

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Consumer and Government Affairs Bureau Seeks)	CG Docket No. 18-152
Comment on Interpretation of the Telephone)	
Consumer Protection Act in Light of the D.C.)	
Circuit’s ACA International Decision)	
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	

To: The Commission

REPLY COMMENTS OF THE VOICE ON THE NET COALITION

The Voice on the Net Coalition (“VON”)¹ hereby submits these reply comments regarding the Consumer and Government Affairs Bureau’s October 3, 2018, Public Notice² seeking further comment on how to interpret and apply the statutory definition of automatic telephone dialing system (“ATDS”)³ following the decision in *Marks v. Crunch San Diego, LLC*.⁴ VON agrees with the numerous commenters in this proceeding that ask the Commission to reject *Marks*’s overbroad interpretation of ATDS and to exercise its discretion to more

¹ VON is the leading advocacy organization for the Internet communications industry, working with policymakers to develop policies that support the availability and adoption of Internet communications products and services. For more information, see www.von.org.

² *Consumer and Governmental Affairs Bureau Seeks Further Comment on Interpretation of the Telephone Consumer Protection Act in Light of the Ninth Circuit’s Marks v. Crunch San Diego LLC Decision*, Public Notice, DA 18-1014 (rel. Oct. 3, 2018).

³ The Telephone Consumer Protection Act (“TCPA”) defines ATDS as “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.” 47 U.S.C. § 227(a)(1).

⁴ *Marks v. Crunch San Diego, LLC*, No. 14-56834, 2018 WL 4495553 (9th Cir. Sept. 20, 2018).

appropriately interpret the definition of ATDS narrowly.⁵ Indeed, NCTA correctly warns that *Marks*'s overbroad interpretation of ATDS "exposes all types of companies . . . to unwarranted TCPA liability, making it extremely difficult for businesses to communicate with their customers. At the same time, and just as importantly, the *Marks* decision puts consumers at risk of legal exposure for calling and texting and may have other similarly unintended consequences."⁶

VON also agrees with commenters that urge the Commission to act quickly to decide how to interpret and apply the definition of ATDS.⁷ Immediate action by the Commission will limit unnecessary legal exposure and prevent additional circuit courts from issuing conflicting decisions. Currently, *Marks*'s broad interpretation of the ATDS definition conflicts with *ACA International v. FCC*,⁸ where the D.C. Circuit held that the Commission's broad interpretation of ATDS adopted in the *2015 Declaratory Ruling*⁹ was "unreasonable" and "impermissible."¹⁰ *Marks* similarly conflicts with the Third Circuit's decision in *Dominguez v. Yahoo*.¹¹ Accordingly, Commission action would resolve the current confusion and uncertainty surrounding the definition of ATDS.

⁵ See, e.g., Comments of NCTA – The Internet & Television Association, CG Docket 18-152, CG Docket 02-278 at 1 (filed Oct. 17, 2018) ("NCTA Comments"); Comments of ADT LLC d/b/a ADT Security Services, CG Docket 18-152, CG Docket 02-278 at 5 ("ADT Comments").

⁶ NCTA Comments at 3.

⁷ See ADT Comments at 6.

⁸ *ACA Int'l v. FCC*, 885 F.3d 687 (D.C. Cir. 2018).

⁹ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd. 7961 (2015).

¹⁰ *ACA Int'l v. FCC*, 885 F.3d 687 at 697.

¹¹ *Dominguez v. Yahoo, Inc.* 894 F.3d 116, 121 (3d Cir. 2018); ADT Comments at 5-6.

CONCLUSION

Based on the record in this proceeding, the Commission should reject *Marks's* overbroad interpretation of the ATDS definition and instead use its discretion to more appropriately interpret ATDS narrowly. It also should act quickly, so as to limit unnecessary legal exposure to companies and individuals, and prevent further confusion and uncertainty.

Respectfully submitted,

VOICE ON THE NET COALITION

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