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**ELECTRONIC FILING**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Re: *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*  
CG Docket No. 02-278.

Dear Ms. Dortch:

On Friday, March 2, 2012, Tim Searcy and Phil Grudzinski, representatives of the American Teleservices Association, had a telephone conference with Josh Gottheimer, Senior Counselor to the Chairman, to discuss issues associated with the Commission's recent Order published on February 15, 2012. The attached summary of the conference was subsequently transmitted to Mr. Gottheimer.

In accordance with the Commission's rules, I am filing this letter electronically in the docket identified above.

Very truly yours,



Mitchell N. Roth

MNR:mmi

Enclosure

**From:** Phil Grudzinski  
**Sent:** Friday, March 02, 2012 03:36 PM  
**To:** Josh Gottheimer  
**Cc:** 'Tim Searcy'  
**Subject:** Re: ATA Conversation on New TCPA Rules for Abandoned Calls

Hi Josh:

Thank you for your time today, it was good to connect again since launching our Jobs for America initiative. I wanted to summarize the points that we discussed briefly.

- The ATA has released a statement of support for the FCC RoboCall announcement mid-February
- The ATA has been active in this rule-making process and has provided the FCC with comments
- Integrated in the rules that were released were provisions that impact abandoned calls and allow for an interactive "opt out" capabilities for the consumer, which is now inconsistent with previous FTC rulings

At no time was there an opportunity for the industry to respond to the new rules around abandoned calls. The abandoned call rules impact all calls and not just robocalls. There are three key problems that this new rule creates:

- 1) **Incompatible Technology** – the ability to add "opt out" capabilities during an abandoned call does not exist and will be very costly to implement. The higher costs will lead to some, less profitable campaigns to be eliminated. This will have a direct impact on jobs and efforts around job creation through JFA
- 2) **Preference Management** – businesses have invested heavily in preference management services, giving consumers control as to what to "opt in and out" of from products to marketing to services. Allowing an "opt-out" at a time where the call is abandoned does not allow the consumer to know what it is they are opting out of, as the original message has not been heard. They always have and still have the opportunity to opt out when they reach a live representative.
- 3) **Definition of "Random and Sequential"** – do to the influence of DNC and consumer behavior, companies today use more sophisticated measures to contact their customers with relevant products, services and messages. These very "targeted" campaigns are designed specifically not to be random and sequential, and are, in fact, highly predictable in nature. The fact that a random and sequential can be defined by the presence of ATDS, is out of date and not accurate.

Per our conversation, it is our understanding that you are passing this note to the staff that is currently dealing with the specifics of these rulings and you will be facilitating a meeting between us. We also will follow the appropriate channels of communication with respect to filing our comments and our conversation is considered ex-parte. As such, we will file notice of ex-parte communication with the Commission and will follow your suggestion of filing a petition for reconsideration.

Josh, thank you again for your time and attention to this matter and we look forward to resolving this quickly in the next few weeks.