

VIA ELECTRONIC DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room TWA325
Washington, DC 20554

Re: CG Docket No. 02-278

Dear Ms. Dortch:

The Marketing Arm's Wireless practice, formerly ipsh!, has been a leader in mobile marketing with Fortune 500 companies for over a decade. We strenuously follow the TCPA rules along with best practices as recommended by the CTIA and MMA. We run national promotions and CRM mobile cadences for recognized retailers, CPG, insurance, travel, telecom, restaurants and pharmaceutical companies. Many of our clients, in partnership with The Marketing Arm, have spent years building SMS databases based on historical TCPA opt-in requirements. We ask for clarification on whether consumers, who opted in for SMS messaging in compliance with existing laws prior to October 16th, have to re-optin consumers with the new disclosures per the new TCPA rules. If the answer to the above is no, we also ask whether consumers who were asked to re opt-in but declined, can subsequently receive SMS messages under their prior opt-in.

Generally, our clients have chosen the conservative path and attempted to re-optin consumers into SMS databases for anyone opted in prior to October 16th. The results of re-opting in have been disastrous. Databases that cost millions of dollars and took years to build were reduced by 65% to 80% during the re-optin process. National sweepstakes and promotional programs were disrupted and either cancelled or mothballed. These are harsh consequences, effectively so that consumers are able to re-optin with the new disclosure requirements to receive messages "at this number," "via an automated dialing system" and with "no purchase required", disclosures that are both confusing to the consumer and do not add much value or consumer protection in connection with mobile marketing SMS programs.

The new TCPA rules have also cast doubt on the opt-in process in connection with in-stadium, online, TV and POS calls to action. Our clients are hesitant to implement a program where for example the consumer sees a call to action "Text OFFERS to 12345 to receive mobile offers" that includes all the required disclosures and is followed by a request to opt-in via text message (i.e. the "double opt-in") because there is uncertainty whether the receipt of the request to opt-in text message is receipt of a message without express written consent. We need clarification that so long as you include all the required disclosures in your calls to action and utilize the double opt-in process that you will be in compliance with the new TCPA rules.

Our Fortune 500 clients have taken this risk averse approach because of the various frivolous, but costly to defend, class action lawsuits for such mundane actions as whether a company should or should not respond with an opt-out confirmation message. However, this risk averse

approach to avoid frivolous lawsuits is affecting companies economically, who have always abided by the TCPA rules and MMA guidelines.

We agree and whole heartedly support the TCPA guidelines to control spamming, surely our Fortune 500 clients do as well. Our client's customers remain free at any time to revoke their consent to receive marketing messages for any reason and any time and these customers have provided express written consent prior to October 16th.

In closing, we ask for a ruling on opt-ins prior to October 16th and clarity on established double opt-in practices in response to calls to action.

Sincerely,

Jesse Smith

Sr. Manager Business Affairs, on behalf of The Marketing Arm's Wireless practice.