consistent with the language and purpose of TCPA.⁹¹ Congress did not intend "the TCPA to be a barrier to normal, expected, and desired business communications,"⁹² but that is precisely the predicament that many educational and other types of organizations face today.⁹³ It would be nearly impossible and impractical for an organization to reconfirm the subscriber for a particular wireless telephone number before every single autodialed or prerecorded call is made (such as by placing a live, manually dialed call to that telephone number).⁹⁴ Yet that is the only way an organization can ensure strict compliance with the statute. As the educational organization commenters point out,

⁸⁹ See, e.g., Homelessness on the rise among school-age children, CBS NEWS (Sept. 22, 2014), <http://www.cbsnews.com/news/homelessness-on-the-rise-among-school-age-children/> (indicating that 1.3 million homeless children were enrolled in U.S. schools in the 2012-2013 school year, which was an 8 percent increase from the previous school year).

⁹⁰ 5 U.S.C. § 554(e); see also 47 C.F.R. § 1.2.

⁹¹ Twitter at 12-14.

⁹² *GroupMe, Inc./Skype Communications S.A.R.L. Petition for Expedited Declaratory Ruling*, 29 FCC Rcd 3442, ¶ 8 (2012).

⁹³ See, e.g., District of Columbia Public Schools at 3; Twitter at 12; Coalition of Higher Education Assistance Organizations at 2; see also CG Docket No. 02-278, Letter from the U.S. Chamber of Commerce and various other trade associations and business groups (dated Feb. 2, 2015) ("Given that compliance-minded organizations in a variety of sectors are being dragged into court and strong-armed into large settlements on an almost daily basis under the TCPA, for actions that do not remotely threaten the privacy interests that the statute was intended to protect, regulatory relief by the Commission is desperately required. We ask for clarification from the FCC to help curb abusive lawsuits that likely harm consumers overall.").

⁹⁴ Twitter at 9; see also United Healthcare Petition at 5; Consumer Bankers Petition at 7-8.

such an approach is nonsensical and dangerous in the educational setting.⁹⁵ It would defeat the purpose of utilizing a mass notification system for distribution of education-related messages (reaching parents as quickly as possible), critical messages would not be distributed in a timely fashion, and the costs of manually placing attendance calls alone would be cost prohibitive.⁹⁶ Even staunch consumer advocates like the National Consumer Law Center and the National Association of Consumer Advocates recognize that some type of “safe harbor” is needed to address the problem of liability for calls to reassigned telephone numbers.⁹⁷

It is well within the Commission’s authority to interpret the phrase “called party” to mean the intended recipient of the message.⁹⁸ Numerous courts have determined that the question of how to construe the term is best left to the Commission.⁹⁹ As one court has recognized, the “strict liability” of the statute coupled with “the absence of a safe harbor” only encourages “opportunistic behavior” by plaintiffs who receive misdialed calls in hopes of increasing their statutory damage calculation.¹⁰⁰ With definitive guidance from the Commission, courts will be

⁹⁵ See, e.g., *Kecia Ray* at 2-3; *Fairfax County Public Schools* at n.13; *District of Columbia Public Schools* at n.1.

⁹⁶ *Kecia Ray* at 3.

⁹⁷ CG Docket No. 02-278, NCLC and NACA Notice of Ex Parte Presentation at 1 (dated Apr. 28, 2015).

⁹⁸ See, e.g., *DISH Declaratory Ruling* ¶ 2 (“Congress accordingly enacted the TCPA to give the FCC the authority to regulate interstate and intrastate telemarketing in order to enable consumers to curb calls that had ‘become an intrusive invasion of privacy.’”); see also *Hudson v. Sharp Healthcare*, 2014 WL 2892290 (S.D. Cal. June 25, 2014) (“Congress has ‘delegated authority to the Federal Communications Commission (“FCC”) to prescribe regulations that implement TCPA’s provisions’”) (citing *Olney v. Job.com, Inc.*, 2014 WL 174674 (E.D. Cal. May 1, 2014)).

⁹⁹ See, e.g., *Jones v. Comcast Corp.*, No. 14-7375, Order (E.D. Pa. Apr. 16, 2015) (“Neither the FCC nor the United States Court of Appeals for the Third Circuit has addressed whether the TCPA imposes liability for calls to wrong or reassigned telephone numbers. The pending FCC administrative proceedings involve issues significantly similar to Plaintiff’s threshold issues pled after the FCC began its review. While we may reach a day where this Court after input from the parties should review these issues *sans* FCC guidance, there is presently a sound basis under the primary jurisdiction doctrine to defer our review pending FCC guidance.”); *Gensel v. Performant Techns., Inc.*, 2015 WL 402840, *3 (E.D. Wisc. Jan. 28, 2015) (“a stay of these proceedings under the primary jurisdiction doctrine will promote uniformity in the administration of the TCPA. . . . it is more efficient to simply wait for the FCC to do what it has already been asked to do. The Court will be in a better position to proceed to judgment with definitive guidance from the FCC.”).

¹⁰⁰ *Gensel v. Performant Techns., Inc.*, 2015 WL 402840, *2 (E.D. Wisc. Jan. 28, 2015).

in a better position to apply the statute and limit TCPA liability to only those parties who violate both the spirit and the letter of the law.

With respect to Blackboard and its educational institution customers, interpreting “called party” to mean the intended recipient of a message will not “allow an explosion of new and undesirable calls.”¹⁰¹ Nor will grant of Blackboard’s Petition “[o]pen[] cell phones to more calls through an [established business relationship or] EBR.”¹⁰² Blackboard’s educational institution customers do not rely on the nebulous EBR exemption to send their automated notifications. Message recipients expressly provide their contact telephone number to the school for the receipt of communications from the school. The recipients expect their contact information to be used by the school to send them informational messages. It is well-established that “persons who knowingly release their phone numbers have in effect given their invitation or permission to be called at the number which they have given, absent instructions to the contrary.”¹⁰³

Further, consumers receiving automated messages from an educational institution always have the ability to opt-out of receiving future messages (to the extent permitted by law) or to inform the school that a wrong number has been dialed. To ensure unintended recipients can readily identify the source of a message, Fairfax County Public Schools displays the school’s main office number in the caller ID and identifies the name of the school or the school system in the voice message.¹⁰⁴ When notified of an error, the educational institution commenters indicate that they promptly update their contact information database.¹⁰⁵

¹⁰¹ CG Docket No. 02-278, NCLC and NACA Notice of Ex Parte Presentation at 1 (dated Apr. 28, 2015).

¹⁰² *Cf.* Joe Shields at 5.

¹⁰³ *1992 TCPA Order* ¶ 31 (citing House Report, 102-317, 1st Sess., 102nd Cong. (1991) at 13 (“noting that in such instances ‘the called party has in essence requested the contact by providing the caller with their telephone number for use in normal business communications’”)).

¹⁰⁴ Fairfax County Public Schools at 7.

¹⁰⁵ Fairfax County Public Schools at 7; Los Angeles Unified School District at 6.

In recent years, the number of individuals requesting to be removed from a school's database has been very small. For example, since July 1, 2014, Fairfax County Public Schools has sent 53,342 automated messages with 2,711,387 phone calls placed, which are drawn from a phone contact population of 449,909.¹⁰⁶ In that time, Fairfax County Public Schools has received only 634 requests to remove phone contacts from receiving future messages, which amounts to 0.14% of the total phone contact population.¹⁰⁷ If it was determined that those calls violated the TCPA, the Fairfax County Public School system could be subject to potential liability of \$317,000 to \$951,000 based on the statutorily-mandated damages for a TCPA violation (\$500 to \$1500 per call).¹⁰⁸ These amounts, however, do not include the substantial litigation costs necessary to defend or settle TCPA claims.¹⁰⁹ School systems already are struggling financially. It is not in the public interest to divert funds from the education of America's school children to defend against frivolous TCPA claims when an educational institution unknowingly sends an automated message to a wireless number in error. In adopting rules, the Commission routinely "must strike a balance among competing interests," and sometimes between "competing public interest considerations."¹¹⁰ Here, the public interest benefit of ensuring educational institutions can freely communicate with their constituencies far outweighs the negligible harm that may result from an unknowingly misdirected call.

¹⁰⁶ Declaration of Maribeth Luftglass in Support of Reply Comments of Blackboard Inc., ¶ 6 (attached hereto).

¹⁰⁷ Declaration of Maribeth Luftglass in Support of Reply Comments of Blackboard Inc., ¶ 6 (attached hereto).

¹⁰⁸ 47 U.S.C. § 227(b)(3). The fact that an individual has asked to be removed from a school's database is not evidence that a TCPA violation has occurred. This is merely a mathematical example of how claims can be alleged and calculated under the TCPA.

¹⁰⁹ Twitter at 7-8 (discussing the potential liability involved with litigation and/or settlement of TCPA cases).

¹¹⁰ *Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands*, 27 FCC Rcd 16102, ¶ 52 (2012).

CONCLUSION

For the foregoing reasons and those stated in Blackboard’s Petition, the Commission should issue a ruling to declare that the education-related informational messages sent by Blackboard’s educational institution customers are sent for “emergency purposes” and thus are not subject to the requirements of the TCPA. The Commission also should rule that the term “called party” in the TCPA and the Commission’s implementing rules means the intended recipient of a message. These declarations will ensure that Blackboard and its educational customers are not liable under the TCPA or the Commission’s implementing rules when education-related informational messages are sent for emergency purposes or to a wireless telephone number in error. Grant of Blackboard’s Petition will ensure that America’s families can continue to receive time-sensitive and important information on their wireless devices without subjecting Blackboard or its educational institution customers to the risk of TCPA liability.

Respectfully submitted,

BLACKBOARD INC.

/s/ Chérie R. Kiser

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Dated: May 7, 2015

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

In the Matter of)	
)	
Blackboard Inc.)	
Petition for Expedited Declaratory Ruling)	CG Docket No. 02-278
)	
Rules and Regulations Implementing the)	
Telephone Consumer Protection Act of 1991)	
_____)	

**DECLARATION OF MARIBETH LUFTGLASS
IN SUPPORT OF REPLY COMMENTS OF BLACKBOARD INC.**

I, Maribeth Luftglass, state as follows:

1. I am Assistant Superintendent and Chief Information Officer for Fairfax County Public Schools (“FCPS”) in Virginia. I am filing this Declaration in support of the Reply Comments of Blackboard Inc., which seeks a declaratory ruling that the Telephone Consumer Protection Act of 1991 (“TCPA”) does not apply to the mass notifications FCPS and other educational institutions send to parents, guardians, students, faculty, and other members of the school community to provide education-related information.

2. I am responsible for information technology (IT) strategic planning, implementation, and support of all information systems throughout the district. Prior to joining FCPS in 1999, I served as senior director for IT for the American Red Cross’s national headquarters. I hold a bachelor’s degree in mathematics and economics from the College of William and Mary, and a master of science degree from the George Washington University School of Engineering.

3. FCPS is the eleventh largest school district in the United States and serves approximately 182,000 students with 243 schools and centers, and more than 140,000 computers.

PS has been named a CIO 100 - an honor awarded to 100 companies that demonstrate excellence and achievement in IT - numerous times. The district has also won the CIO Enterprise Value Award, been selected as one of Computerworld's Premier 100, received the Virginia Governor's award for technology innovation for their eCART application, and is highlighted in the 2010 United States National Educational Technology Plan.

4. As FCPS explained in its initial comments in this proceeding, FCPS uses the Blackboard Connect platform to distribute automated messages to parents, guardians, students, faculty, and other stakeholders in the FCPS school community. FCPS recognizes the importance of ensuring its education-related informational messages are delivered consistent with the recipient's expectations and preferences, and requires message recipients to give consent for FCPS to contact them and to designate how they prefer to be contacted.

5. FCPS strives to use high standards and practices in securing and maintaining the consent and information necessary to contact recipients via their requested method of notification. Recipients always have the ability to change their contact information by contacting FCPS. Once FCPS is notified of a change, it promptly updates its contact information database to the correct the information.

6. The number of individuals requesting to have phone contacts removed from the FCPS database has been very small. Since July 1, 2014, FCPS sent 53,342 automated messages with 2,711,387 phone calls placed, drawn from a phone contact population of 449,909. Of that population, FCPS processed 634 requests to remove phone contacts from receiving future messages (0.14% of the total phone contact population).

7. FCPS has no way of knowing that a message was sent in error unless it is notified otherwise. FCPS must rely in good faith on the contact information parents and guardians are required to provide.

8. FCPS operations are government-funded. Any expense to defend against TCPA claims would expend funds that are designated to and essential for the education of America's school children.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on May 7, 2015

/s/ Maribeth Luftglass

Maribeth Luftglass
Fairfax County Public Schools