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March 10, 2017

VIA ELECTRONIC FILING

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

Re: ***In the Matter of Petition for Rulemaking and Declaratory Ruling filed by Craig Cunningham and Craig Moskowitz,* CG Docket No. 02-278, CG Docket No. 05-338**

Dear Ms. Dortch:

The U.S. Chamber of Commerce[1] in conjunction with the U.S. Chamber Institute for Legal Reform[2] (collectively referred to as "Chamber") respectfully submit these comments to the Federal Communications Commission ("Commission") in response to its Public Notice requesting comment on the Petition for Rulemaking and Declaratory Ruling filed by Craig Cunningham and Craig Moskowitz (the "Cunningham-Moskowitz Petition") on January 22, 2017, in the above-referenced dockets.[3]

The Chamber strongly urges the Commission to deny the Cunningham-Moskowitz Petition, which asks the Commission to take on a rulemaking proceeding to eliminate longstanding guidelines for prior express consent upon which legitimate businesses have

[1] The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than three million businesses of all size, sectors, and regions, as well as state and local chambers and industry associations.

[2] The U.S. Chamber Institute for Legal Reform ("ILR") seeks to promote civil justice reform through legislative, political, judicial, and educational activities at the global, national, state, and local levels.

[3] Public Notice, *Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Rulemaking and Declaratory Ruling Regarding Prior Express Consent Under the Telephone Consumer Protection Act of 1991*, CG Docket Nos. 02-278 and 05-0338, DA 17-144 (Rel. Feb. 8, 2017).

long relied in placing informational and transactional communications to customer-provided numbers. The actions sought by the Petition are not in the public interest, and granting the Petition to undertake a rulemaking on "prior consent" would not be appropriate or useful at this time, as further detailed below. Indeed, their approach would contravene the statutory regime, and take the FCC down the wrong legal and policy path. The Chamber urges the FCC to swiftly deny the petition.

I. American businesses are besieged by predatory TCPA lawsuits, and the Cunningham-Moskowitz Petition proposes to make the situation worse.

As the Chamber has explained in various comments filed with the Commission regarding the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the "TCPA"), in recent years American businesses, large and small, have faced a groundswell of TCPA litigation brought by a cottage industry of TCPA plaintiffs' lawyers and a cadre of professional TCPA plaintiffs who are making a living from suing American businesses under this Act.[4] Indeed, American companies across all industries have discovered that if they have reached out to customers via call, text, or fax for any reason, their company is at risk of being sued under the TCPA—even if the communication is specifically requested or is clearly permitted by the businesses' contract with its customer, and even if most customers find the call or message beneficial.

A statute that was drafted by Congress more than 25 years ago to apply to certain abusive, cold-call telemarketing practices prevalent at that time is now used to bring lawsuits related to a wide range of non-telemarketing communications, including many communications between businesses and their customers that provide substantial public interest benefits. The TCPA's original intent—to stop abusive cold-call telemarketing and fax-blast spamming—has been perverted.[5] It is the TCPA's uncapped statutory damages,

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[4] *See, e.g.,* U.S. Chamber Comments on Communication Innovators' Petition for a Declaratory Ruling (filed Nov. 15, 2012 in CG Docket No. 02-278); U.S. Chamber Comments on PACE's Petition for Expedited Declaratory Ruling and/or Expedited Rulemaking (filed Dec. 19, 2013 in CG Docket No. 02-278); U.S. Chamber Comments on United Healthcare's Petition for Expedited Declaratory Ruling (filed Mar. 10, 2014 in CG Docket No. 02-278); U.S. Chamber Comments on ACA International's Petition for Rulemaking (filed Mar. 27, 2014 in CG Docket No. 02-278); U.S. Chamber and Institute of Legal Reform Comments on American Association for Justice's Petition for Waiver of Section 64.1200(a)(4)(iv) of the Commission's Rules (filed Feb. 18, 2015 in CG Docket No. 02-278, CG Docket No. 05-338).

[5] As Commissioner Pai has recognized, "[t]he TCPA's private right of action and $500 statutory penalty could incentivize plaintiffs to go after the illegal telemarketers, the over-the-phone scam artists, and the foreign fraudsters. But trial lawyers have found legitimate, domestic businesses a much more profitable target." *See In re Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 30 F.C.C.Rcd. 7961, 8072-73(2015) (Pai Dissent).

which can quickly become staggering when aggregated at $500 per communication,[6] that have spurred litigations to be brought at an ever-increasing pace.

To address the litigation abuse fostered by the TCPA, ILR and the Chamber not only have provided comments to the Commission describing the litigation abuses that abound in TCPA litigations,[7] but also have joined various other entities in challenging one of the orders adopted by the Commission under previous leadership—a decision approved by the majority of Commissioners in July 2015 that has served to further ramp up the onslaught of TCPA litigation.[8] The Chamber believes that while consumers should indeed be protected from abusive and unwanted calls, businesses should also be protected from abusive and potentially annihilating litigation brought by TCPA plaintiffs hoping to get any allegations to stick (or to put such substantial aggregate damages at issue that the defendant will be forced to settle).

The Commission had recognized in 1992 that "persons who knowingly release their phone numbers have in effect given their invitation or permission to be called at the number which they have given, absent instructions to the contrary."[9] In 2008, the Commission reassured companies that its longstanding rule for prior consent was still in effect.[10] Then again, in the July 2015 Order, the Commission re-affirmed that, as long established in FCC Orders, prior express consent to receive autodialed or prerecorded non-marketing calls can be established by evidence that the customer opted to provide his or her telephone number to the company placing the calls.[11]

Thus, American businesses have relied for decades on the consistent guidance from the FCC: "prior express consent" for transactional and informational calls exists when a customer opts to provide his or her cellular telephone number to a company.[12] But now, Petitioners are seeking to eliminate the distinction in the kinds of consent the Commission established for informational/transactional autodialed or prerecorded calls to cell phones, so

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[6] The TCPA's per-call damages add up quickly: the small business that sent 5,000 faxes finds itself being sued for a minimum of $2.5 million dollars; the restaurant that sent 80,000 text coupons is sued for trebled damages of $120 million dollars; and the bank with 5 million customers finds itself staring at $2.5 billion in minimum statutory liability for just one call placed to each of its customers.

[7] *See , e.g.,* n.4, *supra.*

[8] *See Chamber of Commerce of the United States of America v. Federal Communications Commission and United States of America,* D.C. Circuit Court Case No. 15-1306 (filed September 3, 2015).

[9] *In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991, Report and Order,* 7 FCC Rcd. 8752, 8769 (Oct. 16, 1992) ("1992 Order").

[10] *See In re: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991,* 23 F.C.C.R. 559, 564–65 ¶ 10 (F.C.C. Jan. 4, 2008) ("2008 Order").

[11] *See In re Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 30 F.C.C.Rcd. 7961, 7991-92 (2015) ("2015 Order").

[12] *See id.*

that **all** calls would require the same "prior express written consent" required for autodialed/prerecorded telemarketing calls.

The reason for the Petitioners' current request? The guidelines established by the Commission many years ago, establishing that prior express written consent is required only for certain telemarketing calls while certain informational/transactional calls simply require prior express consent, apparently are limiting some of the Petitioners' avenues to pursue TCPA lawsuits, as further discussed in Part II below.

Because Petitioners feel stymied in bringing all the lucrative but ultimately frivolous TPCA lawsuits they wish they could bring, they have filed a Petition that seeks a rulemaking proceeding designed to undo one of the only aspects of the Commission's past TCPA orders that has helped facilitate legitimate and desired communications between businesses and consumers: the guidelines on the how prior express consent can be established for informational/transactional calls to customer-provided cellular phone numbers. But as detailed in Part III below, there is no real confusion as to the level of consent needed for different types of calls under current Commission Orders. With various challenges to other Commission Orders pending that could alter the TCPA landscape, now is not the time to wade into the issue of whether "prior consent" can be, or should be, redefined by this Commission in a whole new way that would only provoke more unwarranted and burdensome TCPA litigation.

Finally, Petitioners complain that the Commission over-reached when crafting its rules about prior consent. As explained in Part IV, this is not the case, and in any event the Commission should not over-reach again by redrafting the TCPA to insert a new heightened consent requirement that would apply to **any** call a business might make to customer-provided telephone numbers. Indeed, the rulemaking sought by Petitioners—in which the TCPA would effectively be rewritten to include a singular definition for "prior consent"—would improperly intrude on the role of legislature and untenably rewrite the law.

II. Petitioners' proposed rulemaking, which seeks to create a single standard of prior express written consent for all calls covered by the TCPA's restrictions, is not sought in the public interest and would unnecessarily restrict beneficial calls and messages to consumers.

Petitioners do not articulate any particular interest of the general public that would be met by their proposed rulemaking, but instead tether their request to their own specific desires to bring additional TCPA lawsuits to prevent companies to whom they elected to provide their telephone numbers from raising prior consent as a defense to TCPA liability.[13] Petitioners are concerned about the impact of prior consent defenses on their own TCPA litigation—they do not represent the general public or consumers, but rather a specialized group of serial plaintiffs.

[13] *See* Cunningham-Moskowitz Petition at 5.

Petitioner Cunningham is a well-known TCPA litigant who has filed a slew of actions involving TCPA claims over the years.[14] In 2016 alone, Mr. Cunningham filed TCPA-based litigations against various businesses in federal courts in Tennessee, Texas, Virginia, Florida, and California.[15] Now, Mr. Cunningham claims he is facing arguments by a defendant in a Virginia action, General Dynamics Information Technology, which has defended itself by asserting that Mr. Cunningham provided his prior express consent for the alleged autodialed/prerecorded calls placed to the number he elected to provide via an online application for health insurance.[16] This prior consent defense appears to have prompted Mr. Cunningham (and his attorneys, who themselves specialize in bringing TCPA lawsuits) to file this Petition with the Commission seeking to eliminate any such defenses by redefining TCPA consent requirements to require a heightened consent for **all** communications a business makes.

Petitioner Moskowitz, while not as prolific a filer of TCPA litigations as his co-petitioner, has also helmed various TCPA class and individual actions in a variety of venues.[17] Mr. Moskowitz states in the Petition that he wants to sue Terminix for alleged

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[14] *See, e.g.,* 2010 article about Mr. Cunningham's then-new TCPA business in the *Dallas Observer*, located at http://www.dallasobserver.com/news/better-off-deadbeat-craig-cunningham-has-a-simple-solution-for-getting-bill-collectors-off-his-back-he-sues-them-6419391.

[15] *See, e.g., Cunningham v. The Vanderbilt University; Vanderbilt University Medical Center* (Case No. 3:16cv223), filed on 2/16/2016 in Tennessee Federal Court (M.D. Tenn); *Cunningham v. Tranzvia LLC* (Case No. 4:16-cv-905), filed 11/26/2016, Texas Federal Court (E.D. Tex.); *Cunningham v. Nationwide Security Solutions Inc.; Nortek Security & Control LLC; HomePro Inc.; Techforce National LLC* (Case No. 4:16cv889), filed 11/18/2016 in Texas Federal Court (E.D. Tex.); *Cunningham v. Sunshine Consulting Group LLC; Sunshine Consultation Services LLC dba Specialized Consumer Strategies; Donna Cologna; Cologna Building and Ground Services LLC* (Case No. 3:16cv2921), filed11/17/2016, Tennessee Federal Court (M.D. Tenn.); *Cunningham v. Robert Jacovetti; Law Office of Robert Jacovetti PC; Pre-Paid Legal Services Inc. dba LegalShield; Pre-Paid Legal Casualty Inc.* (Case No. 3:16cv2922), filed 11/16/2016, Tennessee Federal Court (M.D. Tenn.); *Cunningham v. Gregory Charles Mitchell; Eastern Legal Services; Paul Hank aka Poul Hank; Karl Kepper* (Case No. 1:16cv1109), filed 8/30/2016 in Virginia Federal Court (E.D. Va.); *Cunningham v. Rapid Capital Funding LLC/RCF; Craig Hecker; GRS Telecom Inc. fka CallerID4U Inc.; Paul Maduno; GIP Technology Inc.; Ada Manduno; Luis Martinez; Merchant Worthy Inc.; Robert Bernstein; Bari Bernstein; Mace Horowitz; Spectrum Health Solutions Inc. dba Spectrum Lead Generation* (Case No. 3:16cv2629), filed on 10/5/2016 in Tennessee Federal Court (M.D. Tenn.); *Cunningham v. Focus Receivables Management LLC* (Case No. 3:16cv1677), filed7/7/2016 in Tennessee Federal Court (M.D. Tenn.); *Cunningham v. Yellowstone Capital LLC; Integrity Capital Solutions Inc.* (Case No. 0:16cv62029), filed 8/23/2016 in Florida Federal Court (S.D. Fl.); *Cunningham v. Nationwide Business Resources Inc.* (Case No. 2:16cv4542), filed 6/22/2016 in California Federal Court (C.D. Cal.). The Chamber notes that this list represents only a partial selection from Cunningham's 2016 TCPA litigations that the Chamber located through docket searches.

[16] *See* Cunningham-Moskowitz Petition at 5.

[17] *See, e.g., Moskowitz v. Fairway Group Holdings Corp.* (Case No. 3:16-cv-01831-SRU), filed 11/7/16, in Connecticut Federal Court (D. Conn.); *Moskowitz v. Commercial Finance & Leasing Bank of Cardiff Inc*

autodialed/prerecorded collection calls it placed in October and November 2015 to the cellular number he provided Terminix when he opened an account with that company.[18] Mr. Moskowitz complains that because courts are denying TCPA claims when collections-based calls are placed to a customer-provided number, he has not felt able to commence his desired litigation against his pest-control company.[19]

Given their history as serial TCPA litigants, the Petitioners clearly are not seeking their proposed rulemaking as members of the general public, who the law presumes want and expect informational/transactional calls at the numbers they opt to provide to companies with whom they do business. Instead, Petitioners Cunningham and Moskowitz are concerned with their own exploitation of the TCPA, and the problems they face when they give out their telephone numbers to businesses in order to receive calls, but then cannot sue easily on any transactional or informational call they receive as a result.

Significantly, Petitioners ignore the fact that they and other consumers can opt to withdraw their prior consent for non-marketing calls that had been established by the provision of a telephone number to a company.[20] Such revocations, when made in a clear and unambiguous fashion that enables a business to process the request, provide sufficient protection to the public from unwanted non-marketing calls. In contrast, obtaining and recording proof of new heightened written consent requirements for prior consent as specified by Petitioners would be an unnecessary and unwieldy process that would burden businesses tremendously with requirements to acquire and maintain proof of specific written consents that, too, can be later revoked by a customer.

Petitioners, who have not disguised the fact that their interest in a proposed Rulemaking likely stems from their own TCPA-litigation, have articulated no public interest in this proposed rulemaking. Thus, the Commission should not accept the Petition and undertake a rulemaking related to "prior consent" rules.

(Case No. 37-2016-1337-CU-MC-CTL), filed 1/15/2016, in California state court (San Diego County Superior Court); *Moskowitz v. Clinilabs Inc.* (Case No. 1:15cv7838), filed 10/4/2015 in New York Federal Court (S.D.N.Y.); *Moskowitz v. Pullin Law Firm* (Case No. 14-06010), filed 10/14/14 in New York Federal Court (E.D.N.Y).

[18] *See* Cunningham-Moskowitz Petition at 5.

[19] *Id.*

[20] *See in re Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 30 F.C.C.Rcd. 7961 (2015) (stating that consumers who do not wish to receive any communications from a business can revoke prior consent via reasonable notice of revocation to that business). ILR notes that it disagrees with the Majority's determination in that opinion that revocation can be effected in almost any manner, including at brick and mortar locations by informing a cashier (*id.* at 7993-96), and that it has challenged the breadth of this portion of the 2015 Order in its appeal. *See* fn. 8, *supra*.

III. Moreover, the Commission should deny the Petition because there is no real confusion at this time that needs to be resolved as to what levels of prior consent apply to marketing vs. non-marketing calls.

In trying to create the illusion that mass confusion about consent rules exists and needs to be addressed by the Commission, Petitioners make much of a small handful of judicial decisions addressing Commission rules establishing different levels of consent for marketing and non-marketing calls. They claim that "numerous federal and state courts have harshly criticized" the Commission's 2008 order verifying that prior express consent exists for non-marketing calls when a customer opts to provide his or her phone number to a business.[21] But the handful of lower court decisions to which Petitioners cite do not demonstrate any significant confusion in the courts as to how the prior consent rules apply to marketing vs. non-marketing calls.

Instead, many courts (not just trial courts, but also courts of appeal) have understood and accepted the Commission's delineations on prior consent. Indeed, a recent Ninth Circuit decision held that prior express consent existed in a case where a gym member received certain communications made to the cellular phone number he chose to provide in his membership application. In doing so, the court walked through the Commission's orders from 1992 to 2014 that addressed the consent issue. The Ninth Circuit agreed that the provision of the phone number to plaintiff's gym, unless and until clearly revoked, provided the gym with a complete defense to TCPA claims asserted against it for calls placed inviting the plaintiff to reactivate his membership:

> In this case, we hold that as a matter of law Van Patten gave prior express consent to receive Defendants' text messages. He gave his cellular telephone number for the purpose of a gym membership contract with a Gold's Gym franchised gym. . . . Under the logic of the FCC's orders, Van Patten gave his consent to being contacted about some things, such as follow-up questions about his gym membership application, but not to all communications. The scope of his consent included the text messages' invitation to "come back" and reactivate his gym membership.[22]

In this detailed analysis on the question of prior consent, this January 2017 decision exhibited none of the "confusion" that Petitioners claim is present in the lower court cases they cite. Indeed, most courts (like the Ninth Circuit) have easily followed and applied the prior consent rule confirmed by the Commission starting in 1992, which provides businesses

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[21] *See* Cunningham-Moskowitz Petition at 2; *see also id.* at 18- 22 (providing the few examples of lower courts that questioned the prior consent guidelines).

[22] *Van Patten v. Vertical Fitness Grp., LLC,* 847 F.3d 1037 (9th Cir. 2017) (affirming trial court's grant of summary judgment for defendant given plaintiff's provision of his phone number and his failure to clearly revoke that prior express consent to receive calls within the scope of that prior consent).

with comfort that they can make non-marketing calls to telephone numbers their customers have provided.[23]

Thus, Petitioners are wrong to paint courts as broadly "confused" over what consent rules should apply, and to use such "confusion" as a supposed reason why the Commission should take up their proposed Rulemaking. Instead, the real confusion that courts and litigants are facing is over the definition of "automatic telephone dialing system" or "ATDS" and what types of calling systems could be classified as an ATDS so as to make calls actionable under the autodialer provisions of the TCPA.[24] As the Commission is well aware, the U.S. Chamber and various other entities have taken the question of the definition of ATDS on appeal to the District of Columbia Circuit Court of Appeals,[25] and a decision on the fully briefed and argued appeals is expected soon.

Moreover, because the question of what constitutes an ATDS system is as yet undecided, this would not be the appropriate time for the Commission to conduct a rulemaking on the requirements for "prior express consent" to receive calls placed by an ATDS. Without knowing what types of equipment can be considered an "ATDS" subject to TCPA liability, businesses would be left unsure of what kinds of calling technologies would even require the heightened consent requirement that Petitioners seek.

Indeed, Petitioners' request for a heightened prior consent standard to apply to all calls would be unworkable in reality for businesses with longstanding relationships with their customers, where contact numbers have been provided by customers in a manner long held to have established prior express consent to receive calls delivered via any technologies. There would be no easy "fix" for companies to reacquire new consents in the manner suggested by Petitioners, and there is no reason given by Petitioners for why consumers who do not wish to be contacted at the numbers they opted to provide to a company are not already protected by their ability to withdraw their prior consent by communicating a revocation clearly and unequivocally to the company that is contacting them. Further, granting the Petitioner's request would only further stifle or even cease helpful desired communications between companies and consumers.

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[23] *See, e.g., Saunders v. NCO Fin. Sys., Inc.,* 910 F. Supp. 2d 464, 467 (E.D.N.Y. 2012) ("the authorities are almost unanimous that voluntarily furnishing a cellphone number to a vendor or other contractual counterparty constitutes express consent."), citing *Soppet v. Enhanced Recovery Co. LLC,* 679 F.3d 637 (7th Cir. 2012); *Meyer v. Portfolio Recovery Associates, LLC,* 707 F.3d 1036 (9th Cir.2012); *Moore v. Firstsource Advantage, LLC,* No. 07–CV–770, 2011 WL 4345703 (Sept. 15, 2011 W.D.N.Y.); *Starkey v. Firstsource Advantage, LLC, No. 07–CV–662A(Sr),* 2010 WL 2541756 (Mar. 11, 2010 W.D.N.Y.); FCC 07–232 Declaratory Ruling (Dec. 28, 2007).

[24] *See* 47 U.S.C. § 227(a) ("Definitions. As used in this section-- (1) The term "automatic telephone dialing system" means 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.").

[25] *See fn.* 8 *supra.*

IV. Finally, the Commission should deny the Petition because it improperly seeks to further expand the reach of the TCPA into non-marketing communications never intended to be covered by that statute.

It is interesting that Petitioners argue that the Commission exceeded its authority in crafting prior consent rules, but nonetheless ask the Commission to go even further by rewriting the TCPA to specify only one kind of prior express consent can exist: a prior express written consent that meets various specifications.[26]

The Chamber does agree that the Commission over time has expanded the intended scope and purpose of the TCPA in its Orders, and suggests that if the Commission were inclined revisit what types of consents are required, then it should do so in order to clarify that the TCPA's prior express consent requirements only apply to telemarketing calls, and that the TCPA itself was not intended to apply to informational/transactional calls or texts placed to customer-provided numbers.[27] This would go a long way to fixing some of the anomalies in TCPA regulation and litigation.

This of course is not what Petitioners want to hear, as each hopes to pursue TCPA claims for non-marketing calls placed by a business to telephone number he had provided to that company. However, the TCPA should never have been expanded by the Commission's orders to become what it now is: a juggernaut, threatening well-intentioned companies with annihilating statutory damages for communications placed in good faith to customer-provided numbers.[28] The TCPA, designed to protect consumers from the privacy invasions caused by the kind of cold-call telemarketing prevalent in 1991, with spam pre-recorded marketing calls going out to every number in an area code, cannot continue to be rewritten by the Commission (as plaintiffs urge now) to further expand liability for non-telemarketing calls placed to customer-provided numbers.

V. Conclusion.

The dramatic increase in TCPA litigation that American businesses have been facing has been spurred by multi-million dollar settlements (such as a Caribbean Cruiseline's $76 million settlement reached in 2016), as well as news of individual awards in the hundreds of thousands of dollars for some plaintiffs (such as one Wisconsin woman's $571,000 verdict in

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[26] *See* Cunningham-Moskowitz Petition at 37-38 (describing all the varied proposed details of what would constitute the "prior express written consent" that Petitioners seek to have applicable to call calls, and not just telemarketing calls).

[27] Indeed, the application of the TCPA to text messages is something that could not have been considered by the Legislature when passing this statute, as no such technology existed in 1991.

[28] *See, e.g.,* Becca Wahlquist, *The Juggernaut of TCPA Litigation* (prepared for the U.S. Chamber Institute for Legal Reform) at 1 (Oct. 2013), *available at* http://www.instituteforlegalreform.com/uploads/sites/1/TheJuggernautofTCPALit_WEB.PDF

2013 against the finance company calling her husband's phone after she defaulted on car payments[29]). The TCPA plaintiffs' bar is already over-incentivized to bring actions against businesses reaching out in good faith to their own customers. Well-intentioned companies that strive to comply with the law are at risk of a nationwide class-action TCPA lawsuit every time they reach out, for any reason, to their customers.

The Commission should not take up Petitioners' invitation to make their own TCPA lawsuits even easier and more lucrative, and to spur on even more potential litigation, by re-writing established, longstanding prior consent requirements and eliminating the prior consent rules for non-marketing calls that companies have been acquiring and relying on in accordance with Commission guidelines. Particularly when the very nature of "ATDS" equipment subject to consent requirements is uncertain, and when there is no real confusion in the courts on how to apply different levels of consent long ago established by the Commission's orders, this is not the time for the Commission to revisit definitions of "prior consent" through a rulemaking or declaratory order.

Respectfully Submitted,

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Harold Kim
Executive Vice President
U.S. Chamber Institute for Legal Reform

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William Kovacs
Senior Vice President
Environment, Technology & Regulatory Affairs
U.S. Chamber of Commerce

[29] *Nelson v. Santander Consumer USA, Inc.*, 2013 WL 1141009 (W.D. Wisc., March 8, 2013), a decision later vacated by agreement of the parties as part of a confidential settlement.