

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Consumer & Governmental Affairs Bureau)	CG Docket No. 02-278
Seeks Comment on Petition for Declaratory)	
Ruling from Communication Innovators)	
)	
Rules and Regulations Implementing the)	
Telephone Consumer Protection Act of 1991)	
)	

REPLY COMMENTS OF COMMUNICATION INNOVATORS

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REPLY COMMENTS OF COMMUNICATION INNOVATORS

Communication Innovators (“CI”) respectfully submits these reply comments in response to the October 16, 2012 Public Notice released by the Consumer and Governmental Affairs Bureau (“Bureau”) in the above-captioned proceeding,¹ which seeks comment on a Petition for Declaratory Ruling (“Petition”) filed by CI.² In the Petition, CI asks the Federal Communications Commission (“Commission”) to clarify that when predictive dialers: (1) are not used for telemarketing purposes; and (2) do not have the current ability to generate and dial random or sequential numbers, they are not “automatic telephone dialing systems” (“autodialers”) under the Telephone Consumer Protection Act (“TCPA”)³ and the Commission’s TCPA rules.⁴

¹ *Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Declaratory Ruling from Communication Innovators*, CG Docket No. 02-278, Public Notice, DA 12-1653 (rel. Oct. 16, 2012).

² *See* Communication Innovators, Petition for Declaratory Ruling, CG Docket No. 02-278 (filed June 7, 2012) (“Petition”).

³ 47 U.S.C. § 227.

⁴ 47 C.F.R. § 64.1200 *et seq.*

As discussed below, commenters agree that the Commission should grant the Petition and address the widespread confusion regarding whether predictive dialers that lack the required ability to generate and dial random or sequential numbers are “autodialers” under the TCPA. The record confirms that, under the plain language of the TCPA, today’s predictive dialers are not autodialers. In addition, as commenters explain, Congress never intended to target non-telemarketing, informational calls placed using live representatives and predictive dialers. Instead, Congress’s goal was to curb abusive telemarketing and prerecorded “robocalling” practices that, among other things, threatened public safety by tying up emergency lines and blocks of telephone numbers.

As commenters have overwhelmingly demonstrated, predictive dialers enhance consumer privacy and provide a number of other important benefits to consumers and businesses without creating any new unwanted calls. The Commission should continue to support the ability of companies to provide innovative services to consumers on their mobile devices by declaring that today’s predictive dialers are not autodialers, especially when used for non-telemarketing, informational purposes.

I. ABOUT COMMUNICATION INNOVATORS.

CI is a 501(c)(4) coalition of technology companies that seeks to maximize the pace of telecommunications innovation for American consumers and businesses. CI works to identify and support important telecommunications innovations and to provide policy leaders insight into regulatory barriers that may limit their development and deployment. CI and its member technology companies strongly endorse efforts by the President, the Commission, and many in Congress to minimize the burden imposed on innovators and entrepreneurs by outdated, unnecessary, or inefficient regulations.

II. THE VAST MAJORITY OF COMMENTERS AGREE THAT TODAY'S PREDICTIVE DIALERS ARE NOT AUTODIALERS.

As many commenters explain, the plain language and legislative history of the TCPA, along with Commission precedent, support a ruling granting the Petition. Under the plain language of the TCPA, today's predictive dialers do not have the "capacity" to generate random or sequential numbers or to dial such numbers. Moreover, the legislative history of the TCPA shows that Congress never intended to prevent companies from using predictive dialers to make non-telemarketing, informational calls using live representatives. In addition, to the extent that the Commission may be concerned about enabling unwanted *telemarketing* calls, it has ample authority to prevent such abuse while still granting the Petition.

A. There is Broad Agreement by a Number of Commenters that Under the Plain Language of TCPA, Today's Predictive Dialers are not Autodialers.

Many commenters agree with CI that today's predictive dialers do not meet the definition of an autodialer.⁵ The TCPA and the Commission's TCPA rules define an 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."⁶ As CI explained in the Petition, the phrase "using a random or sequential number generator" modifies "to store or produce telephone numbers to be called," and the phrase "to dial such numbers" refers to dialing numbers that have been randomly or sequentially generated. Thus, under the plain language of

⁵ See, e.g., Comments of Varolii Corporation, CG Docket No. 02-278 at 2 (Nov. 15, 2012) ("Varolii Comments"); Comments of U.S. Chamber of Commerce, CG Docket No. 02-278 at 9-10 (Nov. 15, 2012) ("Chamber Comments").

⁶ 47 U.S.C. § 227(a)(1); see also 47 C.F.R. § 64.1200(f)(1).

the TCPA, predictive dialers that do not have the “capacity” to generate and dial random or sequential numbers are excluded from the definition of an autodialer.⁷

The plain English meaning of “capacity” is “ability,”⁸ and today’s predictive dialers have no number-generating abilities (sequential, random, or otherwise) – they merely dial numbers that have been entered into them.⁹ As Noble Systems Corporation (“Noble”) confirms, “the predictive dialers used by [Noble] and its customers, and generally used throughout the industry, do not come equipped with random or sequential number generating software.”¹⁰ The Commission should recognize that such equipment is not an autodialer, especially when used to place non-telemarketing, informational calls.

The plain language of the TCPA also requires that, to be considered an autodialer, equipment must have an actual, present capacity, *i.e.*, the *current* ability to generate and dial random or sequential numbers without additional modifications to the equipment.¹¹ Specifically, autodialers include only equipment that “has the capacity . . . to store or produce telephone numbers to be called, using a random or sequential number generator.”¹² As the U.S. Chamber of Commerce recognizes, Congress’s choice of the present tense “has the capacity” instead of the

⁷ Petition at 5-6.

⁸ Oxford English Dictionary (2012) (defining “capacity” as “[t]he power, ability, or faculty for anything in particular”).

⁹ *See, e.g.*, Comments of CenturyLink, CG Docket No. 02-278 at 3 (Nov. 15, 2012) (“CenturyLink Comments”).

¹⁰ Comments of Noble Systems Corporation, CG Docket No. 02-278 at 8 (Nov. 15, 2012) (“Noble Comments”).

¹¹ *See, e.g.*, Chamber Comments at 9 (explaining that the plain language of the TCPA “excludes equipment [that], only with substantial subsequent modifications, would gain the ability to store or produce randomly or sequentially generated numbers, and then to dial those numbers”); Varolii Comments at 2 (“Based on the plain language of the TCPA, it follows that telephone systems or equipment that do not have the current ability to generate and dial ‘random or sequential numbers’ are excluded from the definition of an autodialer.”).

¹² 47 U.S.C. § 227(a)(1) (emphasis added).

future tense “will have the capacity,” is informative.¹³ Thus, equipment should only be considered an autodialer if, *at the time of use*, it has the ability to generate and dial random or sequential numbers without first being technologically altered. Equipment meeting this standard has random or sequential number generation and dialing as a functioning feature – one that can be used readily and without further software or device changes (*e.g.*, without the installation or modification of software or hardware) – even if the feature is turned “off” at the time of use.¹⁴ The Commission should reject claims that some theoretical, future ability to generate and dial random or sequential numbers is sufficient to qualify equipment as an autodialer.¹⁵ Congress could have passed language that looked to a theoretical future capacity simply by changing the verb tense. It did not.

Furthermore, to avoid absurd results, the Commission must interpret capacity as a current ability. For example, if capacity were interpreted broadly to encompass any theoretical, future ability to store or produce randomly or sequentially generated lists of numbers (*i.e.*, with different software or hardware), all smartphones and computers would fall within the TCPA’s autodialer definition.¹⁶ As a result, callers could be exposed to TCPA liability simply for

¹³ *See* Chamber Comments at 10.

¹⁴ Therefore, if a caller merely has to “flip a switch” to generate and dial random or sequential numbers, the device would still be an autodialer, even if the switch or feature is turned off at the time the call is made.

¹⁵ *See, e.g.*, Comments of Robert Biggerstaff, CG Docket No. 02-278 at 15-16 (Aug. 29, 2012) (contending that “‘capacity’ expressly includes a capabilit[y] realized if a device can be ‘used in conjunction with other equipment.’”); Comments of Consumer Litigation Group, CG Docket No. 02-278 at 1 (Aug. 31, 2012) (“[T]echnology should continue to be characterized as [an autodialer] if it *could* be used as a random or sequential number generator.”).

¹⁶ *See* Varolii Comments at 3; Comments of American Financial Services Association, CG Docket No. 02-278 (Nov. 26, 2012) (“AFSA Comments”). Simple software can be loaded onto most smartphones to allow them to generate random or sequential numbers, and then dial those numbers.

misdialing a wireless telephone number, as aggressive Plaintiffs' lawyers have proved all too willing to file abusive TCPA suits in the hopes of a payout.¹⁷

The Commission should also reject Gerald Roylance's erroneous reading of the autodialer provision. He contends that "the reasonable interpretation of ATDS has two prongs (storing or producing telephone numbers)"¹⁸ and that "the bad English/comma-spliced phrase about number generators only applies to the producing prong."¹⁹ As noted above, autodialers must, in part, have the capacity "to store or produce telephone numbers to be called, using a random or sequential number generator."²⁰ Roylance argues that autodialers only need to store numbers to be called; they do not need to store or produce such numbers using such a number generator.²¹ Not only does Roylance misunderstand comma splices,²² he essentially contends that any device with an address book or speed dialing function – including a traditional telephone – is an autodialer because it is capable of storing numbers. Roylance's argument illustrates perfectly the pitfalls of an overly broad interpretation of autodialer and capacity.

¹⁷ See, e.g., Petition at 14-16.

¹⁸ Comments of Gerald Roylance, CG Docket No. 02-278 at 2 (Nov. 15, 2012) ("Roylance Comments").

¹⁹ *Id.* at 2.

²⁰ 47 U.S.C. § 227(a)(1).

²¹ See Roylance Comments at 2.

²² A comma splice is the (erroneous) use of a comma to join two independent clauses. Neither the phrase "to store or produce telephone numbers to be called," nor the phrase "using a random number generator" are stand-alone clauses. Cf. R.W. Burchfield, Fowler's Modern English Usage at 162 (3d ed. 2004); William Strunk, Jr. and E.B. White, *The Elements of Style* (1918) ("Do not join independent clauses by a comma.") available at <http://xrl.us/bn3t6b>.

Contrary to arguments from a few TCPA plaintiffs,²³ many commenters agree that there is significant confusion in the industry surrounding the scope of the Commission’s prior rulings on predictive dialers.²⁴ This uncertainty is even chilling calls from parties that have obtained prior express consent. As DirecTV explains, although prior express consent is a defense in TCPA litigation, it is a costly defense to exercise.²⁵ This cost of defending a suit, coupled with the risk that an overeager plaintiffs’ attorney will sue, chills legitimate business activity. The U.S. Chamber of Commerce’s comments illustrate just how expensive the discovery process can be, even when a company has a valid consent defense.²⁶ In *Ryabyschuck v. Citibank (South Dakota) N.A.*, No. 11-cv-1236 (S.D. Cal. filed June 6, 2011), it still took nearly a year (and thousands of dollars) for the defendant to prevail – even though it had a valid consent defense. The plaintiff had even alleged in his original complaint that he had consented to receiving the calls, although he later removed those allegations and was able to clear the motion to dismiss stage (the defendant succeeded in having the case decided on summary judgment). The difficulty of prevailing on the consent defense illustrates the need for the Commission to clarify that companies can use predictive dialers to place non-telemarketing, informational calls.

²³ Comments of Joe Shields, CG Docket No. 02-278 at 1 (Nov. 15, 2012) (“Shields Comments”); Roylance Comments at 1; Comments of Robert Biggerstaff, CG Docket No. 02-278 at 1 (Nov. 15, 2012).

²⁴ Comments of Marketing Research Association, CG Docket No. 02-278 at 6 (Nov. 15, 2012) (“Marketing Research Association Comments”); Comments of DirecTV, CG Docket No. 02-278 at 7 (Nov. 15, 2012) (“DirecTV Comments”).

²⁵ DirecTV Comments at 1-2.

²⁶ Chamber Comments at 6 n.30.

B. Many Commenters Also Agree that the Legislative History of the TCPA Reveals that Congress Never Intended to Restrict Non-Telemarketing, Informational Use of Predictive Dialers.

Many commenters recognize that the legislative history of the TCPA demonstrates that the autodialer restriction is targeted at telemarketing calls, not informational calls. For example, as the Marketing Research Association explains, “[t]he Congressional sponsors . . . stated that the TCPA was focused on the use of the telephone (and associated technology) when such use is designed to encourage or sell products or services.”²⁷ Likewise, Varolii Corporation notes that “Congress enacted the TCPA to address no more than the use of automated equipment to engage in telemarketing.”²⁸ In targeting telemarketing calls, Congress did not intend for the TCPA “to be a barrier to the normal, expected or desired communications between businesses and their customers.”²⁹

As Congress explained, the moving force behind the TCPA was that “[t]he use of automated equipment to engage in telemarketing [wa]s generating an increasing number of consumer complaints.”³⁰ Increased complaints were traced to “two sources: the increasing number of telemarketing firms in the business of placing telephone calls, and the advance of technology which makes automated phone calls more cost-effective.”³¹ In passing the TCPA, Congress intended to “target . . . calls that [we]re the source of the tremendous amount of

²⁷ Marketing Research Association Comments at 5 (citing H.R. Rep. No. 102-317 (1991); 137 Cong. Rec. S9874 (daily ed. July 11, 1991) (statement of Sen. Hollings); 137 Cong. Rec. 518317 (daily ed. Nov. 26, 1991) (statement of Sen. Pressler)).

²⁸ Varolii Comments at 3 (internal citations omitted).

²⁹ H.R. Rep. No. 102-317 (1991).

³⁰ *See, e.g.*, Sen. Rep. No. 102-178, at 1 (1991), reprinted in 1991 U.S.C.C.A.N. 1968, 1969; 137 Cong. Rec. 35302 (1991) (“The compromise gives the public a fighting chance to start to curtail unwanted telemarketing practices.”).

³¹ *Id.*

consumer complaints – telemarketing calls placed to the home.”³² Congress was also particularly concerned by the threat that computerized telephone sales calls posed to public health and safety. When telemarketers used automated equipment to dial random or sequential telephone numbers, they could tie “up all the lines of a business and prevent[] outgoing calls.”³³ Likewise, such randomly or sequentially dialed numbers tied up emergency lines and prevented true emergency calls from reaching emergency services.³⁴

As CI explained in the Petition, Congress explicitly acknowledged that it did not intend to prohibit certain non-telemarketing, informational calls. For instance, Congress explained that the Act was not intended to prevent business from using predictive dialers to deliver account-related information to customers.³⁵ Indeed, the legislative history recognizes that there are certain classes of helpful calls that consumers do not mind receiving and that Congress did not pass the legislation to prohibit, such as a bank contacting a customer about his or her credit card.³⁶ Thus, the legislative history of the TCPA shows that it targets telemarketing calls and is not intended to prevent businesses from making non-telemarketing, informational calls to customers.

³² 137 Cong. Rec. 18123 (1991).

³³ *See, e.g.*, S. Rep. No. 102-178, at 1-2 (“Telemarketers often program their systems to dial sequential blocks of telephone numbers, which have included those of emergency and public service organizations, as well as unlisted telephone numbers.”).

³⁴ *See, e.g.*, 137 Cong. Rec. 35303 (1991); 137 Cong. Rec. 30821 (1991).

³⁵ *See, e.g.*, Petition at 7; 137 Cong. Rec. 35302 (1991) (describing the TCPA as allowing the Commission to exempt certain types of calls, including calls “to leave messages with consumers to call a debt collection agency to discuss their student loan”); *id.* at 35304 (“Calls informing a customer that a bill is overdue, or a previously unstocked item is now available at a store are clearly not burdensome, and should not be prohibited.”).

³⁶ *See* 137 Cong. Rec. 30817-18 (1991).

C. The TCPA Provides Ample Authority for the Commission to Distinguish Between Telemarketing Calls and Non-Telemarketing, Informational Calls in Clarifying the Definition of Autodialer.

To the extent that the Commission is concerned about facilitating abusive telemarketing practices, many commenters agree that the Commission can distinguish between telemarketing calls and non-telemarketing, informational calls when it clarifies the meaning of “capacity.”³⁷ In fact, the Commission made a similar distinction between telemarketing and informational calls for purposes of requiring prior express written consent in the *Robocall Report and Order*.³⁸ In that decision, the Commission required prior express written consent for telemarketing calls to prevent telemarketing abuses, even though the text of the TCPA does not mention a written consent requirement.³⁹ Indeed, the Commission explicitly refused to adopt an in-writing requirement for informational calls because “it would unnecessarily restrict consumer access to information.”⁴⁰ Just as the Commission distinguished between informational and telemarketing calls in clarifying the definition of prior express consent, the Commission can distinguish between informational and telemarketing calls in clarifying the definition of autodialer.⁴¹

Making this distinction will facilitate innovative non-telemarketing, informational uses of predictive dialers and other consumer-friendly technologies while still preventing harm from unwanted telemarketing calls. Contrary to arguments from Joe Shields, informational calls are

³⁷ See, e.g., Comments of Global Connect LLC, CG Docket No. 02-278 at 2 (Nov. 15, 2012) (“Global Connect Comments”); Comments of Global Tel*Link Corporation, CG Docket No. 02-278 at 3 (Nov. 15, 2012); Chamber Comments at 12 (Nov. 15, 2012).

³⁸ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, FCC 12-21 (rel. Feb. 15, 2012) (“*Robocall Report and Order*”).

³⁹ *Id.* ¶ 21.

⁴⁰ *Id.*

⁴¹ CI notes that the TCPA and the Commission’s TCPA rules also do not define “capacity.” Nor do they define (or even reference) predictive dialers.

far less invasive than telemarketing calls.⁴² Companies contacting consumers with informational calls often have preexisting relationships with consumers. Moreover, because of the non-telemarketing, informational purpose of the call, callers do not have the same incentive to bombard consumers that telemarketers do. For callers placing non-telemarketing, informational calls, every random number dialed wastes valuable resources.⁴³ For telemarketers, on the other hand, every random number dialed is another potential sale. In addition to lacking this incentive to barrage consumers, informational callers, unlike telemarketers, provide a service that consumers are increasingly demanding.⁴⁴

The Commission also does not need to worry that it will allow an end-run around the TCPA's autodialer restrictions. For example, the Commission can recognize that loading a predictive dialer with randomly or sequentially generated numbers would render the predictive dialer an autodialer. It can also clarify that a predictive dialer, without the current ability to randomly or sequentially generate numbers itself, has the required capacity when combined with software or equipment that randomly or sequentially generates numbers. Without the connection of such software or equipment, however, the predictive dialer would not have the requisite capacity to store or produce randomly or sequentially generated numbers.

⁴² Shields Comments at 2 (“Simply because the calls are not telemarketing calls does not lessen the cost to the recipients or lessen the invasion of privacy caused by the automated calls.”).

⁴³ See, e.g., Reply Comments of Portfolio Recovery Associates, CG Docket No. 02-278 at 1-2 (Sept. 10, 2012) (“Wrong party contacts are costly and time-wasting for any business that contacts consumers by telephone.”).

⁴⁴ See Chamber Comments at 3 (“[C]onsumers are increasingly demanding the ability to receive real-time, non-marketing information from the companies with which they do business.”).

III. COMMENTERS OVERWHELMINGLY SUPPORT THE USE OF PREDICTIVE DIALERS FOR INNOVATIVE, NON-TELEMARKETING PURPOSES.

As the comments demonstrate, predictive dialers provide significant benefits to both consumers and businesses by allowing businesses with a legitimate need to contact large numbers of specific customers and accountholders to do so accurately, efficiently, and cost-effectively. Among the many services already provided using predictive dialers, companies contact consumers regarding time-sensitive information about home appointments, package deliveries, transportation delays, and data breach notifications. Likewise, universities use predictive dialers to remind students about deadlines for aid applications, payments, or registration; warnings about class cancellations due to lack of payment; and alerts for school closures.⁴⁵ Indeed, Hurricane Sandy showed the potential for predictive dialers to aid companies in using live representatives to contact consumers quickly after a natural disaster – as Global Connect explained, predictive dialers enabled the company to make over 40 million calls during the Hurricane on behalf of local municipalities and utility companies.⁴⁶

Without predictive dialers, it would be cost-prohibitive for companies to provide many of these services. According to Noble, predictive dialers increase the efficiency of live representatives in reaching customers by at least 200 to 300 percent: “an agent in a manual call center achieves only 15 to 20 productive minutes – that is, minutes spent in conversation with

⁴⁵ Comments of National Association of College and University Business Officers & Coalition of Higher Education Assistance Organizations, CG Docket No. 02-278 at 1 (Nov. 15, 2012) (“NACUBO/COHEAO Comments”).

⁴⁶ Global Connect Comments at 1.

intended persons – each hour.”⁴⁷ In comparison, a modern predictive dialer increases “the average agent’s productive time . . . to as much as 40 to 57 minutes per hour.”⁴⁸

Americans “are increasingly demanding the ability to receive real-time, non-marketing information from the companies with which they do business,”⁴⁹ and they continue to adopt wireless devices as their primary (and, increasingly, only) telephones. As commenters recognize, the number of wireless-only households continues to increase.⁵⁰ This trend is even more pronounced among the youth: “[c]ollege students and other young people are among the most likely to forgo a landline telephone altogether and rely only on cell phones.”⁵¹ This wireless-only adoption rate can be especially problematic for institutions of higher education, which “find that, as students have become inured to email communications, they often need to call students to provide them with necessary and timely information.”⁵² Confirming that today’s predictive dialers are not autodialers, particularly when used for non-telemarketing, informational calls, will allow consumers that primarily rely on wireless phones to receive the information that they desire.

Predictive dialers also significantly enhance consumer privacy compared to manual dialing. They aid companies in complying with consumer protection laws by allowing them to keep a record of how often they call and what time of day they call. They also ensure that

⁴⁷ Noble Comments at 3.

⁴⁸ *Id.*

⁴⁹ Chamber Comments at 3.

⁵⁰ Marketing Research Association Comments at 10; Chamber Comments at 2 (citing Centers for Disease Control and Prevention, Stephen J. Blumberg & Julian V. Luke, *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2011*, at 2 (June 2012)).

⁵¹ NACUBO/COHEAO Comments at 2.

⁵² *Id.* at 1.

companies do not make improper calls to numbers on Federal, state, or entity-specific do-not-call lists.⁵³ Furthermore, predictive dialers significantly reduce the number of misdialed calls by eliminating human dialing errors. Predictive dialers can even enable consumer-specific calling preferences (*i.e.*, contacting a consumer at his or her work telephone number during the day and home telephone number at night). They can also help callers to allow a specified amount of time to lapse between calls and aid in making timely scheduled callbacks that are requested by a customer.

Predictive dialers provide these privacy (and convenience) benefits without the risks associated with prerecorded robocalls because predictive dialers require the use of live representatives. Whereas prerecorded robocalls can be placed to thousands of consumers in just a few minutes, calls placed using a predictive dialer are limited by the number of live representatives available. For this reason, companies using predictive dialers also do not tie up phone lines in the way prerecorded robocalls do.

By requiring live representatives, the use of predictive dialers for non-telemarketing, informational purposes also helps to create jobs for U.S. workers who are most familiar with American culture and American English.⁵⁴ Although American workers are often paid a premium over foreign workers, this increased pay is more cost-effective when American workers spend most of their time talking on calls, as predictive dialers allow them to do.⁵⁵ If, however, American workers have to spend a significant amount of time dialing calls, waiting for the telephone to ring, and receiving busy signals and answering machines, then it becomes more difficult to justify the increased costs. Companies could be forced to outsource additional jobs if

⁵³ *See, e.g.*, DirecTV Comments at 4; Noble Comments at 4 n.6.

⁵⁴ Noble Comments at 6.

⁵⁵ *Id.*

they are unable to maximize worker efficiency,⁵⁶ contrary to the Chairman's efforts to bring 100,000 call center jobs back to the U.S as part of the Jobs4America initiative.

IV. MANY COMMENTERS AGREE THAT GRANTING THE CI PETITION WILL NOT ALLOW ANY NEW UNWANTED CALLS.

Granting the CI Petition and clarifying that today's predictive dialers are not autodialers will not authorize any new unwanted calls. Live representatives are already allowed to dial customers manually for non-telemarketing, informational purposes.⁵⁷ Predictive dialers merely connect these live representatives with consumers while weeding out unproductive calls. As CenturyLink explained in its comments, "a Commission declaration allowing the use of predictive dialers generally in the context of non-marketing communications would affect only the mechanics of how some calls are made, not whether the calls are made at all or the number of calls made."⁵⁸

Granting the CI Petition also will not provide any new ability for parties to send unwanted text messages.⁵⁹ Companies can already send non-telemarketing, informational text messages manually. Such callers do not have an incentive to flood customers with texts, as discussed above. Furthermore, wireless carriers also limit the ability of companies to inundate customers with text message spam.⁶⁰

⁵⁶ *Id.*

⁵⁷ *See* AFSA Comments at 4.

⁵⁸ CenturyLink Comments at 4.

⁵⁹ *Contra* Comments of Gerald Roylance, CG Docket No. 02-278 at 2 (Nov. 15, 2012).

⁶⁰ For example, the Mobile Marketing Association's U.S. Consumer Best Practices require prior express consent to send messages to mobile devices. Mobile Marketing Association, *U.S. Consumer Best Practices*, Version 7.0, at 4 and § 1.4-1 (Oct. 16, 2012), available at <http://www.mmaglobal.com/uploads/Consumer-Best-Practices.pdf>.

Many calls are also regulated under dozens of separate Federal and state laws and regulations. For example, consumers have extensive protections from telemarketing calls based on the National Do Not Call registry as well as state and company-specific do-not-call lists. Likewise, debt collection practices are already regulated under the Fair Debt Collection Practices Act and dozens of other Federal and state consumer protection laws. The Commission does not change any of these protections by granting the CI Petition.

V. CONCLUSION

For the foregoing reasons, the Commission should declare that predictive dialers that are not used for telemarketing purposes and do not have the current ability to generate and dial random or sequential numbers are not autodialers under the TCPA and the Commission's TCPA rules.

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