

Before the
UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:)	
)	
Petition for Expedited Declaratory)	CG Docket No. CG 02-278
Ruling Filed by Glide Talk, Ltd.)	
)	
)	

COMMENTS OF DIALING SERVICES, LLC IN SUPPORT
OF PETITION FOR EXPEDITED DECLATORY RULING
FILED BY GLIDE TALK, LTD.

Mitchell N. Roth
Genevieve C. Schmitt
ROTH DONER JACKSON, PLC
8200 Greensboro Drive, Suite 820
McLean, Virginia 22102
Tel: (703) 485-3535
Fax: (703) 385-3525

Dated: January 3, 2014

Counsel to Dialing Services, LLC

Before the
UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:)	
)	
)	
Petition for Expedited Declaratory Ruling Filed by Glide Talk, Ltd.)	CG Docket No. CG 02-278
)	
)	

COMMENTS OF DIALING SERVICES, LLC IN SUPPORT
OF PETITION FOR EXPEDITED DECLATORY RULING
FILED BY GLIDE TALK, LTD.

Dialing Services, LLC (“Dialing Services”), by counsel, hereby files its comments in response to the Public Notice dated December 2, 2013 issued by the Consumer and Governmental Affairs Bureau seeking comment on the Petition for Expedited Declaratory Ruling filed by Glide Talk, Ltd. and states the following in support of same.

I. INTRODUCTION AND SUMMARY

On October 28, 2013, Glide Talk, Ltd. (“Glide Talk”) petitioned the Federal Communications Commission (“Commission”) for an Expedited Declaratory Ruling seeking clarification on certain TCPA interpretation issues. The Commission solicited public comment on Glide Talk’s petition on December 2, 2013. As the Commission paraphrased, Glide Talk sought, among other items, clarification that Glide Talk is not the responsible party for violations of the TCPA when its users send messages through Glide Talk’s software (i.e., clarification that

Glide Talk does not “make” calls).¹ Dialing Services supports Glide Talk’s position that providers of transmission services should not be deemed to “make” calls under the TCPA.²

II. AS GLIDE TALK EXPLAINS, TECHNOLOGY PROVIDERS AND HOSTED PLATFORMS DO NOT *INITIATE* OR *MAKE* CALLS AS CONTEMPLATED BY THE TCPA.

47 C.F.R. § 64.1200(a)(1) prohibits a party from *initiating* any call to a cell phone using an automatic telephone dialing system (“ATDS”) or prerecorded message unless made for emergency purposes or with the prior express written consent of the called party. Similarly, 47 C.F.R. § 64.1200(a)(2) and (a)(3) prohibit a party from *initiating*, or causing to be initiated, a telemarketing call to a cell phone or residential line using an ATDS or prerecorded message unless made with the prior express written consent of the called party or the prior express consent of the called party when the call is made by or on behalf of a tax-exempt nonprofit organization.

Dialing Services agrees with Glide Talk’s contention that software providers or hosted platforms that provide transmission services do not *make* or *initiate* calls for the purposes of TCPA liability.³ The parties actually making the calls are the platforms’ users since they select the numbers to be called, control the content of the messages, and take affirmative action for the call to be transmitted. As Glide Talk contends, the platform provider is a mere conduit that enables message delivery and is not the maker of the call.⁴

III. HOLDING PROVIDERS OF TRANSMISSION SERVICES LIABLE FOR ITS CUSTOMERS’ CALLS RESULTS IN ILLOGICAL AND UNINTENDED CONSEQUENCES.

¹ See Public Notice, *Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Expedited Declaratory Ruling Filed by Glide Talk, Ltd.*, CG Docket No. CG 02-278, DA 13-220 (Dec. 2, 2013).

² Glide Talk Petition, at 15.

³ *Id.* at 13-15.

⁴ *Id.* at 15 (citing Petition for Declaratory Ruling of Club Texting, Inc., CG Docket No. 02-278, at 1 (filed Aug. 25, 2009)).

Imposing liability upon the providers of transmission services yields illogical results. First, hosted dialing platforms or providers of transmission services do not enjoy privity or any relationship with the call recipients to enable them to gain the requisite consent from the call recipients prior to the initiation of the calls. Privity, for the purposes of obtaining prior consent, exists exclusively between the transmission providers' users and the call recipients. The transmission services provider of the message, whether the message consists of text data or voice data, is merely a conduit. It follows, therefore, that the users are the culpable parties who *make* or *initiate* calls under the TCPA and not the providers of the transmission software or technology.

Moreover, holding providers of transmissions services liable runs contrary to the Commission's treatment of fax broadcasters who are not liable for TCPA violations provided they do not have a high degree of involvement in the broadcasting campaign. This is also consistent with the clarification sought by Club Texting, Ltd. ("Club Texting") in its Petition for Declaratory Ruling, filed August 25, 2009 ("Club Texting Petition"). In its Petition, Club Texting stated, "In light of the functional equivalence between text broadcasting and fax broadcasting, the Commission should clarify that text broadcasters, like fax broadcasters, are not "senders" of text messages under the TCPA."⁵ Dialing Services supports this contention.

The Commission should treat all providers of transmission services similarly regardless of whether they broadcast facsimile, text or voice files. They should be shielded from liability for TCPA violations when they are merely a conduit and lack involvement in the selection of the numbers to be called and the content of the text or prerecorded message.

Lastly, Dialing Services queries: if liability for calls without the requisite consent attaches to providers of transmission services, where does such liability end? Are providers of

⁵ Club Texting Petition, at 1.

transmission services liable for violations pertaining to do-not-call, caller ID violations, scripting requirements, time-of-day requirements, etc.? Such a result would certainly stymie innovation and serve as a barrier to the development of new technology.

III. CONCLUSION

In sum, Dialing Services strongly urges the Commission to grant the Glide Talk Petition, consistent with these comments.

Dated: January 3, 2014

Respectfully submitted,

DIALING SERVICES, LLC

By Counsel



Mitchell N. Roth
Genevieve C. Schmitt
ROTH DONER JACKSON, PLC
8200 Greensboro Drive, Suite 820
McLean, Virginia 22102
Tel: (703) 485-3535
Fax: (703) 385-3525
mroth@rothdonerjackson.com

Counsel to Dialing Services, LLC