

June 29, 2012

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VIA ELECTRONIC FILING

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

Re: Ex Parte Notice – SoundBite Communications, Inc., Petition for Expedited Declaratory Ruling in CG Docket No. CG 02-278

Dear Ms. Dortch:

On June 27, 2012, Monica Desai, counsel to SoundBite Communications, Inc. (“SoundBite”), along with SoundBite executives Bob Leahy (Chief Operating Officer and Chief Financial Officer) and John Tallarico (Vice President of Product Management) met with individuals from the Office of General Counsel, including: Sean Lev (Acting General Counsel), Diane Griffin Holland (Deputy Associate General Counsel), Marcus Maher (Assistant General Counsel) and Raelynn Remy (Attorney-Advisor), and from the Office of Consumer and Governmental Affairs Bureau, including: Kris Monteith (Acting Bureau Chief); Mark Stone (Deputy Bureau Chief); Kurt Schroeder (Acting Chief, Consumer Policy Division); Michael Jacobs (Senior Legal Advisor to the Bureau Chief); and Richard Smith (Attorney-Advisor).

The primary purpose of the meeting was to provide background to Mr. Lev on the legal and policy arguments made by SoundBite and others in support of SoundBite’s Petition for Expedited Declaratory Ruling (“Petition”).¹ SoundBite requests clarification that when a subscriber sends a text message choosing to opt-out of future text messages and within minutes receives a one-time immediate reply via text message confirming the opt-out request, that opt-out confirmation text message is not a violation of the Telephone Consumer Protection Act² or FCC

¹ *SoundBite Communications, Inc.*, Petition for Expedited Declaratory Ruling, CG Docket No. 02-278 (filed Feb. 16, 2012) (“Petition”).

² Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227 (2000 & Supp. 2005) (“TCPA”).

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rules.³ During the meeting, SoundBite also described the bi-partisan congressional support for opt-out confirmation texts,⁴ as well as judicial support for its position as evidenced by the recent *Ibey v. Taco Bell Corp.* decision.⁵ Finally, SoundBite emphasized the urgent need for the Commission to act expeditiously on its Petition in light of the tremendous pressure mounting on the company caused by existing pending litigation and the uncertainty of future TCPA liability over one-time, opt-out confirmation texts.

Specifically, the following topics were addressed during the meeting:

I. SOUNDBITE'S REQUEST IS CONSISTENT WITH THE TCPA.

SoundBite is facing class action lawsuits under the theory that its system sends its one-time confirmation messages using an “automatic telephone dialing system” (“ATDS”).⁶ An automatic telephone dialing system is “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.”⁷ SoundBite reiterated that it does not use an ATDS under the TCPA because its equipment does not have the capacity to generate and dial random or sequential numbers.⁸ By definition, SoundBite does not have a system that has the ability to “produce” or call telephone numbers “randomly or sequentially.”⁹ The SoundBite system only has the ability to send an outbound response to an inbound request, and only to the specific number that has sent the inbound request. As a result, only subscribers (1) that have earlier authorized and requested text message communications, and then (2) later send a text message to request an opt out of those communications, then (3) immediately (within minutes) are sent an opt-out confirmation text

³ 47 C.F.R. § 64.1200.

⁴ See Letter from Senator John F. Kerry and Senator Scott P. Brown, United States Senate, to Chairman Julius Genachowski, Federal Communications Commission, dated April 13, 2012.

⁵ See *Ibey v. Taco Bell Corp.*, Case No. 12-CV-0583-H (WVG)(S.D. Cal. 2012)(granting Defendant’s Motion to Dismiss and granting Plaintiff 30 days leave to amend its Complaint).

⁶ See 47 U.S.C § 227(b)(1)(A)(iii); see also 64.1200(a)(1)(iii).

⁷ 47 U.S.C. § 227(a)(1); 64.1200(f)(1).

⁸ See 47 U.S.C §227(a)(1).

⁹ Merriam-Webster dictionary defines “random” as “lacking a definite plan, purpose, or pattern” and “sequential” as “following in sequence.” Confirmation text messages sent only to specific individuals who make a specific opt out request are neither “random” nor “sequential.” See Merriam-Webster Online, <http://www.merriam-webster.com/> (last visited May 14, 2012).

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message to the number that requested the opt-out.¹⁰ The system is not capable generating or dialing any random or sequential numbers, is not intended to be used for such purposes, and is specifically designed not to be used for such purposes. Therefore, as a factual matter, this type of system is not an autodialer under the TCPA.

Moreover, the FCC has acknowledged that in evaluating “capacity” it should consider how a system operates when hardware is paired with software.¹¹ This approach correctly evaluates capacity as present capacity. Otherwise, as others have pointed out,¹² with today’s technology looking at future capacity would be meaningless as almost all modern tele-communications equipment (including an iPhone, a television set-top box, an answering machine system) could be altered to have the ability through software or hardware installations to store and autodial random or sequential numbers without human interaction.

Furthermore, developing 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” is an involved and resource-intensive process. SoundBite would have to go through a multi-step process involving software design, network and capacity review cycles, a coding phase, quality assurance, rounds of testing, product launch phases, and coordination among different internal and external groups to eventually become an “automatic telephone dialing system” under the TCPA. The entire process generally takes four to eighteen months.¹³

Not only does SoundBite’s equipment fall outside the scope of the TCPA, but the type of one-time opt-out confirmation text message sent to a subscriber are not what Congress was concerned about when passing the TCPA: preventing unsolicited automated telemarketing and bulk communications.¹⁴ In fact, opt-out confirmatory text messages are just the opposite: they are responsive messages sent immediately to the individual consumer who sent the opt-out

¹⁰ See Comments of SoundBite Communications, Inc., CG Docket No. 02-278, at 8-10 (filed Apr. 30, 2012) (SoundBite Comments”).

¹¹ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, FCC 03-153, 18 FCC Rcd 14014, ¶ 131 (2003) (“2003 TCPA Order”) (“The hardware, when paired with certain software, has the capacity to store or produce numbers and dial those numbers at random, in sequential order, or from a database of numbers.”).

¹² See e.g., Comments of Twilio Inc., CG Docket No. 02-278, at 7 (filed Apr. 30, 2012).

¹³ For a detailed explanation of this process, see Letter from Monica S. Desai, Counsel, SoundBite Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte in CG Docket No. 02-278, dated May 29, 2012, pages 3-5.

¹⁴ See S. Rep. 102-178, at 4-5 (1991), as reprinted in 1991 U.S.C.C.A.N. 1968, 1972.

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request, and only to that consumer, to provide assurance that the request has been received.¹⁵

In summary, SoundBite does not have the capacity to be an “autodialer,” it could not create that capacity without an involved and resource-intensive process taking generally 4-18 months, and the one-time confirmation sent in specific response to confirm an inbound request is not the type of “harassing” bulk communications that the TCPA autodialer definition was intended to prevent.

II. A NARROW RULING WILL NOT CREATE A LARGE LOOPHOLE.

A narrow ruling clarifying that a one-time confirmation text message of an opt-out request does not violate the TCPA would benefit consumers without opening the door to an onslaught of unwanted texts and would not create unintended consequences. The Commission could do this by issuing a narrow ruling applicable to a system that only has the ability to send a one-time outbound opt-out confirmation text message in direct response to an inbound opt-out text message request.

A. Limited and Isolated Context.

SoundBite’s Petition only applies to a limited, one-time, isolated event – when a consumer opts out of a text messaging campaign he or she will receive a one-time, immediate response back that goes only to that specific consumer confirming the opt-out. Sending the confirmation does not use a system that has the capacity to store, produce or dial randomly or sequentially generate numbers for making calls, much less the type of harassing or annoying bulk calls that Congress was concerned about. Instead, the SoundBite system is specifically designed merely to react to an individual request.¹⁶ This important distinction limits the context in which such confirmatory opt-out text messages can be sent and therefore substantially limits the potential reach of the clarification requested by SoundBite. If the FCC were to narrow its clarification as applicable only to equipment that is designed only to send a one-time, targeted, individual confirmation text message in response to a text message opt-out request, and is only capable of that function, such a ruling would not open up the doors for bad actors to circumvent

¹⁵ See *Ibey v. Taco Bell*, at 5 (“To impose liability under the TCPA for a single, confirmatory text message would contravene public policy and the spirit of the statute—prevention of unsolicited telemarketing in a bulk format”).

¹⁶ See also Comments of Verizon and Verizon Wireless, CG Docket No. 02-278, at 9 (filed Apr. 30, 2012) (“Verizon Comments”) (“the equipment is *reacting* to a request from a *single* telephone number and sending a *single* response”).

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the TCPA by sending the type of bulk, “annoying” or “harassing” communications that Congress sought to prevent in enacting the TCPA.¹⁷

B. Additional Marketing Is Preventable.

SoundBite explained that pursuant to MMA Guidelines, the text of the opt-out confirmation should not contain marketing material. Although under the legal theories presented by SoundBite the content of the confirmation response is irrelevant, adherence to MMA Consumer Best Practices is required by wireless operators and aggregators in order to activate and run any text message campaign. As a result, a confirmation of an opt-out request should not contain marketing in the body of the confirmation response.¹⁸ The wireless carriers, aggregators and CTIA review and approve confirmation texts, and audit them, to ensure they are consistent with those guidelines.

Furthermore, to the extent the Commission wants to make a ruling that covers the content of opt-out confirmation texts, it can look to the CAN-SPAM rules that evaluate the “primary purpose” of messages for guidance.¹⁹ A text message containing a concise confirmation informing the subscriber they will no longer receive messages from the entity with the inclusion

¹⁷ Instead, the unintended consequences of the Commission not issuing the clarification could be enormous. First, many companies will likely stop sending confirmations altogether to avoid the risk of TCPA litigation. This result is contrary to the MMA and CTIA guidelines which require confirmations to be sent and contrary to the public who has come to rely on opt-out acknowledgements. *See* Mobile Marketing Association, U.S. Consumer Best Practices, Version 6.0, § 1.6 (March 1, 2011). In fact, without a confirmation, consumers will likely worry their request had not been received, causing them to have to spend more time trying to verify their request. Second, expensive class action lawsuits based on confirmation texts sent within the past four years (the statute of limitations for TCPA claims) will likely to continue to grow. The costs to defend these lawsuits are tremendous, causing millions of dollars to be spent in litigation fees that could be spent on growing business and creating jobs.

¹⁸ *See* MMA Consumer Best Practices, § 1.6 and examples of “Stop” confirmation messages at page 23, *available at* mmaglobal.com/bestpractices.pdf. Companies sending text campaigns must further adhere to associated carrier guidelines. For example, the Sprint/Nextel section of the MMA CPB (at page 114) specifies that it is a violation if a confirmation of an opt-out contains “unauthorized marketing material” and the required consequence of that violation is to “discontinue embedded marketing campaign.” *See also* CTIA Compliance Monitoring and Enforcement Playbook (Oct. 25, 2011), *available at* http://www.wmcglobal.com/images/CTIA_handbook.pdf

¹⁹ 16 C.F.R. § 316.3. *See also* 47 C.F.R. § 64.3100(c)(2), (c)(8).

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of a contact point for questions clearly has the primary purpose of providing information – the confirmation of an opt-out request.

In instances where the opt-out request is confirmed and a link is provided to identify how the user can either receive further information or opt back in, such information does not transform the opt-out confirmation text message into “marketing.” As explained in prior meetings, providing such information benefits consumers in several circumstances: (1) some users may just want to temporarily terminate the relationship, but intend to join again in the future (e.g. after vacation); (2) some users may have inadvertently opted out; (3) some other party may have fraudulently opted-out the consumer; and (4) some users may just change their minds and want to continue receiving particular information via text messaging.²⁰ In all of these instances, providing simple instructions in order to get further assistance allows consumers an easy and convenient way to exercise their preferences. Moreover, the Commission has recently recognized in the context of TCPA that this type of informational message can be very valuable to consumers.²¹

III. IT IS UNHELPFUL TO DISTINGUISH BETWEEN FREE-TO-END-USER AND STANDARD RATE TEXT MESSAGES.

During the meeting, SoundBite also discussed that the FCC should not distinguish between free-to-end user text (FTEU) messages and standard rate text messages in evaluating TCPA applicability. As a practical matter, industry-wide, the vast majority of text messages sent to consumers apply standard rates, including the messages cited as examples in SoundBite’s comments, such as from the Center for Disease Control, US Fish & Wildlife Service, the History Channel, Obama for America, Romney for President, USA.gov, and the FCC. If the Commission declares that only free-to-end user opt-out confirmation text messages fall outside the scope of the TCPA, all of the millions of standard rate text messages that have been sent over the past four years confirming an opt-out by any entity prior to the ruling - sent pursuant to the requirements of the Mobile Marketing Association and carriers and at least one state attorney

²⁰ See Letter from Monica S. Desai, Counsel, SoundBite Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte in CG Docket No. 02-278, dated June 8, 2012 (emphasizing the American Bankers Association’s observation that the confirmatory opt-out receipt notifies the consumer that the bank will stop sending alerts and information - which is particularly important if those alerts have been fraudulently turned off by a person intending to defraud the subscriber).

²¹ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, FCC 12-21, 27 FCC Rcd 1830, ¶¶ 21, 29 (2012)(concluding that requiring prior express written consent for all autodialed or prerecorded calls would unnecessarily impede consumer access to informational messages upon which they rely).

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general – may be vulnerable to further class action litigation. Thus, such a distinction may exacerbate the number of lawsuits filed as plaintiff attorneys seek to capitalize on the ruling’s implications for past practices. Moreover, relatively few consumers actually get “charged” a separate individual fee for an individual separate text message.²²

IV. ONE-TIME, TARGETED OPT-OUT CONFIRMATION TEXT MESSAGES ARE WIDESPREAD AND PROMOTE SOUND PUBLIC POLICY.

Sending one-time confirmation texts is required by the MMA as part of its guidelines on consumer best practices,²³ required by CTIA,²⁴ and even by the Florida Attorney General in a settlement with Verizon Wireless - all in an effort to protect consumers.²⁵ There is widespread and overwhelming support for this narrow request for a declaratory ruling.²⁶

²² As stated in previous filings, there are a wide variety of plans that consumers subscribe to, and under the majority of such plans there is no separate charge for most texts. Sprint, AT&T, Verizon Wireless and T-Mobile charge the relatively few post-paid consumers who do not have texting in a monthly plan only 20 cents per standard message. *See* Sprint, Sprint Services – Texting, http://shop.sprint.com/mysprint/services_solutions/details.jsp?detId=texting&catId=service_messaging&catName=Messaging&detName=Texting&specialCat; AT&T, AT&T Residential Wireless – Pricing for text messaging, <http://www.att.com/esupport/article.jsp?sid=52588&cv=820&requestid=1038421#fbid=9as38904UrH>; Verizon Wireless, <http://www.verizonwireless.com/b2c/explore/?page=text-plan>; T-Mobile, Text Messaging Value Bundles | Mobile Phone Texting Bundles | T-Mobile, http://www.t-mobile.com/shop/addons/services/information.aspx?passet=messaging&tp=svc_tab_textmessaging.

²³ *See* MMA Consumer Best Practices, § 1.6.

²⁴ CTIA Compliance Monitoring and Enforcement Playbook (Oct. 25, 2011), *available at* http://www.wmcglobal.com/images/CTIA_playbook.pdf.

²⁵ *See In the Matter of Verizon Wireless Services LLS & Alltel Communications, LLC*, CASE NO. L08-3-1035 (June 19, 2009) (Assurance of Voluntary Compliance) *available at* [http://myfloridalegal.com/webfiles.nsf/WF/KGRG-7TAJQ2/\\$file/VerizonAVC.pdf](http://myfloridalegal.com/webfiles.nsf/WF/KGRG-7TAJQ2/$file/VerizonAVC.pdf) (The Florida Attorney General explicitly required Verizon Wireless to contractually bind companies that provide mobile marketing services over Verizon Wireless’ mobile network, including text message campaigns, to abide by practices “consistent with the MMA Guidelines,” which include sending a confirmatory message when a consumer opts out of a marketing program.)

²⁶ As echoed by the several commenters who supported SoundBite’s Petition – including, for example, Consumer Action, CTIA -The Wireless Association®, the Retail Industry Leaders

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Furthermore, SoundBite described the implicit support of its position by a broad range of other government, political, consumer and other organizations - including the American Automobile Association, Center for Disease Control and Prevention, Chicago Transit Authority, Federal Emergency Management Agency, U.S. Fish and Wildlife Service, History Channel, National Healthy Mothers Healthy Babies Coalition, Obama for America, Romney for President, United States Government (USA.gov), AARP, Black Entertainment Television, Consumers Union, the Federal Communications Commission, National Consumers League, and the National Trial Lawyers – all of whom send out an opt-out confirmation text message either in connection with a direct text message to the entity or in connection with an opt-out request through Twitter.

V. ***IBEY V. TACO BELL CORP.* AFFIRMS SOUNDBITE'S PETITION.**

In the meeting, SoundBite discussed the recent decision in *Ibey v. Taco Bell Corp.* which squarely addressed and supported the position taken by SoundBite in its Petition for Declaratory Ruling.²⁷ SoundBite pointed to the relevant language which described the court's reasoning for concluding "that the TCPA does not impose liability for a single, confirmatory text message."²⁸ In granting Taco Bell Corporation's Motion to Dismiss, the court stated:

Defendant argues that the legislative history of the TCPA indicates that the statute cannot be read to impose liability for a single, confirmatory opt-out message. (Doc. No. 15.) The Court agrees. **The Court concludes that the TCPA does not impose liability for a single, confirmatory text message.** The TCPA's statutory and legislative history emphasize that the statute's purpose is to prevent unsolicited automated telemarketing and bulk communications. Further, the Ninth Circuit has explained that "the purpose and history of the TCPA indicate that Congress was trying to prohibit use of ATDSs in a manner that would be an invasion of privacy." Here, Plaintiff expressly consented to contact by Defendant when he initially texted 91318 to Defendant. When Plaintiff decided he no longer wanted to receive in text communications, Plaintiff allegedly notified Defendant that he wished to stop communications, and Defendant allegedly confirmed its receipt of the message and Plaintiff's removal from Defendant's text-

Association, the Mobile Marketing Association, Future of Privacy Forum, and Verizon Wireless – and the industry representatives who recently met with Commission staff which collectively represent thousands of businesses and organizations²⁶ – including, for example, the Consumer Bankers Association, Neustar, and the Council of Better Business Bureaus – and others all agree: when a subscriber sends a text message choosing to opt-out of future text message marketing and within minutes receives a one-time immediate reply via text message confirming the opt-out request, that confirmation message is not a violation of the Telephone Consumer Protection Act.

²⁷ See Case No. 12-CV-0583-H (WVG)(S.D. Cal. 2012).

²⁸ See *id.* at 4.

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message communication list. **Defendant’s single, confirmatory text message did not constitute unsolicited telemarketing;** Plaintiff had initiated contact with Defendant. **Further, Defendant’s sending a single, confirmatory text message in response to an opt-out request from Plaintiff, who voluntarily provided his phone number by sending the initial text message, does not appear to demonstrate an invasion of privacy contemplated by Congress in enacting the TCPA. To impose liability under the TCPA for a single, confirmatory text message would contravene public policy and the spirit of the statute—prevention of unsolicited telemarketing in a bulk format.**²⁹

SoundBite also discussed the court’s treatment of whether a single text message sent by Taco Bell in direct response to a specific user’s request for an opt-out was placed via an “automatic telephone dialing system” as required by the TCPA. The court emphasized that under the TCPA, the equipment “must have the capacity to store or produce telephone numbers.”³⁰ Similar to SoundBite’s position, the court reasoned that that “the text message did not appear to be random but in direct response to Plaintiff’s message” and that a lack of “human intervention on the part of the Defendant” is insufficient to meet the requirements of the statute, concluding without making a final determination that “it appears Defendant could be entitled to summary judgment because there does not appear to be a genuine dispute of material fact.”³¹

VI. EXPEDITIOUS ACTION IS CRITICAL; TIMING IS RIPE FOR DECISION.

Finally, SoundBite described the pending lawsuits and the tremendous pressure mounting on the company, including upcoming deadlines and the rapidly rising costs associated with discovery. Given that the comment cycle for its Petition has closed, the overwhelming support in the record, the nearly ubiquitous practice of sending opt-out confirmation texts, a recent court decision supporting the arguments raised by SoundBite, the bi-partisan hill support, and the consumer benefits associated with receiving opt-out acknowledgements and as supported by surveys and research placed in the record, SoundBite emphasized that the time is ripe for a ruling clarifying that a single confirmation text of an opt-out request is not a violation of the TCPA or Commission rules.

²⁹ See *id.*, at 4-5 (citations omitted)(emphasis added).

³⁰ *Id.* at 5 (citing 47 USC Sec. 227(a)(1)).

³¹ *Id.* at 6. Despite this, the court allowed the Plaintiff 30 days leave to amend to correct the deficiencies of the Complaint, including the failure to sufficiently plead the use of an ATDS within the meaning of the TCPA.

VII. FILINGS SUBMITTED BY SOUNDBITE.

SoundBite provided the following filings it submitted in the record in support of its position:

- **Comments (filed Apr. 30, 2012).** SoundBite outlined the strong legal and policy arguments in support of its position and provides examples of the many types of organizations that send opt-out confirmations. SoundBite also emphasized the tremendous cost faced by SoundBite and other companies that have been targeted with multi-million dollar class action lawsuits based on one-time confirmation texts of an opt-out.
- **Reply Comments (filed May 15, 2012).** SoundBite detailed the widespread and overwhelming record support for SoundBite's narrow request, while noting the irony of the National Association of Consumer Advocates opposing the filing despite sending out confirmation text messages when consumers opt out of their Twitter-based campaigns. SoundBite also described the implicit support for its request by a broad range of other government, political, consumer and other organizations, all of whom send out opt-out confirmation texts either in response to regular text campaigns or in response to a Twitter opt-out.
- **Notice of Ex Parte (filed May 23, 2012).** SoundBite described meetings with Commission staff in which it discussed the widespread agreement throughout the industry and within consumer groups that providing a "receipt" for opt-out confirmations is not only a good consumer practice and wise public policy, and is required by the MMA as part of its guidelines on consumer best practices.
- **Notice of Ex Parte (filed May 29, 2012).** SoundBite discussed why the FCC should not distinguish between free-to-end user text (FTEU) messages, why a consumer's decision to opt out is within the scope of the consumer's consent to participate in the text messaging campaign in the first place, and the usefulness of adopting the "primary purpose" standard under the CAN-SPAM Rules as policy guidance for evaluating opt-out confirmation texts. SoundBite also outlined the involved, multi-step internal product release process that would generally take four to eighteen months to proactively alter its equipment in order to give it the capacity to function as an "autodialer" under the TCPA.
- **Notice of Ex Parte (filed June 8, 2012).** SoundBite described meetings with Commission staff in which it, along with several representatives of organizations collectively representing thousands of businesses and organizations, discussed the unique viewpoints of major industry players underscoring the urgent need for expeditious Commission action on SoundBite's Petition. The ex parte letter highlighted the ubiquitous nature of text messaging (193.1 billion text messages

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are exchanged monthly in the country) and research supporting the basic notion that consumers value receiving confirmation of their transactions. SoundBite also cited bi-partisan Congressional support for sending one-time, confirmatory opt-out messages as evidenced by a letter signed by Sen. John Kerry (D-MA) and Sen. Scott Brown (R-MA) urging the Commission to not only clarify that the practice is allowable, but to encourage such confirmations to “help provide certainty for everyone engaged in mobile commerce.”

- **Notice of Ex Parte (filed June 14, 2012).** SoundBite emphasized that class action lawsuits are costing the industry millions of dollars in expenses and legal fees, and provided imminent court deadlines related to pending lawsuits in which SoundBite is specifically implicated. SoundBite’s counsel underscored that its legal fees are growing exponentially causing more and more resources to be diverted from investing in the company and in jobs.
- **Notice of Ex Parte (filed June 21, 2012).** SoundBite alerted FCC staff to a recent court decision holding that a one-time confirmatory opt-out text message does not violate the TCPA, and language emphasizing that “To impose liability under the TCPA for a single, confirmatory text message would contravene public policy and the spirit of the statute—prevention of unsolicited telemarketing in a bulk format.” SoundBite also noted that the court questioned whether the single text message sent by the defendant in direct response to a specific user’s request for an opt-out was placed via an autodialer under the TCPA.

Respectfully submitted,



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