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November 26, 2013

ELECTRONIC FILING

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

Re: Notice of Ex Parte Presentation
CG Docket No. 02-278.

Dear Ms. Dortch:

On Wednesday, November 20, 2013, the undersigned and Genevieve C. Schmitt of this law firm and Anthony C. Kolker, CEO of Dialing Services, Inc. (“Dialing Services”) met with Mark Stone, Kurt Schroeder, Aaron Garza, and Richard Smith of the Consumer and Governmental Affairs Bureau. Richard Hindman and Claire Wack of the Enforcement Bureau attended the meeting as well. The purpose of the meeting was to discuss the Petition for Declaratory Ruling filed by Club Texting, Inc., CGB Docket No. 02-278 (“Petition”), that is presently before the Bureau. During the meeting, we expressed support for the position set forth in Club Texting’s petition, namely that operators of hosted messaging/broadcasting platforms should be shielded from liability for violations of the Telephone Consumer Protection Act (“TCPA”) committed by their clients (i.e., those parties using the platform to transmit a message).

During the meeting, we specifically discussed the following:

1. Background Info. Explanation of the hosted messaging services provided by Dialing Services and its level of involvement in providing those services.
2. Legislative Intent. We discussed our opinion that Congress did not intend to saddle operators of messaging/broadcasting platforms with liability arising out of their clients’ use of their platforms. We also discussed the similarities between hosted messaging platforms and fax broadcasters, and we discussed the Junk Fax Protection Act of 2005 and the Commission’s implementing regulations. We noted how in the Commission’s regulations implementing the Junk Fax Protection Act of 2005, the Commission specifically opted to shield broadcasters from liability for the actions of their clients provided they do not demonstrate a high degree of involvement in, or actual notice of, the

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unlawful activity and fail to take steps to prevent such violations. This is the protection that the Club Texting petition seeks and Dialing Services supports this position.

3. Consequences. We discussed the illogical consequences that would follow if voice message broadcasters/platform providers are held liable for violations of the TCPA by their clients. Such liability would likely extend to do-not-call violations, time of day restrictions, caller identification requirements, etc. Additionally, it will expose operators of hosted messaging/broadcasting platforms to the increasing amount of class action litigation pertaining to the TCPA.

Please contact me with any questions that you may have.

Very truly yours,



Mitchell N. Roth

MNR:gcs

cc: Mark Stone
Kurt Schroeder
Aaron Garza
Richard Smith
Richard Hindman
Claire Wack