

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Rules and Regulations Implementing the	)	
Telephone Consumer Protection Act of 1991	)	
	)	
All About the Message, LLC’s	)	CG Docket No. 02-278
Petition for Declaratory Ruling	)	
	)	

**REPLY COMMENTS OF MASSACHUSETTS, NEW YORK, AND KENTUCKY  
CONCERNING RINGLESS VOICEMAIL MESSAGES**

The Robocall Strike Force described robocalls as the number one source of complaints to the FCC: “What was once a nuisance has become a plague to U.S. consumers receiving an estimated 2.4 billion robocalls per month in 2016.”<sup>1</sup> In the face of consumer hostility to unwanted robocalls, the Petition for Declaratory Ruling filed by All About the Message (“AATM”) seeks an exemption for ringless robocalls that deliver voicemails to consumers without causing their phones to ring. This would not only add to this existing plague of unwanted contacts but would also undermine the best defense consumers currently have against robocalls—using call blocking apps on their cell phone.<sup>2</sup> Because ringless robocalls are “calls” within the meaning of the Telephone Consumer Protection Act and because they will undoubtedly harass, abuse and harm consumers further still, we urge to Commission to deny the Petition.

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<sup>1</sup> Federal Communications Commission, *Robocall Strike Force Report*, October 26, 2016. (<https://transition.fcc.gov/cgb/Robocall-Strike-Force-Final-Report.pdf>)

<sup>2</sup> All About the Message, LLC Petition for Declaratory Ruling, CG Docket No. 02-278 (filed Mar. 31, 2017) (hereinafter the “Petition”)

Ringless voicemails are prerecorded calls within the meaning of the TCPA.<sup>3</sup> All About the Message seeks to avoid this conclusion by stating that ringless voicemail “bypasses the wireless telephone and telephone subscriber altogether,”<sup>4</sup> and by narrowly construing its conduct to include only the delivery of the voicemail message to a server and not to the consumer. This is a distinction without a difference.

The obvious and intended consequence of leaving a voicemail message is that the recipient will be notified that he/she has a new message and will actually check the message. The most common manner in which a subscriber will be notified of the message and check the message is through his/her cell phone. If the subscriber turns on his/her phone after a period of the device being switched off, the subscriber will receive notification of a voicemail message and will not be able to discern any difference between ringless and ordinary robocalls. In sum, ringless voicemail technology *does* cause the delivery of a prerecorded message to a consumer *through* his/her cell phone. Shifting the blame for the final delivery of the robocall message onto the consumer because the consumer actually checks their voicemail messages does not make the call permissible under the TCPA. Consumers receiving ringless voicemail messages should understand that they have received a robocall—and the Commission should too.

As noted by several commenters, Robocalls are more than merely annoying, they impose significant costs on consumers.<sup>5</sup> For example, consumers with prepaid cell phones or phone contracts with limited allotments of minutes will be charged for checking their messages and consumers with limited size voicemail boxes may miss important messages when their voicemail is clogged with unwanted messages.

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<sup>3</sup> 47 U.S.C. § 227(b)(1)(A)(iii).

<sup>4</sup> Petition for Declaratory Ruling All About the Message, p. 3 (“Declaration of Chris Blaylock”)

<sup>5</sup> National Consumer Law Center, et al., Comments Opposing the Petition for Declaratory Ruling and Waiver, CG Docket No. 02-278 (filed May 18, 2017)

The Petition and several commenters have expressed the view that this technology is less intrusive than calls which ring.<sup>6</sup> This position ignores the current state of call blocking technology. As noted recently by the Commission's own Robocall Strike Force, the recent advent of call blocking technology is an important part of helping consumers eliminate robocalls.<sup>7</sup> These applications use inbound caller ID information in conjunction with whitelist and dynamic blacklist based solutions<sup>8</sup> to help consumers identify and block unwanted calls.<sup>9</sup> Ringless voicemail is likely to be more intrusive, not less, because it can bypass some of the most common call blocking applications used by wireless subscribers. Ringless voicemail bypasses important lines of defense for consumers and threatens the efficacy of call blocking applications which can protect consumers from scams and unlawful calls.

The purpose of the TCPA is to protect consumers from unwanted and intrusive calls.<sup>10</sup> The Commission should exercise its authority to protect consumers from these unwanted ringless robocalls and deny the Petition.

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<sup>6</sup> See Petition at p. 15, *see also* Comments of the Republican National Committee, CG Docket No. 02-278 (filed May 18, 2017)

<sup>7</sup> *Robocall Strike Force Report*, p. 1-2.

<sup>8</sup> Whitelist technology allows consumers to designate incoming phone numbers that will not be blocked and/or allows an application with a database of legitimate numbers to allow the calls through on consumers' behalf. Dynamic blacklist technology allows consumers to designate specific phone numbers to be blocked from calling and also allows a call blocking application with an ever-changing database of spam callers to block incoming calls from those numbers. Consumers are often able to add or remove numbers from these lists at the time the call rings.

<sup>9</sup> *Id.* at p. 16.

<sup>10</sup> *Todd v. Citibank*, No. CV 16-5204-BRM-DEA, 2017 WL 1502796 (D.N.J. Apr. 26, 2017) *citing Gager v. Dell Fin. Servs., LLC*, 727 F.3d 265, 268 (3d Cir. 2013).

Respectfully Submitted,

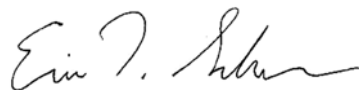


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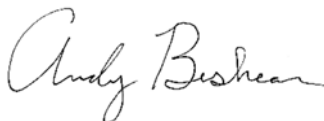


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