BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FILED/ACCEPTED

JAN 19 2012

Federal Communications Commission
Office of the Secretary

In the Matter of	)	
	)	
Rules and Regulations Implementing the	)	
Telephone Consumer Protection Act of 1991	)	**CG Docket No. 02-278**
	)	
Revolution Messaging's Petition for an	)	
Expedited Clarification and Declaratory Ruling	)	

REVOLUTION MESSAGING'S PETITION FOR AN EXPEDITED CLARIFICATION AND DECLARATORY RULING

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TABLE OF CONTENTS

I. INTRODUCTION 2

II. SUMMARY 3

III. FACTUAL BACKGROUND 4

A. Nature of Internet-to-Phone Text Messaging Technology 4

B. Recent Significantly Increased Use of Internet-to-Phone Text Messaging Technology 6

IV. DISCUSSION 10

A. The Commission Has Not Distinguished Between Phone-to-Phone and Internet-to-Phone Text Messaging Technology Under the TCPA 10

B. Internet-to-Phone Text Messaging Technology Is An Automatic Telephone Dialing System Within the Meaning of the TCPA 11

1. The Commission Has Authority to Apply the TCPA Restrictions to Internet-to-Phone Text Messaging Technology 12

2. Applying the TCPA to Internet-to-Phone Text Messaging Technology Is Necessary In Order to Achieve the Objectives of the Act 13

C. Defining "Dial" To Include Transmission of a Text Message to a Cell Phone Using Internet-to-Phone Text Messaging Technology Is Necessary to Protect Public Safety 14

D. Exempting Internet-to-Phone Text Messaging Technology from the TCPA Would Result in Severely Weakening Consumer Rights Under the TCPA 15

E. The CAN-SPAM Act Does Not Preclude Application of TCPA To Internet-to-Phone Text Messaging Technology 16

V. CONCLUSION 17

I. INTRODUCTION

Pursuant to 47 C.F.R. § 1.2 and Section 554(e) of the Administrative Procedure Act, 5 U.S.C. § 554(e), Revolution Messaging, LLC, a District of Columbia limited liability company ("RM") respectfully petitions the Federal Communications Commission for an expedited declaratory ruling. This petition involves the regulations promulgated by the Commission implementing the Telephone Consumer Protection Act of 1991, 47 U.S.C. §227 (the "TCPA"), which prohibit initiating noncommercial unsolicited text messages without the prior express consent of the recipient to cellular phone numbers. RM seeks this ruling to remove uncertainty and clarify that this prohibition applies to users of Internet-to-phone text messaging technology[1] and similar technologies involving storage and automatic dialing of cellular telephone numbers. The ruling requested by RM would clarify that Internet-to-phone text messaging technology is a type of "automated telephone dialing system" within the meaning of the Commission's regulation, 47 CFR § 64.1200(a), and therefore subject to the prohibitions against initiating noncommercial unsolicited text messages without the prior express consent of the recipient.

RM requests an expedited declaratory ruling due to the significant likelihood that millions of cellular phone users will be charged for unsolicited text messages in the upcoming 2012 election cycle. As explained below, the practice of transmitting these unsolicited text messages on behalf of political candidates and organizations has increased exponentially in recent years and appears likely to explode in 2012.

[1] The term "Internet-to-phone text messaging technology" is used to refer to all forms of messages that are converted to SMS messages (or any other type of text messages) that are sent or directed to an address with an Internet domain reference. This includes both messages that are sent as "email" and those electronic mail messages that are entered at a provider's website interface.

II. SUMMARY

The TCPA and current FCC regulations prohibit using an "automatic telephone dialing system" ("ATDS") to initiate any call to cellular phones without the prior express consent of the recipient. The Commission's rule, 47 C.F.R. § 64.1200(a), provides that:

> No person or entity may:
>
> (1) Initiate any telephone call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice;
>
> (iii) To any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.

It is clear that this prohibition (the "ATDS prohibition") applies regardless of the content of the call.[2] It is also clear that, for purposes of this prohibition, a text message is considered a "call."[3]

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[2] *In the Matter of Rules and Regulations the Telephone Consumer Protection Act of 1991,* Request of ACA International for Clarification and Declaratory Ruling, 23 FCC Rcd 559, 565, para. 11 (2008) ("[The Commission] also reiterate[s] that the plain language of section 227(b)(1)(A)(iii) prohibits the use of autodialers to make any call to a wireless number in the absence of an emergency or the prior express consent of the called party. We note that this prohibition applies regardless of the content of the call, and is not limited only to calls that constitute 'telephone solicitations'") (citations omitted).

[3] *In Re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991,* Report and Order, 18 FCC Rcd 14014, 14115, para. 165 (2003) *(2003 TCPA Order)* (the prohibition "encompasses both voice calls and text calls to wireless numbers, including for example, short message service (SMS) calls"); *In the Matter of Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003; Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991,* CG Docket Nos. 04-53 and 02-278, Order, 19 FCC Rcd 15927, 15934, para. 17 (2004) *(2004 CAN-SPAM Implementation Order)* (the "prohibition on using automatic telephone dialing systems to make calls to wireless phone numbers applies to text messages"). *See also Satterfield v. Simon & Schuster, Inc.* 569 F.3d 946 (9th Cir. 2009).

The issue causing uncertainty arises from the definition of an "automatic telephone dialing system." The TCPA and FCC regulations define an "automatic telephone dialing system" as "equipment which has the capacity (A) to store or produce numbers to be called, using a random or sequential number generator; and (B) to dial such numbers."[4] The specific uncertainty lies in whether the technology being used to transmit text messages, Internet-to-phone text messasging technology, is a type of ATDS.

As explained below, users of this new technology clearly believe that they are legally circumventing the ATDS prohibitions contained in the TCPA. RM respectfully requests the Commission to find that Internet-to-phone text messaging technology falls within the meaning and statutory definition of "automatic telephone dialing equipment."

III. FACTUAL BACKGROUND

A. Nature of Internet-to-Phone Text Messaging Technology

Internet-to-phone text messaging technology essentially involves the collection and storage of cellular telephone numbers and the use of a Simple Mail Transfer Protocol (SMTP) to transmit a noncommercial text message to the recipient's cellular telephone number, without that recipient's prior consent. Use of this technology frequently results in imposition of additional usage charges on the text message recipient. The use of Internet-to-phone text messaging technology generally engages in the following:

1) Collecting cell phone numbers of individuals;

2) Identifying commercial mobile radio service ("CMRS") carriers for each number;

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[4] 47 U.S.C. § 227(a)(1); 47 C.F.R. § 64.1200(f)(1).

3) Creating email addresses using the domain names assigned by each CMRS carrier for mobile service message ("MSM") service;

4) Transmitting unsolicited text messages via these created email addresses;

For example, a company buys consumer data that contains the cellular phone number 555-555-1111. The company then attempts to identify the specific CMRS carrier for this number, *e.g.*, Sprint or T-Mobile. Once the carrier is identified, the company attaches the carrier specific domain information to create an email address which will convert the message into a text message. So, if a company determines that the carrier for cell phone number 555-555-1111 is Sprint, then the company creates the following address for that cell phone number: 5555551111@sprint.messaging.net. If the carrier is determined to be T-Mobile, the relevant email is 5555551111@tmobile.messaging.net.

In the alternative, if the carrier cannot be determined, the company may opt to send multiple emails to the same phone number using different domain names from the finite list of cellular phone service providers/carriers. So, if the carrier of 555-555-1111 cannot be determined, due to cost or some other factor, the company may create multiple email addresses using the same phone number, such as 5555551111@verizon.messaging.net, 5555551111@credo.messaging.net and 5555551111@sprint.messaging.net and so forth.

A company could thereby create millions of addresses and send an unlimited number of unsolicited noncommercial text messages, causing recipients to incur unlimited additional charges on their cellular phone bills.

B. Recent Significantly Increased Use of Internet-to-Phone Text Messaging Technology

Unsolicited noncommercial text messages have become an increasingly popular political campaign tactic. After text messaging was effectively used by the Obama campaign in the 2008 presidential campaign, other political campaigns and organizations quickly set out to use this method to communicate with voters. The vast majority of political organizations and campaigns using text messaging have observed the requirements of the TCPA as well as the guidelines of the Mobile Marketing Association, and have sent text messages only to recipients who have expressly opted-in—who have expressly given prior consent—to receive such messages. Since 2008, however, some consultants to political campaigns and organizations have determined that it was too difficult and costly to obtain express consent from the cell phone user prior to sending text messages, as required by the TCPA. Relying on a contorted reading of the TCPA and FCC regulations, these consultants publicly declared that the TCPA does not require text message senders to obtain prior consent as long as the text message is transmitted using Internet-to-phone text messaging technology rather than other available technologies.

For example, Brad Herrmann, president of Call-Em-All, a company in Frisco, Texas, said: "I've seen other companies in the industry say, 'We currently can't send informational calls to cellphones.' I disagree — we do it every day. The current law is clear."[5] Similarly, Gabriel Joseph, head of a company called ccAdvertising, was asked whether ccAdvertising's dissemination of thousands of unsolicited text messages was permissible. Joseph replied that, "Everything that ccAdvertising does is legal, per the law of Virginia and the laws of the land."[6]

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[5] Randall Stross, *Robocalls Instigate a Cellphone Fight*, N.Y. Times, Nov. 12, 2011.

[6] David Sherfinski, *Political Texting Roils Va. State Senate Race*, Wash. Times, Oct. 30, 2011.

The position taken by these and other companies—that unsolicited noncommercial text messages are lawful if sent through the Internet—has resulted in tens of thousands of cellular telephone users receiving unsolicited political text messages and in some cases paying additional charges for them.

Weeks before the 2010 general election, a conservative political action committee, Americans in Contact PAC, sent unsolicited political text messages to voters in Minnesota opposing the re-election of U.S. Rep. Tim Walz (D-MN).[7] The text message indicated that Congressman Walz "passed Obamacare and failed to create jobs."[8] At least one recipient of this unsolicited text message did not have a cell phone plan that included unlimited text messaging.[9] Other unsolicited text messages were sent regarding a Virginia congressional candidate,[10] and attacking U.S. Rep. John Carney (D-DE)[11] and multiple North Carolina candidates.[12]

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[7] Elizabeth Dunbar, *Vote 4 Me: Text Message Political Ads Showing Up in Minnesota,* Minn. Public Radio, Oct. 28, 2010, http://minnesota.publicradio.org/display/web/2010/10/28/political-text-messages/.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] Beth Miller, Conservative PAC Names Carney in Text Attack, http://blogs.delawareonline.com/dialoguedelaware/ 2010/10/30/conservative-pac-names-carney-in-text-attack/ (October 30, 2010).

[12] Aaron Sarver, *Text messages from Americans in Contact PAC Flood Shuler, Kissell Districts*, North Carolina Independent News, http://www.americanindependent.com/153498/nc-text-messages-from-americans-in-contact-pac-flood-shuler-kissell-districts (Nov. 2, 2010) (noting that the sponsor of the text message "claims to have contact info for *120 million* homes contained in proprietary databases.") (emphasis added).

More unsolicited text messages were distributed prior to the special gubernatorial election held in West Virginia in October of 2011. These text messages attacked the democratic nominee, Earl Ray Tomblin.[13] And, in the 2011 Virginia state legislative elections, political campaigns or organizations began sending unsolicited text messages more than a month before the November 8, 2011 general election. Text messages were sent attacking multiple different candidates across the state.[14] At least five different unsolicited text messages were sent to an unknown number of people attacking State Senator David Marsden (D-Fairfax).[15] One of these messages read as follows:

> FRM:Concerned Parents
> SUBJ:Busted
> MSG:Dave Marsden voted to allow Ffx County Schools to HIDE FROM PARENTS when they discipline kids. Ask Dave why 703-865-7425

This message not only harassed the recipients but confused and misled them as well, and created havoc for the campaign. First, the sponsor of the message obscured its identity. Although the text provides "Concerned Parents" in the "FRM" column, it is unclear who or what this organization might be or how to contact the sender. In addition, the number displayed on the Caller ID, 410-000-0001, an obviously fake phone number, led many confused recipients to believe that the text came from the only real phone number provided: Senator Marsden's campaign office phone number, 703-865-7425. Therefore, many outraged recipients called

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[13] David Beard, *Texts Cause Political Furor,* Dominion Post (Morgantown) (Oct. 4, 2011); Whitney Burnette, *Text Messages at Center of Election Controversy* (Oct. 3, 2011), http://webcache. googleusercontent.com/search?q=cache:GJfALgGrIcsJ:wtrf.com/story.cfm/wtrfUploads/younews/help/story.cfm%3Ffunc%3Dviewstory%26storyid%3D109224+&cd=3&hl=en&ct=clnk&gl=us.

[14] *See e.g.,* Anita Kumar, *Anti-democratic Text Messages in Northern Va. Prompt Lawsuit, Complaints,* Wash. Post (Oct. 31, 2011); David Sherfinski, *Political Texting Roils Va. State Senate Race*, *Wash. Times*, Oct. 31, 2011.

[15] Email from Kiel Brunner, Campaign Manager, Marsden for Senate (Dec. 19, 2011) (on file).

Senator Marsden to complain about the text message that they received which attacked Senator Marsden - believing that Senator Marsden was responsible for sending it. Not only did this tie up the phone lines at the Marsden for Senate campaign office, it also cost text recipients an untold amount of money in additional cell phone charges.

After it came to light that Senator Marsden's opponent was an executive at a political consulting firm known to distribute unsolicited text messages, one of the recipients of an unsolicited text message filed a complaint. Subsequent unsolicited texts then even attacked the individual who filed the complaint. On November 2, 2011 multiple individuals, potentially thousands, received the following text:

> FFM: Concerned Parents
> MSG: Dem activist files frivolous lawsuit to help DAVE MARSDEN COVER UP his vote to allow schools to hide disciplinary actions frm parents.

Additional rounds of unsolicited text messages attacking Senator Marsden continued through Election Day.[16]

It is apparent that the firms sending these political spam text messages are becoming more and more aggressive in their use of this technique. Gabriel Joseph, who as noted above heads a firm called ccAdvertising that engages in this practice, stated in an appearance before the American Association of Political Consultants Conference in 2011, that his firm had already sent "millions" of these unsolicited texts. He explained that lists of consumer data, including cell phone numbers, could be purchased and then matched against voter files.

The sending of unsolicited political text messages is likely to increase exponentially during the 2012 election cycle. Those firms engaging in this practice will be encouraged to send such messages to the *hundreds of millions* of potential voters in the 2012 presidential election.

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[16] Email from Kiel Brunner, Campaign Manager, Marsden for Senate (Nov. 8, 2011).

The potential recipients will not only receive numerous unsolicited messages but in numerous cases will be saddled with additional text message charges.

IV. DISCUSSION

A. The Commission Has Not Distinguished Between Phone-to-Phone and Internet-to-Phone Text Messaging Technology Under the TCPA

In adopting rules and regulations as required pursuant to the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM"), the Commission had occasion to address different types of text messaging technologies, specifically Internet-to-phone text messaging technology and phone-to-phone text messaging technology. In concluding that CAN-SPAM only regulated Internet-to-phone text messaging technology commercial messages, the Commission implicitly suggested that the TCPA ATDS prohibitions applied to *both* Internet-to-phone text messaging technologies and phone-to-phone text messaging technologies. The Commission stated:

> In 2003, we released a Report and Order in which we reaffirmed that the TCPA prohibits *any* call using an automatic telephone dialing system or an artificial or prerecorded message to any wireless telephone number. We concluded that this encompasses both voice calls and text calls, including Short Message Service (SMS) text messaging calls, to wireless phone numbers.[17]

The Commission did not, in these statements, draw any distinction between Internet-to-phone text messaging technologies and phone-to-phone technologies.

In that 2004 CAN-SPAM Implementation Order, the Commission further explained that the CAN-SPAM rules and regulations overlap with the TCPA prohibitions, and implied that the

[17] *2004 CAN-SPAM Implementation Order,* 19 FCC Rcd at 15930, para. 7 (emphasis in original) (citing *2003 TCPA Order*, 18 FCC Rcd at 14115, para. 165 ("Both the [TCPA] and our rules prohibit these calls, with limited exceptions, 'to any number assigned to a paging service, or any service for which the called party is charged.' This encompasses both voice calls and text calls to wireless number including, for example, short message service (SMS) calls, provided the call is made to a telephone number assigned to such service.")).

TCPA ATDS prohibitions apply regardless of whether the message is sent using Internet-to-phone text messaging technology or phone-to-phone text messaging technology. It stated:

> [A]s we explained in the NPRM and a previous Commission order, the TCPA prohibition on using automatic telephone dialing systems to make calls to wireless phone numbers applies to text messages (e.g., phone-to-phone SMS) as well as voice calls. We clarify here that this prohibition applies to all autodialed calls made to wireless numbers, including audio and visual services, regardless of the format of the message.[18]

Thus, in addressing the TCPA prohibitions on transmission of text messages without the prior consent of the recipient, the Commission has not in any way distinguished between Internet-to-phone text messaging technology and phone-to-phone text messaging technology.

B. Internet-to-Phone Text Messaging Technology Is An Automatic Telephone Dialing System Within the Meaning of the TCPA

The TCPA and FCC regulations define an "automatic telephone dialing system" as "equipment which has the capacity (A) to store or produce numbers to be called, using a random or sequential number generator; and (B) to dial such numbers."[19]

Internet-to-phone text messaging technology clearly meets the first element of the definition of an ATDS: "the capacity… to store or produce numbers to be called, using a random or sequential number generator." The cellular phone numbers are a necessary and unique identifier in each created email address. The technology therefore necessarily and inherently requires the collection and storage of these numbers.

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[18] *2004 CAN-SPAM Implementation Order,* 19 FCC Rcd at 15934, para. 17.

[19] 47 U.S.C. § 227(a)(1); 47 C.F.R. § 64.1200(f)(1).

Internet-to-phone text messaging technology also meets the second requirement of the ATDS definition, namely, "the capacity… *to dial* such numbers." The sender, by intentionally transmitting text messages to specific cellular phone numbers, is "dialing" these phone numbers. To be sure, the sender is not using a traditional dialing technique. The sender is, however, clearly initiating calls to specified cellular phones.

Congress provided no definition of "to dial" in the TCPA. Given that the meaning of this phrase is not clear from its plain language, the Commission can and should consider congressional intent. And it is clear that, for two reasons, congressional intent requires that the Commission apply the TCPA restrictions to Internet-to-phone text messaging technology. *First,* Congress intended the FCC to have authority to apply the TCPA restrictions to technologies not in existence at the time of enactment of the law in order to prevent use of such new technologies to evade the objectives of the law. *Second,* applying the TCPA restrictions to Internet-to-phone text messaging technology is necessary in order to achieve those objectives.

1. The Commission Has Authority to Apply the TCPA Restrictions to Internet-to-Phone Text Messaging Technology

In enacting the TCPA, Congress specifically anticipated the development of technological advances in automated or computerized calls. And Congress intended that the FCC would have the authority to apply the TCPA restrictions to new technologies in order to ensure that such innovations are not used to circumvent those restrictions. During the floor debate on the bill, the principal sponsor of TCPA, Senator Earnest Hollings (D-SC), stated:

> [T]he FCC is not limited to considering existing technologies. The FCC is given the flexibility to consider what rules should apply to future technologies as well as existing technologies.[20]

[20] 137 Cong. Rec. S18781-02 at S18784 (1991).

The Commission has expressly recognized this authority to regulate technological advances not contemplated when the TCPA was originally enacted.[21]

In 2002, the Commission noted that "the marketplace for telemarketing has changed significantly in the last decade."[22] At that juncture, the Commission noted its concern that then current technology allowed users "to deliver prerecorded messages to thousands" of people every day.[23] Technological advances in this area have continued in this decade and now current technology enables users to deliver *millions* of text messages every day.

2. Applying the TCPA to Internet-to-Phone Text Messaging Technology Is Necessary In Order to Achieve the Objectives of the Act

The TCPA was passed into law in 1991 after thousands of consumer complaints and much condemnation of "computerized calls." Summarizing the problem which the TCPA was designed to combat, Senator Hollings stated:

> Computerized calls are the scourge of modern civilization... Even more important, these computerized telephone calls threaten our personal health and safety... These machines are out of control.... *It is telephone terrorism, and it has got to stop.*[24]

The manifest purpose of the TCPA, as recognized by the FCC, was "to alleviate a particular problem - an increasing number of automated and prerecorded calls to certain

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[21] *2003 TCPA Order,* 18 FCC Rcd at 14092, para. 132 ("It is clear from the statutory language and the legislative history that Congress anticipated that the FCC, under its TCPA rulemaking authority, might need to consider changes in technologies.") (citations omitted).

[22] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, CG Docket No. 02-278 and CC Docket No. 92-90, 17 FCC Rcd 17459, 17464, para. 7 (2002) (*2002 NPRM*).

[23] *Id.*

[24] 137 Cong. Rec. S16204-01 at S16205 (1991) (emphasis added).

categories of numbers."[25] One of those categories is calls placed to "any telephone number assigned to a… cellular telephone service… or any service for which the called party is charged for the call."[26] "The Commission noted that Congress prohibited the use of automated equipment with respect to these particular categories of calls because such practices were determined 'to threaten public safety and inappropriately shift marketing costs from sellers to consumers.'"[27]

As technology continues to develop, additional and various means of contacting individuals on their cell phone are sure to arise. Not only would a narrow definition of "dial" encourage innovators to create technology which merely uses non-traditional methods to connect with specific cell phone users, a narrow definition may exempt technology currently understood to be covered under the definition of ATDS from the TCPA prohibitions. Technological advances in the autodialing industry currently allow prerecorded calls to be delivered using non-traditional dialing methods. An infinite variety of connection options appears possible in the future as technology continues to develop. Applying the TCPA restrictions to Internet-to-phone text messaging technology is essential in order to achieve the purposes of the TCPA.

C. Defining "Dial" To Include Transmission of a Text Message to a Cell Phone Using Internet-to-Phone Text Messaging Technology Is Necessary to Protect Public Safety

The TCPA prohibits the use of an ATDS to initiate calls not just to cellular phone users, but also emergency numbers, such as those reserved for law enforcement and hospital emergency lines. Specifically, the TCPA prohibits using an ATDS to contact:

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[25] *2003 TCPA Order,* 18 FCC Rcd at 14092, para. 133.

[26] 47 U.S.C. § 227(b)(1)(A)(iii).

[27] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed Rulemaking, 25 FCC Rcd 1501, 1504, para. 7 (2010).

(i) Any emergency telephone line (including any "911" line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency);

(ii) The telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or

(iii) Any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.

Unless the Commission defines "dial" to include transmission of text messages through Internet-to-phone text messaging technology, text spammers could send an unlimited number of unsolicited noncommercial calls to these categories of recipients. The purposes of prohibiting the transmission of unsolicited calls to these types of recipients are clearly to prevent harassment and prevent tying up the lines needed for emergency purposes. Only by applying the TCPA restrictions to Internet-to-phone text messaging technology can the FCC prevent the severe harm that would result from use of this technology to send unsolicited text messages to the categories of recipients covered by the TCPA.

D. Exempting Internet-to-Phone Text Messaging Technology from the TCPA Would Result in Severely Weakening Consumer Rights Under the TCPA

The private right of action contained in the TCPA is meant to protect and empower recipients of unsolicited text messages.[28] If Internet-to-phone text messaging technology is exempted from the definition of ATDS, then consumers will be unable to determine if they have a private right of action against the sender of an unsolicited noncommercial text message.

[28] 47 U.S.C. § 227(b)(3); 137 Cong. Rec. S16204-01 at S16205 (1991) .

Delivered text messages do not contain a description of the technology being used to transmit the message. Such messages merely contain the unsolicited text.

In adopting the provision granting a private right of action, Congress clearly did not intend to shift to the recipient of automated calls the burden of determining the technology used to make the call. During floor debate on the bill, Senator Hollings stated that:

> The substitute bill contains a private right-of-action provision that will make it easier for consumers to recover damages *from receiving* these computerized calls. The provision would allow consumers to bring an action in State court against any entity that violates the bill.[29]

The Commission has also noted that the private right of action is intended "to empower consumers to control what calls *they receive*."[30] Exempting Internet-to-phone text messaging technology from the definition of ATDS would place an undue burden on the consumer to initially determine the type of technology used to transmit the unwanted and unsolicited text message before they can avail themselves of the private right of action.

E. <u>The CAN-SPAM Act Does Not Preclude Application of the TCPA to Internet-to-Phone Text Messaging Technology</u>

Although the Commission has adopted regulations pursuant to the CAN-SPAM Act which restrict the transmission of "mobile service commercial messages" ("MSCM"), these regulations 1) do not apply to noncommercial text messages and 2) do not preempt the TCPA.[31] In adopting the CAN-SPAM regulations, the Commission explained "[t]he CAN-SPAM Act

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[29] 137 Cong. Rec. S16204-01 at S16205 (1991).

[30] Press Release, Federal Communications Commission, FCC Proposes Tougher Restrictions on Robocalls (Jan. 20, 2010) (Statement of Commission Robert M. McDowell) (emphasis added); *see also id.* (Statement of Commissioner Michael J. Copps) ("returning a measure of privacy and control to citizens, allowing each of us to choose limits on the telemarketing calls *we receive*") (emphasis added).

[31] *See generally 2004 CAN-SPAM Implementation Order,* 19 FCC Rcd 15927.

specifically states it does not override the TCPA"[32] and that "nothing in [CAN-SPAM] shall be interpreted to preclude or override the applicability of the TCPA."[33]

V. CONCLUSION

For the reasons set forth above, Revolution Messaging respectfully submits that the Commission can best serve the public interest by issuing a declaratory ruling that Internet-to-phone text messaging technology falls within the meaning and statutory definition of "automatic telephone dialing equipment."

Respectfully submitted,

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[32] *Id.,* 19 FCC Rcd at 15929, para. 3.

[33] *Id.,* 19 FCC Rcd at 15930-31, para. 7 (internal quotations and citations omitted).