

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

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**In the Matter of:**

**Rules and Regulations Implementing  
The Telephone Consumer Protection Act of 1991**

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**CG Docket No. 02-278**

**REPLY COMMENTS OF  
THE AMERICAN TELESERVICES ASSOCIATION**

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**I. GENERAL OVERVIEW.**

The American Teleservices Association (“ATA”) respectfully submits these reply comments in response to the Commission’s Notice of Proposed Rulemaking (“NPRM”) dated January 20, 2010 that proposes amendments that will require, *inter alia*, that companies obtain call recipients’ written consent before transmitting prerecorded messages to them and before initiating calls to their cell phones.

**II. JOINT PETITION FOR DECLARATORY RULING THAT THE COMMISSION HAS EXCLUSIVE REGULATORY JURISDICTION OVER INTERSTATE TELEMARKETING CALLS.**

This docket's record is replete with instances where states continue to subject interstate telemarketers to an unfair and burdensome patchwork of conflicting laws and regulations. As FreeEats.com, Inc. commented, since the 2003 Report and Order, “callers are left with a complicated framework of conflicting mandates that should not exist under the TCPA’s clear

preemptive authority to create a uniform national regulation of calls.”<sup>1</sup> While FreeEats called for the Commission to rule upon its Petition for Declaratory Ruling that the TCPA preempts state laws as applied to interstate calls, it notes that the Commission has failed to do so.

ATA suggests that the more appropriate call to action is for the Commission to, once and for all, declare that states do not have jurisdictional authority to impose more restrictive requirements on interstate telemarketing calls than those imposed by the TCPA. The precedence and authority for this conclusion is clearly supported in ATA’s petition for Declaratory Ruling that the Commission has exclusive regulatory jurisdiction over interstate telemarketing calls and other supporting materials found in this docket. ATA was joined in its petition by the Direct Marketing Association and thirty-one (31) other trade associations, for profit entities, charities, and nonprofits. Although this petition was filed in 2005, the Commission has failed to rule upon it. As the record indicates, the Commission’s failure to rule on this issue has created enormous confusion in the telemarketing industry and imposes significant financial and compliance burdens on all businesses, regardless of their size, that seek to implement compliant telemarketing programs. It also creates confusion amongst consumers who try to understand who may contact them by telephone and in what manner. ATA respectfully suggests that the Commission rule on this long-standing petition.

**III. E-SIGN ACT IS AMBIGUOUS AS TO WHETHER DIGITAL RECORDING CONSTITUTES A SIGNATURE FOR PURPOSES OF COMMISSION’S PROPOSED WRITTEN CONSENT REQUIREMENT.**

While the Commission made repeated references to the fact that a digital voice recording constitutes an electronic signature, it refers to no legal authority in support of this.<sup>2</sup> The FTC has

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<sup>1</sup> Comments of FreeEats.com, Inc., p. 6 (May 21, 2010) (on file electronically with the Fed. Commc’ns. Comm’n.).

<sup>2</sup> See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Federal Communications Commission, 75 Fed. Reg. 13471, 13474 (March 22, 2010) (“Such a rule change would permit a telemarketer wishing to deliver prerecorded telemarketing messages to residential subscribers to obtain agreements

similarly published no legal position as to whether a digital voice recording constitutes an electronic signature under the E-SIGN Act. Without clear precedence that a digital voice recording constitutes an electronic signature, ATA respectfully suggests that the Commission consult with the FTC and declare once and for all that a digital voice recording constitutes an electronic signature under the E-SIGN Act since this appears to be the Commission's position.

Respectfully submitted,

AMERICAN TELESERVICES ASSOCIATION

By Counsel



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from the subscribers by any electronic means authorized by the E-SIGN Act (including, for example, email, web form, telephone key press, or voice recording).”).