

New Petition Seeking FCC Clarification That Calls Using Soundboard Technology Are Not “Entirely Prerecorded Calls” Prohibited By the TCPA

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The FCC’s TCPA docket now has two pending petitions for declaratory ruling on the question as to whether outbound telemarketing calls made through soundboard technology are prohibited communications if made without prior consent under the TCPA. As [we predicted in April 2019](#), industries using soundboard technology to streamline their telemarketing operations are increasing their efforts before the FCC in seeking review of this very issue.

The FCC recently issued a [Public Notice](#) seeking comments on a [Petition for Declaratory Ruling](#) filed by Yodel Technologies, a Florida-based company providing other entities with outbound telemarketing services using soundboard technology. The Yodel Petition “fully supports” “a currently pending [Petition for Emergency Declaratory Ruling filed by NorthStar Alarm Services, LLC](#), that sets forth a litany of persuasive reasons why the Commission should rule that use of soundboard technology does not violate the TCPA.” The Yodel Petition also “submits its own justifications” to assist the FCC in reaching this conclusion or, alternatively, in waiving application of any rules prohibiting soundboard technology prior to May 12, 2017.

According to Yodel, as “calls using recorded audio clips specifically selected and presented by a human operator in real-time,” soundboard technology should not be considered “prerecorded voice message.” Yodel argues that the FCC’s [1992 TCPA Report and Order](#) implied that prerecorded voice message only refers to calls and messages that are *entirely* prerecorded. In support, it observes that the FCC has always been and has only been using examples of fully automated calls when discussing TCPA implementing rules in the past twenty-seven years. Yodel’s Petition emphasizes that a caller’s ability to “ascertain the propriety of proceeding with a message” is an important characteristic in distinguishing between live and prerecorded calls – a view supported by case law in the Ninth Circuit. As such, Yodel advocated that outbound calls using soundboard technology would not be prerecorded calls when live operators would remain “available to interact with every called party from inception.”

After the Supreme Court declined in April 2019 to review a challenge to a Federal Trade Commission decision treating outbound telemarketing calls made through soundboard technology as robocalls, a

wave of litigation ensued. Many federal courts, including the Eleventh Circuit (with appellate jurisdiction over Florida), have not examined soundboard technology in the context of TCPA claims in the past. Others have not had a consistent view on soundboard technology. As Yodel put it, clarity is needed because of the “serious reliance interests at stake.”

Interested parties have until October 21, 2019 to submit comments to the FCC on the Petition.

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