

Ms. Marlene H. Dortch

Office of the Secretary

Federal Communication Commission

445 12th Street, SW, Room TW-A325

Washington, DC 20554

Re: Rules and Regulations Implementing of Telephone Consumer Protection Act of 1991

Notice of Proposed Rulemaking

CG Docket No. 02-278

Dear Ms. Dortch,

CallAssistant LC submits this letter as its reply comments to the Commission's Further Notice of Proposed Rulemaking in docket number 02-278. We applaud the Commission for opening this proceeding to harmonize the FCC and FTC rules under the Telephone Consumer Protection Act (TCPA) governing auto-dialed and prerecorded commercial telemarketing sales calls.

We believe that in 1991 Congress did not intend to restrict the development of technologies for outbound telemarketing that give consumers greater control and more relevant information. Instead, TCPA established policies to prevent intrusive computer-generated calls for which the called party has no means of "escape," in which the consumer is assaulted with a one-way communication without the ability to speak with a live operator or customer service representative. Since that time, telemarketing technology has come a long way and advancements have made customer interaction better and more efficient. The technology we are referencing enables human-to-human interaction and one-on-one contact with every call, throughout the entire call.

As a leading developer of this process, CallAssistant LC submits these reply comments to suggest that Commission clarification of the applicability of TCPA to operator-supervised calls using prerecorded call segments is appropriate. Specifically, the new technology deployed by CallAssistant and others enables

calling agents to interact with the recipient of a call using his or her own voice or by substituting appropriate audio recording of a response. A live agent using the system places a call to the consumer and hears the consumer greeting. In response to the greeting, the agent may elect to speak to the call recipient using his or her voice, or may press a button to play an appropriate recorded script segment. After the agent's response, the agent listens to the consumer customer's reply. After listening to the consumer's reply, the live agent again chooses whether to speak to the call recipient in his or her own voice, or another recording. ***At all times, even during the playing of any recorded segment, the agent retains the power to interrupt the recorded message and respond directly and personally to the consumer.*** Live agents hear every word spoken by the call recipient, and determine what is said and are able to respond; further a single agent always stays with a call from beginning to end.

The threshold TCPA issue is whether such operator-supervised prerecorded call segments are within the scope of the statute, which makes it unlawful to "initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes or is exempted by rule or order by the Commission under paragraph (2)(B)." 47 USC § 227(b)(1)(B).

47 USC § 227(b)(2)(B) authorizes the FCC to exempt classes of calls from the prohibition. Under its Rules (47 CFR § 64.1200(c)), the FCC has defined "telephone calls" subject to TCPA to exclude a call or message that is "made for a commercial purpose but does not include the transmission of any unsolicited advertisement" or is "to any person with whom the caller has an established business relationship at the time the call is made." For CallAssistant's clients, although a relatively small subset, some calling traffic includes outbound commercial telemarketing. We are therefore seeking clarification from the FCC in this proceeding that such human-to-human technology using pre-recorded audio segments is exempted under the original definition and premise for pre-recorded messages as defined in 1991.

We believe the availability of live agents to transmit personalized recorded segments, interactively with the consumer, and to which the called party can speak directly, avoids the public policy reasons upon which TCPA outlawed prerecorded telemarketing sales calls. Our position is that when new, consumer-friendly technologies are used that have live agents making outbound telemarketing calls and interacting with customers, these calls should not be categorized as "an artificial or prerecorded voice to deliver a message" under the statute for the following reasons:

- Newly developed telemarketing technology operates with a live agent/representatives participating on every telemarketing call,
- Consumers always have a "human to human" interaction using this system,
- Consumers can always interrupt and get customized answers to their inquiries,

- Consumers can always request, during any period of the call, to be placed on the Do Not Call Registry,
- Consumers can always interact with a live call representative at any time during the call for any reason.
- Human to human interaction, while still using a pre-record voice, provides higher consumer satisfaction, and call quality and 100% guarantees on disclosures to consumers.

Because these technologies allow for control by the customer and the agent, and since consumers participate interactively in the entire call, these calls do not violate the intention of TCPA and the Commission's implementing rules governing prerecorded, so-called "robo" calls. Indeed, they are the converse, representing the use of technological innovation to give marketers a more efficient calling system, more responsive to customer needs, by giving consumers unprecedented control over unsolicited sales calls they have never enjoyed to date.

We also note that the purpose of this FNPRM docket is to harmonize the Commission's regulations with the parallel rules implemented by Federal Trade Commission (FTC). In this connection, the FTC's Staff determined on September 11, 2009 that human to human telemarketing technology does not violate that agency's Telemarketing Sale Rule (TSR). The FTC's informal opinion letter is attached for the Commission's consideration and convenience.

We hope the Commission will clarify that call technology using human-to-human interaction does not infringe TCPA's prerecorded sales calls prohibition or, alternatively, use its authority under Section 227(b)(2)(B) of the Act to exempt such calls from the prerecorded messaging ban. CallAssistant looks forward to working with the Communication on this issue and is prepared to provide the FCC with whatever further information may be necessary or helpful in that regard.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Bills", written in a cursive style.

Mike Bills

Call Assistant, LLC