

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

**Filed December 19, 2013**

In the Matter of ) CG Docket No. 02-278  
Rules and Regulations Implementing the )  
Telephone Consumer Protection Act of 1991 )

**COMMENTS OF THE AMERICAN INSURANCE ASSOCIATION  
IN SUPPORT OF THE PETITION FILED BY  
THE PROFESSIONAL ASSOCIATION FOR THE CUSTOMER EXPERIENCE (PACE)**

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The American Insurance Association (AIA) is writing in support of the petition filed by the Professional Association for Customer Engagement (PACE) for a declaratory ruling related to the Telephone Consumer Protection Act (TCPA) (CG Docket No. 02-278) (Pace Petition). The PACE Petition requests the Federal Communications Commission (Commission) to make two important clarifications relating to the definition of an automatic telephone dialing system (ATDS) contained in the Commission's rules issued pursuant to the TCPA .

AIA represents approximately 300 major U.S. insurance companies that provide all lines of property-casualty insurance to consumers and businesses in the United States and around the world. AIA members write more than \$117 billion annually in U.S. property-casualty premiums and approximately \$225 billion annually in worldwide property-casualty premiums.

#### Background

The TCPA prohibits a person from initiating any telephone call that includes an advertisement or constitutes telemarketing, using an automatic telephone dialing system to a cell phone without the prior express consent of the called party. 47 U.S.C. § 227(b)(1)(A)(iii). Under the Commission's recent amendments to its TCPA rules, express written consent of the called party is required before such calls may be made to cell phones. 47 C.F.R. § 64.1200(a)(2). The Commission's rules currently define an ATDS 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. 47 U.S.C. § 227(a)(1); 47 C.F.R. § 64.1200(f). There is little Commission guidance on the scope of this definition. Moreover, recent court rulings have created confusion as to what features determine whether equipment is an ATDS. *Cf. Nelson v. Santander Consumer USA, Inc.*, 2013 U.S. Dist. LEXIS 40799 (W.D. Wis. Mar. 8, 2013) and *Hunt v. 21st Mortg. Corp.*, 2013 U.S. Dist. LEXIS 132574 at 11 (N.D. Ala. Sept. 17, 2013).

In order to eliminate the confusion that presently exists, AIA supports PACE's request that the Commission issue guidance clarifying that (1) a system is not an ATDS under the TCPA unless it has the capacity to initiate phone calls without human intervention, and (2) the term "capacity" be interpreted to mean what the system is able to do when a call is made rather than what it could do if it were modified.

#### Discussion

Insurers recognize that there is strong public support for limitations on telemarketing. However, AIA also believes that the current confusion and uncertainty regarding what systems come within the definition of ATDS is having a significantly adverse effect on insurance policyholders. Insurers often contact policyholders to remind them of upcoming renewals,

potential lapses in coverage due to missed premium payments and the status of claims filed. While these types of contacts are not ordinarily subject to the restrictions of the TCPA and the Commission's rules, the discussion often turns to the topic of potential changes coverage or additional insurance products that should be considered by the policyholder as a result of new information or major life events, such as the purchase of a new home or car. Notwithstanding the benefits of these communications with customers, given the nature of the subject matter, it is likely that telephone contacts between insurance company representatives and clients may involve a discussion that could be interpreted as telemarketing under the TCPA and the Commission's rules. . As a result, insurers are put in the challenging position of trying to assess whether the system used to contact policyholders is an ATDS, thereby requiring representatives to narrow the scope of their conversations with policyholders.

Adopting the clarification of the scope of what constitutes an ATDS in the manner proposed by PACE will reduce uncertainty that companies are currently facing. As a result, such a clarification is in the best interests of consumers because it will enable them to discuss their unique situations with company representatives in order to meaningfully address their insurance needs. Moreover, such guidance will reduce the likelihood of costly and unduly burdensome litigation that is burgeoning due to varying interpretations of what is an ATDS from courts across the country.

#### Conclusion

Accordingly, AIA supports PACE's petition for declaratory relief under the TCPA and respectfully asks that the Commission grant the requested relief.