

# American Staffing Association

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VIA ELECTRONIC SUBMISSION

June 9, 2015

The Honorable Tom Wheeler  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: CG Docket No. 02-278; Federal Communications Commission (FCC or Commission)  
Proposal to Protect and Empower Consumers against Unwanted Robocalls, Texts to Wireless  
Phones

Dear Chairman Wheeler:

The American Staffing Association is a national trade association comprised of member temporary help firms that recruit, screen, and hire employees and place them on temporary assignments with clients on an as-needed basis. We are writing to urge the Commission to protect staffing firms from liability when such firms transmit job-related information to their registered candidates and employees, through prerecorded calls or autodialed text messages, and such individuals have provided wrong telephone numbers or such numbers have been reassigned to others.

## *Industry Background*

Temporary and contract staffing is one of America's largest service industries. Staffing firms play a vital role in the U.S. economy by providing employment flexibility for workers and just-in-time labor for businesses. Staffing firms provide workers with jobs, training, choice of assignments and work, flexibility, and a bridge to permanent employment for those who are just starting out, changing jobs, or out of work. Temporary and contract employees work in virtually every job category, including industrial labor, office support, health care, engineering, science and information technology, and various professional and managerial positions.

Approximately 17,000 staffing firms operate in the United States, with approximately 35,000 offices. More than three million temporary and contract employees work for America's staffing companies during an average week. During the course of a year, staffing firms employ more than 14 million temporary and contract employees, many of whom cite scheduling flexibility as a key reason for choosing temporary and contract work. In 2014, one-third (35%) of temporary and contract workers were offered a permanent job by a client where they worked on an assignment, and two-thirds (66%) of those accepted the offers of permanent employment.

The value of temporary work is similarly recognized by staffing clients that turn to staffing firms to achieve workforce flexibility at a predictable cost. Businesses utilize staffing firms' temporary and contract employees to fill in for absent employees or fill a vacancy temporarily; provide extra support during busy times or seasons; and staff special projects.

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### *How Staffing Firms Operate and their Use of Autodialers and Text Messages to offer Candidates Jobs*

Staffing firms recruit and hire their own employees and place them on temporary assignments with clients. Typically, temporary employees visit the staffing firm's office only once—to register and be placed on the firm's roster of candidates. Thereafter, they wait to be contacted with potential job assignments.

Given the on-demand nature of temporary assignments, staffing clients often provide little to no advance notice of their staffing needs; clients often will call a staffing firm to request a worker for the following day, if not the very same day. Therefore, many staffing firms use autodialers or so-called "robocalls," as well as text messages, to convey job information to workers in a timely fashion—staffing firms make candidates aware of job openings, and also send reminders about when, where, and to whom to report, what to bring to job assignments, and other job-related information.<sup>1</sup>

Additionally, several states, including California, Illinois, and Massachusetts, require staffing firms to furnish job candidates with assignment details in writing. Because not all candidates have e-mail accounts, and because staffing firms must transmit such information quickly in order to fill a position in a timely fashion, many staffing firms use text messaging as an efficient and effective means of communication.

Unfortunately, despite the constructive use to which staffing firms have put autodialing services and text messages, some firms have faced potential liability as a result of (i) candidates inadvertently providing wrong telephone numbers; or (ii) candidates' phone numbers later being reassigned to others. In such cases, staffing firms have called or texted such numbers and left messages in order to offer jobs, not been apprised that the numbers are incorrect, and subsequently been subjected to potential liability and legal action for violation of the TCPA.

Such potential liability makes no sense and serves neither the interests of job candidates nor businesses looking to fill open positions. Staffing firms should be encouraged to offer people jobs rather than be constrained, through fear of liability, from using autodialers or text messages to do so.

Therefore, we urge the FCC to exempt staffing firms from liability for prerecorded calls and autodialed text messages unless (i) the staffing firm is affirmatively advised by the recipient that the number dialed is incorrect and that he wishes to receive no additional calls or texts; and (ii) following a reasonable period of time after being so advised by the recipient, the staffing firm nevertheless continues to autodial or text the recipient's telephone number. In so doing, the Commission would adopt a commonsense approach to both protecting consumers' privacy interests and encouraging the productive use of autodialers and text messages by staffing firms to offer people jobs.

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<sup>1</sup> This information is for the benefit of the job candidates and they are not charged for job placements. As a result, staffing firms' conveyance of job offers and job information does not fall within the Telephone Consumer Protection Act's (TCPA) definition of "unsolicited advertisement," or "telephone solicitation." See *In the matter of Rules and Regulations Adopting the Telephone Consumer Protection Act of 1991*, Second Order on Reconsideration, released Feb. 18, 2005. CG Docket No. 02-278; *Petition for Declaratory Ruling, filed by George Crosby, Vice President for Business Development for Medstaffing, Inc.*, Dec. 16, 2013; *Missouri v. American Blast Fax, Inc.*, 196 F.Supp.2d 920 (E.D. Missouri March 13, 2002); *Lutz Appellate Services Inc. v. Curry*, 859 F. Supp. 180 (E. D. Pa. July 28, 1994).

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Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "S. C. Dwyer", is centered on a light gray rectangular background.

Stephen C. Dwyer  
General Counsel  
American Staffing Association