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March 23, 2012

**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.  
**Revised Notice of Ex Parte**

Dear Ms. Dortch:

On Monday, March 19, 2012, the undersigned General Counsel for the American Teleservices Association, met with Kris Monteith, Kurt Schroeder, Michael Jacobs, Karen Johnson and Mark Stone of the Consumer and Governmental Affairs Bureau to discuss issues associated with the Commission's recent Order published on February 15, 2012 containing revised regulations implementing the Telephone Consumer Protection Act. Specifically, I addressed the requirements to be codified at 47 C.F.R. §64.1200(a)(7)(i)(B) and informed the Bureau of their effect on business:

1. Companies will be required to invest in expensive new technology. Existing regulations require companies to transmit a *non-solicitous* prerecorded message when an outbound call is abandoned by a predictive dialer when live agents are not available to speak with the called consumers. These calls are not robocalls that are intended to transmit prerecorded sales solicitations; instead, by existing regulation, the messages only identify the business entities on whose behalf the calls were made, telephone numbers at which the entities may be reached and that the calls were made for telemarketing purposes. The new regulation requires companies to provide an automated, interactive voice- and/or key press-activated opt-out mechanism during this recording that enables the called persons to make do-not-call requests prior to the end of the messages. This functionality will require many companies to make significant investments in technology and purchase equipment that have the capability of transmitting and implementing the automated mechanisms.

Marlene H. Dortch, Secretary  
Federal Communications Commission  
March 23, 2012  
Page 2

2. Consumers cannot make an informed decision as to whether to opt-out of future calls.  
While ATA supports the notion that consumers should be able to choose the entities from which they want to receive sales solicitations, consumers do not have enough information at hand when they hear the prerecorded message at issue to make an informed decision. This is due to the fact that, as discussed above, these abandoned call messages only provide identifying information about the entities making the calls. By regulation, the messages are not permitted to contain sales solicitations. Consumers intending to opt-out of receiving one subsidiary's or division's calls may inadvertently opt-out of receiving solicitations from all divisions and subsidiaries of the entity, thereby inhibiting consumers from accurately expressing their preferences.
3. Inadequate Notice. Neither the Notice of Proposed Rulemaking nor the accompanying text in the Report and Order provided clear and sufficient notice to the public that the Commission was considering modifying its regulations in this manner. Throughout the course of the proceeding, the Commission indicated that the purpose of the rulemaking was to make its requirements consistent with those of the Federal Trade Commission. However, the provision discussed imposes requirements that go significantly above and beyond those of the FTC.
4. Relief. We discussed whether the Commission may consider reconsidering its Report and Order on its own, or whether industry should utilize administrative remedies.

Please contact me with any questions that you may have.

Very truly yours,



Mitchell N. Roth

MNR:mmi

cc: Kris A. Monteith  
Kurt A. Schroeder  
Michael J. Jacobs  
Karen Johnson  
Mark Stone