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July 20, 2011

Via ECFS

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentation, CG Docket No. 02-278

Dear Ms. Dortch:

Yesterday, Don Redmond, Vice President – Government Relations, of Portfolio Recovery Associates, LLC (“PRA”), and I met with Joel Gurin, William Freedman, Karen Johnson and Kurt Schroeder of the Consumer and Government Affairs Bureau, and, separately, with Christine Kurth of the Office of Commissioner Robert McDowell in connection with the above-referenced docket. In both meetings, we discussed the history and consequences of the Commission’s decision to treat predictive dialers as “automatic telephone dialing systems” and “autodialers” under its rules, as well as the benefits that would result through increased productivity, lower costs and quality control if predictive dialers were treated differently. We explained that the Commission can clarify its earlier statements on predictive dialers so as to permit their broader use in a manner consistent with the core policy objectives of the Telephone Consumer Protection Act and the FCC’s rules. We also distributed the attached document to all meeting attendees.

Pursuant to the Commission’s rules, we are filing a copy of this letter in the above-referenced docket.

Respectfully submitted,



Yaron Dori

cc: Joel Gurin (via e-mail)
William Freedman (via e-mail)
Karen Johnson (via e-mail)
Kurt Schroeder (via e-mail)
Christine Kurth (via e-mail)

Enclosure

PORTFOLIO RECOVERY ASSOCIATES, LLC

CG DOCKET NO. 02-278

The definition of “automatic telephone dialing system” and “autodialer” can and should exclude predictive dialers where their use does not implicate core TCPA and FCC policy objectives.

Treating predictive dialers as autodialers has led to absurd and unintended consequences.

- The TCPA and the FCC’s rules define an “automatic telephone dialing system” and “autodialer” as “equipment which has the capacity (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers.”
- In 2003, the FCC interpreted this language to subsume predictive dialers, largely on policy grounds. This conclusion was reiterated by the FCC five years later in *ACA International*.
- But predictive dialers transmit calls to *pre-programmed* numbers, not “using a random or sequential number generator.” They also do not dial randomly- or sequentially-generated numbers. Relying on the term “capacity” to bridge these gaps overreaches. With the right app, an iPhone has the *capacity* to do just about anything, but that does not make it an autodialer.
- Treating predictive dialers as autodialers has unleashed a torrent of unnecessary and destructive class action litigation across industries, including the debt collection industry.

The “increased productivity and lower costs” of predictive dialers should be embraced, not punished.

- Predictive dialers are beneficial to businesses and consumers. They allow businesses to reach consumers in an accurate, efficient and quality-controlled manner.
- In the debt collection context, predictive dialers help ensure compliance with the Fair Debt Collection Practices Act (“FDCPA”) and other federal and state requirements that govern debt collection activity.
- The mobile phone has become the only way to reach many consumers, with dramatic declines in usage costs. Debtors especially are difficult to reach through other means.
- The premise that predictive dialers unfairly shift costs to consumers is no longer apt. In fact, restrictions on predictive dialers lead to increased operating costs that ultimately are borne by consumers.

The FCC can fix this problem without disturbing its core policy objectives.

- The FCC cannot alter the definition of “automated telephone dialing system” in Section 227(a)(1) of the Communications Act.
- But the FCC can *clarify* that its own application of that definition to predictive dialers does not apply in certain contexts, such as debt collection.
- The FCC has long understood that debt collection calls do not implicate the same policy considerations as telephone solicitation, telemarketing, and even most other non-commercial calls. Debt collectors:
 - cannot secure the prior express consent of call recipients;
 - possess few reliable alternatives to reaching debtors; and
 - are bound by the requirements of the FDCPA, which empowers debtors to, among other things, cease all communications from debt collectors, including communications by phone.
- There may be ample policy reasons to clarify the extent to which the definition of “automated telephone dialing system” should not apply to predictive dialers in other contexts as well.