

June 9, 2015

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Notice of Ex Parte – CG Docket No. 02-278**
Genesys Telecommunications Laboratories, Inc.

Dear Ms. Dortch:

On June 5, 2015, Monica Desai of Squire Patton Boggs (US) LLP, counsel to Genesys Telecommunications Laboratories, Inc., and John Tallarico (Vice President of Outbound Engagement, Genesys Telecommunications Laboratories, Inc. (Genesys)), held meetings with the following Federal Communications Commission (FCC or Commission) staff: Maria Kirby (Legal Advisor, Office of the Chairman) and Matthew Collins (Honors Attorney, Office of General Counsel); and with Travis Litman (Legal Advisor, Office of Commissioner Rosenworcel) and Jennifer Thompson (Special Advisor & Confidential Assistant, Office of Commissioner Rosenworcel). On June 9, 2015, Ms. Desai and Mr. Tallarico met with Chanelle Hardy (Chief of Staff and Media Legal Advisor, Office of Commissioner Clyburn); Nicholas Degani (Legal Advisor, Office of Commissioner Pai); and Amy Bender (Legal Advisor, Office of Commissioner O'Reilly).

During the meetings, Genesys emphasized that pursuant to the Telephone Consumer Protection Act (TCPA), Congress explicitly provided callers a statutory defense that they could rely on prior express consent of the called party when using an automated telephone dialing system (ATDS) to call a cellphone.¹ Genesys stated the Commission should not negate the ability of a caller to rely on the defense of prior express consent simply because a consumer happens to not pick up a call, or because a voicemail message may have changed.

¹ See 47 U.S.C. § 227(b)(1)(A) (“It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States to make any call (other than a call made for emergency purposes or *made with the prior express consent of the called party*) using any automatic telephone dialing system or an artificial or prerecorded voice) to any telephone number assigned to a . . . cellular telephone service.”).

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Genesys also noted that Congress specifically defined an ATDS as: “equipment which has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator; and to dial such numbers.”² The Commission should not—and *cannot*—change what Congress specifically required of a device defined as an ATDS. Indeed, as other commenters in this docket have explained, the FCC “could not have nullified any element of the statute . . . [as] an agency may not disregard clear and precise statutory language.”³ Any device that does not contain statutory elements of an ATDS is, by definition, not an ATDS under the statute.

In conclusion, Genesys advocated that the FCC cannot (1) negate the ability of a caller to rely on the statutory defense of prior express consent of the called party; and (2) deem that equipment is an ATDS under the TCPA, if it does not meet the express definition of an ATDS under the TCPA.

Respectfully submitted,



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cc:

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² 47 U.S.C. § 227(a)(1).

³ *See, e.g.,* ACA International, Inc., *Notice of Ex Parte* at 2, CG Docket No. 02-278 (Nov. 3, 2014).