

June 11, 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 9, 2015, Monica Desai of Squire Patton Boggs (US) LLP, counsel to Genesys Telecommunications Laboratories, Inc. (Genesys), and John Tallarico (Vice President of Outbound Engagement, Genesys), held meetings with the following Federal Communications Commission (FCC or “Commission”) staff: Channele Hardy (Chief of Staff and Media Legal Advisor, Office of Commissioner Clyburn) and Amy Bender (Legal Advisor, Office of Commissioner O’Rielly).

During the meetings, Genesys continued to emphasize that under the Telephone Consumer Protection Act (TCPA), callers should be able to rely on the explicit statutory defense of prior express consent of the called party when using an automated telephone dialing system (ATDS) to call a cellphone.¹

Genesys discussed the various types of important communications that would be impacted if the Commission effectively negates the prior express consent defense by forcing calling parties to assume that a number has been reassigned, based on a “one call attempt” standard. The “one call attempt” standard will force companies to take customers off of calling lists, or off of texting lists, for not responding to a text or not answering a phone call. This will result in the unintended consequence of companies having to stop numerous

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.”) (emphasis added).

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consumer beneficial, normal and expected communications, or risk being faced with potentially catastrophic TCPA liability.

To illustrate, some basic examples of communications that would be impacted include emergency notifications relating to utility power outages; product recalls for food that should be pulled off the shelf for consumer safety; financial alerts, including balance and overdraft information; school closings and delays; and many, many others. It does not benefit consumers to force callers to freeze such communications simply because a consumer did not pick up a call or respond to a text. Indeed, there is no expectation by consumers that they should have to respond to texts providing information such as power outage notifications or product recalls.

Genesys reiterated the heightened expectation that customers develop as technology continues to grow, and the significant benefits of timely customer communications. More and more, customers have come to expect that the companies they interact with will use new technology to enhance customer service and create new methods for communication. Indeed, it is unquestionable that to meet consumer expectations, companies must deliver effective and timely customer communication. For example, widespread consumer acceptance and use of text and voice messaging to facilitate more convenient communications is on the rise.²

Genesys respectfully urged the Commission to refrain from negating the ability of a caller to rely on the statutory defense of prior express consent of the called party.

² According to a 2013 report by the Pew Research Center, 91% of the U.S. adult population now owns some kind of cell phone, and 56% of all American adults are now smartphone adopters. *Smartphone Ownership – 2013 Update*, Pew Research Center, at 2 (June 5, 2013), available at http://www.pewinternet.org/files/old-media//Files/Reports/2013/PIP_Smartphone_adoption_2013_PDF.pdf. Furthermore, according to a recent government survey, “[m]obile 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.” *Consumer and Mobile Financial Services 2014*, Federal Reserve Board, at 17 (Mar. 2014), available at www.federalreserve.gov/publications.default.htm.

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Respectfully submitted,



Monica S. Desai
Squire Patton Boggs, LLP
2550 M Street, NW
Washington, DC 20037
202-457-7535
*Counsel to Genesys Telecommunications
Laboratories, Inc.*

cc:

Maria Kirby
Chanelle Hardy
Travis Litman
Nicholas Degani
Amy Bender