

March 22, 2013

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

Re: **Ex Parte Notice of SoundBite Communications, Inc. Re: Petition for Expedited Declaratory Ruling Filed by Cargo Airline Association CG Docket No. 02-278**

Dear Ms. Dortch:

On March 21, 2013, Monica Desai of Patton Boggs, LLP, counsel to SoundBite Communications, Inc. (“SoundBite”), John Tallarico, Vice President of Product Management for SoundBite (who participated by phone), met with individuals from the Consumer and Governmental Affairs Bureau, including: Mark Stone (Deputy Bureau Chief); Deborah Broderon (Legal Advisor to the Bureau Chief); John B. Adams (Acting Deputy Chief, Consumer Policy Division); Kurt Schroeder (Acting Chief, Consumer Policy Division); Lynn Ratnavale (Attorney Advisor), and from the Office of General Counsel, including: Diane Griffin Holland (Deputy Associate General Counsel, Administrative Law Division); and Marcus Maher (Assistant General Counsel).

SoundBite, founded in 2000, is a publicly traded company headquartered in Bedford, Massachusetts, with additional offices in Irvine, Dallas, Arlington and London, UK. SoundBite specializes in customer communications and works with a wide range of other companies, including banks, retailers, utilities, and wireless operators, to send text messages and other messages on their behalf.

During the meeting, SoundBite discussed its support for the Petition for Expedited Declaratory Ruling filed by Cargo Airline Association (“CAA”) which requests that the Commission clarify that, in certain limited circumstances, “prior express consent” to receive autodialed and prerecorded, non-telemarketing customer service calls (including text messages) can be passed through to an associated third party or intermediary under the Telephone Consumer Protection Act (“TCPA”). Specifically, CAA requests the Commission to confirm that delivery companies can rely on representations from package senders that a package recipient demonstrated “prior express consent” under the TCPA to receive notifications regarding a particular shipment by

providing the package sender with a wireless telephone contact number.<sup>1</sup> SoundBite agrees with CAA, that by providing a package sender with a wireless contact telephone number, the package recipient has authorized calls to that number regarding the delivery, whether by the delivery company or by any other member of the supply chain that facilitates delivery. SoundBite also supports CAA's alternative request for the Commission to declare that package delivery notifications are exempt from the TCPA's restriction on autodialed and prerecorded calls and messages to wireless telephone numbers.

SoundBite explained that one of its clients is a US-based global package delivery company, delivering more than 16 million packages and documents to approximately 195 countries daily. For this company, customer communication – including providing specific information regarding when and where a customer should expect a delivery – is critical. As is true with most delivery companies, the relationship between the delivery company and the recipient is not always direct, and instead usually involves a third party. In the meeting, SoundBite used the example of ordering a product from eBay or Amazon as a way to demonstrate the way in which a third party typically becomes involved in the delivery process. In such a scenario, a consumer usually orders the product and provides payment credentials and delivery information to the merchant. Typically, the merchant then engages with any number of delivery services to get the product to its destination in a timely manner.

SoundBite described that in the United States, potential ambiguity related to the TCPA compounded by the threat of frivolous class action lawsuits, combine to make it difficult for a delivery company to contact a consumer to timely and efficiently inform them that a package will be delivered at a particular time, unless the consumer has directly provided that contact information to the delivery company (as opposed to the merchant). The options for notification are very narrow: a consumer can set-up a profile with the delivery company for all package deliveries which can be cumbersome and time consuming; the consumer can go through a separate and potentially cumbersome opt-in process after, for example, receiving a tracking notification by email; or the delivery company can contact the merchant who in turn can contact the consumer, which is both impractical and time-insensitive. The result is lower levels of customer communications and consumer frustration. SoundBite expressed its belief that if the FCC grants the CAA petition, consumer satisfaction would be increased. A purchaser of a product, who presumably is looking forward to receiving the product ordered and who provided specific contact information expressly consenting to receiving information regarding delivery of that product, would not have to go through burdensome hurdles in order to receive basic status information about package delivery.

SoundBite compared its experience in 21 other countries where it provides this type of package delivery notification on behalf of its clients. In each of these other countries, consumers do not need to go through the additional hurdles described above in order to receive package delivery

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<sup>1</sup> See Cargo Airline Association, Petition for Expedited Declaratory Ruling, CG Docket No. 02-278 (filed Aug. 17, 2012) (“CAA Petition”); see also Reply Comments of Cargo Airline Association, CG Docket No. 02-278 (filed November 30, 2012).

information, and SoundBite does not need to obtain separate consent for the package delivery company when consent was already provided to the merchant. As an example, SoundBite pointed to the United Kingdom, which takes the perspective that the consumer understands that their phone number is going to be used for delivery notification at the time the consumer provides contact information. The delivery company does not need to obtain separate consent apart from the merchant to provide delivery information. As a result, in every other country outside of the United States in which SoundBite operates, consumers who provide their wireless phone numbers in connection with ordering a package receive calls or texts with basic delivery status information, such as “your delivery is scheduled for 5pm,” or “Your package has been delayed,” or “Your package has been delivered,” without being forced to go through a separate, cumbersome process to receive such notices.

During the meeting, SoundBite advocated that a narrow ruling confirming CAA’s request would be another step in ensuring the TCPA is doing what it was designed to do – protect consumers from unwarranted and costly intrusions of privacy by telemarketers – and not being used as a vehicle to promote frivolous lawsuits. SoundBite explained how the costs of defending TCPA lawsuits are tremendous, causing millions of dollars to be diverted to litigation fees that could be spent on growing business and creating jobs. SoundBite also explained that any delivery message can be opted-out by the consumer, if the consumer does not want to receive future package delivery information.

In addition, SoundBite elaborated on several arguments put forth by CAA in its Petition and explained why they justify a favorable ruling by the Commission:

- **A favorable ruling is sound public policy and will provide certainty to delivery companies that sending auto-dialed, prerecorded delivery notifications to wireless numbers is lawful.** Delivery companies must rely on the information provided by the sender to complete the transaction. It would be impossible for delivery companies to provide millions of package notifications each day if they first had to obtain consent independently from each package recipient. As CAA explained, SoundBite strongly agrees that manually dialing a wireless telephone number to provide a notification – or even seek separate consent – is not an option due to the sheer volume of packages delivered each day. The volume of daily calls that would be required to provide time-sensitive package notifications using live representatives would make providing the service cost-prohibitive. Instead, a confirmation by the FCC that by giving a wireless phone number to a merchant related to the purchase of an item that will be delivered, the consumer has authorized calls or texts to that number regarding delivery information both by the sender and by a third party that delivers the package on behalf of the sender. In this way, consumers would obtain desired delivery information without opening the door up to unwarranted calls and messages outside of delivery notifications.
- **A favorable ruling would not undermine the intent of the TCPA.** Package delivery notifications do not trigger the concerns that Congress was attempting to address through the TCPA, such as dialing random or sequential numbers, endangering public

safety by tying up blocks of telephone lines, and protecting consumer privacy. Instead, delivery notifications are targeted to specific recipients who specifically provided a wireless contact number related to a specific package. Notifications involve the shipment, arrival, or scheduled delivery date of a package; failed attempts to deliver specific packages; or that a package is available for pickup at a specific carrier location. There is no invasion of privacy resulting from delivery notifications because they are connected solely to packages already being delivered to a designated address.

- **A favorable ruling benefits consumers.** Time-sensitive, non-telemarketing package delivery notifications provide a number of significant benefits to consumers. Package delivery notifications maximize convenience for package recipients, facilitate the timely delivery of packages and reduce delivery delays, and allow delivery companies to provide services in an efficient, cost-effective manner.
- **A favorable ruling would be consistent with the recent *Robocall Report and Order*.** In the recent *Robocall Report and Order*,<sup>2</sup> the Commission highlighted the benefits of informational calls to wireless telephone numbers – including package delivery calls – and affirmed that it did not want to “impede” or “unnecessarily restrict” these “highly desirable” calls to consumers.

SoundBite concluded the meeting by encouraging the Commission to act promptly to rule favorably on CAA’s Petition to allow delivery notifications via third party consent or, alternatively, to exempt package delivery notifications from the TCPA’s restriction on autodialed and prerecorded calls and messages to wireless telephone numbers.

Respectfully submitted,



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<sup>2</sup> 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*”).

cc:

John B. Adams  
Deborah Broderson  
Diane Griffin Holland  
Sean Lev  
Marcus Maher  
Kris Monteith  
Lynn Ratnavale  
Kurt Schroeder  
Mark Stone