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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of	)	
	)	
Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991	)	DA 17-364
	)	
Petition for Declaratory Ruling of All About the	)	
Message, LLC	)	

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Comments Opposing the Petition for Declaratory Ruling and Waiver

Filed by

National Consumer Law Center
on behalf of its low-income clients

and

Center for Responsible Lending
Consumer Action
Consumer Federation of America
Consumers Union
National Association of Consumer Advocates
Public Knowledge
U.S. PIRG
Public Justice Center of Maryland
Legal Services NYC
Legal Aid Society of Southwest Ohio, LLC
Financial Protection Law Center, Wilmington, NC
Kentucky Equal Justice Center
SC Appleseed Legal Justice Center
Virginia Poverty Law Center
Mountain State Justice of West Virginia

Submitted May 18, 2017

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Summary

These comments are to oppose the request for a declaratory ruling to allow unfettered

voicemail messages to clutter the voicemail boxes of consumers' cell phones. The petition in this

case seeks to permit voicemail messages that are inserted into consumers' cell phone voicemail boxes without ringing the cell phones to be exempt from the Telephone Consumer Protection Act. Yet these voicemail messages are just as invasive, expensive, and annoying as calls and texts to cell phones. Granting the petitioner's request would allow telemarketing and debt collection messages to overwhelm the voicemail boxes of consumers. Unlike their ability to limit calls and texts, consumers have no way to limit, restrict or block unwanted voicemail messages from particular callers. These messages appear to be delivered using technology that is identical to that used for texts, so there is no technological or legal reason for them not to be covered by the same rules under the TCPA.

Table of Contents

I. Introduction

Pursuant to the Public Notice[1] issued by the Consumer and Governmental Affairs Bureau, the **National Consumer Law Center** (NCLC)[2] files these comments on behalf of our low-income clients and the following national and state public interest and legal services programs: **Center for Responsible Lending, Consumer Action, Consumer Federation of America, Consumers Union, National Association of Consumer Advocates, Public Knowledge, U.S. PIRG, Public Justice Center of Maryland, Legal Services NYC, Legal Aid Society of Southwest Ohio, LLC, Financial Protection Law Center, Wilmington, NC, Kentucky Equal Justice Center, South Carolina Appleseed Legal Justice Center; Virginia Poverty Law Center; Mountain State Justice of West Virginia.** We respectfully oppose, in all respects, the request of All About the Message, LLC [hereinafter AATM Petition[3]] to exclude voicemail messages that are directly deposited into consumers' voice mailboxes from the consumer protections of the Telephone Consumer Protection Act (TCPA)[4].

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[1] Public Notice, Federal Communications Commission, Consumer and Governmental Affairs Bureau Seeking Comment on All About the Message, LLC, CG Docket No. 02-278 (Rel. April 18, 2017), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0418/DA-17-368A1.pdf.

[2] The National Consumer Law Center is a nonprofit corporation founded in 1969 to assist legal services, consumer law attorneys, consumer advocates and public policy makers in using the powerful and complex tools of consumer law for just and fair treatment for all in the economic marketplace.

[3] All About the Message, LLC Petition for Declaratory Ruling, CG Docket No. 02-278 (filed Mar. 31, 2017) [hereinafter AATM Petition], *available at* https://ecfsapi.fcc.gov/file/104010829816078/Petition%20for%20Declaratory%20Ruling%20of%20All%20About%20the%20Message%20LLC.pdf.

[4] The TCPA is codified at 47 U.S.C. § 227. The Commission's implementing rules are codified at 47 CFR § 64.1200. The TCPA and/or the related rules, among other things, prohibit any call to a 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" using any automatic telephone dialing system or an artificial or prerecorded voice other

AATM's petition requests that the Federal Communications Commission (Commission) "declare that the delivery of a voice message directly to a voicemail box does not constitute a call that is subject to the prohibitions on the use of an automatic telephone dialing (ATDS) or an artificial or prerecorded voice under the TCPA." In the alternative, the petition requests that the Commission grant a waiver for the petitioner and its customers – and even that it make the waiver retroactive.

We strongly oppose these requests. These voicemail messages are just as invasive, expensive, and annoying as calls and texts to cell phones. If left unregulated by the TCPA, telemarketing and debt collection messages could easily overwhelm the voicemail boxes of consumers. Unlike their ability to limit calls and texts, consumers have no way to limit, restrict or block unwanted voicemail messages from particular callers. These messages appear to be delivered using technology that is identical to that used for texts, so there is no technological or legal reason for them not to be covered by the same rules under the TCPA.

Moreover, it would be contrary to the purpose of the rules allowing waivers for one to be issued in this case. And a retroactive waiver would be especially inappropriate. Millions (if not tens of millions) of unconsented-to voicemail messages have already been left on consumers' cell phones – invading their privacy, annoying them, and costing them money. This clearly illegal behavior should not be forgiven with the grant of a retroactive waiver.

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than a call made for emergency purposes; made with the prior express consent of the called party; or made solely to collect a debt owed to or guaranteed by the United States. 47 U.S.C. § 227(b)(1)(A)(iii); 47 CFR § 64.1200(a)(1)-(2).

II. Left Unregulated, Ringless Voicemail Would Flood Consumers' Mailboxes

The technology at issue—namely ringless voicemail (RVM)—works to deliver deliberately targeted, pre-recorded telemarketing and debt collection voice messages *en masse* to the voicemail boxes of cellular subscribers. The technology is essentially a perverted use of the standard voicemail system. Instead of leaving a typical voicemail message only when a cellular subscriber is unavailable to receive a call, RVM works to deliver a pre-recorded voicemail message directly to the cellular subscriber's voicemail box without ever giving the consumer the opportunity to answer—or to block—the incoming call.[5]

The leaving of an RVM message in the consumer's voicemail box then triggers an audible notification of the presence of a voicemail message, depending on the consumer's settings, just as notification of a call is dependent on the choice of settings. The deposit of the RVM message into the consumer's voice mailbox will also cause a notification to appear on the consumer's visual voicemail application, using up data on the consumer's data plan.

The duration of each RVM message is limited only by the maximum time, in minutes, supported by each carrier's voicemail offering, generally around three to five minutes, or longer.[6]

As illustrated by Exhibit A, many cell phone plans have limited voicemail capacity in terms of the number of messages that can be left on the systems and the permissible length of the messages. This means that each unwanted and unconsented-to RVM message has the potential to exclude from the consumer's voice mailbox messages that the consumer wants and needs.

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[5] *See, e.g.,* Comments filed by Randall A. Snyder in this docket [hereinafter Snyder Comments]. *available at* https://ecfsapi.fcc.gov/file/10516277901362/Snyder%20FCC%20All%20About%20the%20Message%20Comments%2005161617.pdf.

[6] *Id.*

Consumers have absolutely no control over who can leave an RVM message, how long the messages are, or how often the messages are left on their voicemail. Unlike standard calls and texts to cell phones, which can be blocked, RVM messages cannot be blocked by the recipient. Also, while text messages are limited in length by the underlying technology, there is no inherent limit for RVM messages—they can be any length. In one pending case, the messages left were almost a minute in length.[7] Indeed, it is entirely possible that debt collectors using this method of communicating might hijack a consumer's voicemail box—filling it with RVM messages—until the consumer pays the debt.[8] There is no technological reason that this could not occur. If the TCPA were found to be inapplicable to these messages, it would take away from consumers the right to stop these messages by declining to provide consent. While the Fair Debt Collection Practices Act (FDCPA) allows consumers to require debt collectors to cease communication with them,[9] that law applies only to certain debt collectors, not to most servicers or to creditors collecting their own debts, or to calls that are not for the purpose of debt collection.

To access RVM messages, consumers must call into their voicemail systems. This can be more time-consuming for consumers than answering a call or looking at a text message. Moreover, approximately one quarter of the population in the United States has cell phone plans with limited minutes.[10] Every call for these consumers, even those to their own voicemail, counts against those precious minutes, reducing the available minutes for essential life tasks.

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[7] *See* Mahoney v. TT of Pine Ridge, Case No. 17-80029-CV, U.S. District Court, Southern District of Florida, Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment, at 1-2.

[8] *See* Richard Read, *From Stone Age to Drone Age: Debt Collection Goes High-Tech* (Apr. 18, 2017), *available at* https://www.nerdwallet.com/blog/finance/debt-collectors-go-high-tech/. *See* also Ringless Voicemail, *available at* http://www.donotcallprotection.com/ringless-voicemail.

[9] 15 U.S.C. § 1692c(c).

[10] *See CTIA-The Wireless Association, CTIA's Wireless Industry Summary Report, Year-End 2013 Results, 2014, Prepaid Connections Make Up 23.4 Percent of Wireless Market, available at*

Additionally, even those consumers who have unlimited minutes on their calling plans generally have significantly fewer minutes when roaming away from home—either in another state, or in a foreign country. When the consumer is roaming, just leaving the RVM message can trigger roaming charges—even when the consumer does not retrieve the message. Retrieving the message will trigger additional roaming charges. For example, AT&T charges consumers when they are abroad for both calling time and data usage when a voicemail message is left on their system:

> How am I charged for receiving voicemail messages while roaming internationally?
>
> *When receiving standard voicemail messages:*
> Standard voicemail messages received when roaming outside of the U.S. are charged at international roaming calling rates, based on the international roaming feature on your account, or if you have not selected a feature, pay-per-use rates will apply.
>
> *When receiving Visual Voicemail messages:*
> Visual Voicemail messages received when roaming outside of the U.S. are charged at international roaming data rates, based on the international roaming feature on your account, or, if you have not selected a feature, pay-per-use rates will apply.[11]

The potential impact on consumers from RVM messages is massive. Stratics Networks, the purveyor of the RVM technology, advertises on its website that these systems have the capability to "Send Out 10,000 RVMs Per Minute."[12] (*See* Exhibit B).

One of the explicit concerns that prompted Congress to enact the TCPA were complaints by residential and business telephone users that "automated calls fill the entire tape of an answering machine, preventing other callers from leaving messages."[13] This is exactly the problem—translated to cell phones--that AATM's petition would unleash. If unregulated, RVMs will likely overwhelm

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http://www.ctia.org/industry-data/facts-and-infographics-details/factand-infographics/prepaid-connections-make-up-23-4-percent-of-wireless-market (accessed Jan. 29, 2017) .

[11] AT&T Frequently Asked Questions on international calls, *available at* https://www.att.com/offers/international-plans/faq.html (accessed May 11, 2017) (emphasis added*).*

[12] *See* http://straticsnetworks.com/stratics-networks-vs-the-competitors/ (accessed May 15, 2017).

[13] S. Rep. No. 178, Calendar No. 262, 102d Cong., 1st Sess 2 (Sept. 19, 1991) (Sen. Hollings) [hereinafter Senate Report].

consumers' voicemail systems and consumers will have no way to limit, control or stop these messages. Debt collectors could potentially hijack a consumer's voicemail with collection messages, eliminating access by callers whose messages are wanted and needed by the consumer.

III. Technologically, RVM Messages Are Calls to Cell Phones.

As explained more specifically by telecommunications experts Randall Snyder[14] and Jeffrey Hanson[15] in their filings in this docket, RVM messages possess the following critical characteristics which make them calls covered by the TCPA:

1. Upon receiving a voicemail message, cell phones will alert the consumer with a tone or "ring."

2. In one method of delivering RVM messages, a computerized platform initiates automatic calls to special "backdoor numbers" of the cellular carriers' voicemail systems using an automatic telephone dialing system. A list of cellular numbers is uploaded into the system. As part of each automated call, the subscribers' cellular telephone numbers are used to identify each voicemail box so that the pre-recorded voice message is left in each voicemail box. <u>The consumer's cell phone is accessed by specifically addressing the RVM message to the specific number belonging to the consumer.</u>

3. Thus, targeted pre-recorded voicemail messages are left *en masse* using an automatic dialing system for each particular consumer using their cellular telephone numbers.

4. Another method that can be used is by a computerized platform establishing a direct Internet-based computer-to-computer data connection to the respective voicemail systems

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[14] *See* Declaration of Jeffrey A. Hansen on the Petition for Declaratory Ruling of All About The Message, LLC [hereinafter Hansen Comments], *available at* https://ecfsapi.fcc.gov/file/10515968513445/decl%20of%20jeffrey%20hansen%20ringless%20voicemail%20-%202.pdf.

[15] *See* Snyder Comments and Hansen Comments.

of the cellular carriers. As part of the protocol for this data communication, subscribers' cellular telephone numbers are used to identify each voicemail box so that the pre-recorded voice messages are inserted into each voicemail box *en masse.*

5. Consumers are charged for voicemail messages. As illustrated above, cell phone mailboxes are limited in size, and consumers have the option to purchase larger mailboxes. When RVM messages are left, they use up the limited space, and can easily eliminate the consumer's ability to receive desired voicemail messages.

6. Receiving pre-recorded messages would require a consumer to spend substantial amounts of time reviewing and deleting voicemail messages. For many subscribers, allowing their voicemail inboxes to fill up, thereby rendering them useless, might be their only option.

7. The method by which a computer-to-computer connection is used is essentially the same technology that is used for sending SMS-based telemarketing text messages to cellular subscribers *en masse* (as illustrated by Exhibit C).

8. In addition to being like a text technologically, an RVM message is also conceptually just like a text because it is a message the consumer must do something to access. But, unlike texts, which a consumer can block, RVM messages cannot be blocked. Also, unlike texts, RVM messages are not limited in length.

In these ways, RVM messages are clearly "calls" made by addressing the message specifically to a consumer's personal cell phone number, for which the consumer is charged.

IV. RVM Messages are Legally Calls under the TCPA.

Petitioners argue that RVM messages are not calls covered by the TCPA because no "call" is made, a telephone number is not dialed, [16] and consumers are not charged for the delivery of RVM messages.[17] We disagree on all three counts: The messages are calls under the TCPA; a telephone number is accessed—which means that it is dialed (who uses a rotary dial anymore?); and consumers are clearly charged for RVMs.

A. RVM messages are Calls.

As explained above, and in more detail by two telecommunications experts who have filed in this proceeding,[18] the RVM technology is nearly identical to the mass text messaging technology that the courts and the Commission have repeatedly found to constitute "calls" requiring full compliance with the TCPA.

In making this determination, the Commission analyzed whether using a computer to communicate with a cell phone subscriber via a text message is a covered "call" under the TCPA. It found that even when the computer "dials" the cell phone number such that the message is not initiated from a telephone, that the message is considered to be a "call" under the TCPA.[19]

> 113. There is no dispute that <u>Internet-to-phone text messaging technology is used to initiate calls that ultimately are carried over wireless carriers' networks to wireless consumers via their respective unique telephone numbers</u>. Rather than using a wireless phone to initiate the call, the <u>sender has chosen to initiate text messages using equipment that nevertheless "dials" numbers</u> in a fashion required by and

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[16] *See* AATM Petition at 8.

[17] *See* AATM Petition at 10.

[18] *See* Snyder Comments and Hansen Comments.

[19] *In re* Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, 30 FCC Rcd. 7961 ¶¶ 113 – 122. (2015) (hereinafter 2015 Omnibus Order).

compatible with the technical characteristics, features, and functionalities of the wireless carrier's network.[20]

B. RVM Messages are Directed to Specific Telephone Numbers.

The prohibition in the TCPA against automated calls to cell phones prohibits "calls" "to any telephone number assigned to a … cellular telephone services . . . ."[21] The petition seeks to escape coverage under the TCPA because a telephone number is not dialed.[22] But as the FCC has already determined in the contexts of sending messages, that addressing a message to a particular telephone number, assigned to a cell phone, clearly falls under the coverage of the TCPA.

On this issue, the FCC concluded its analysis of internet-to-text calling by stating:

114. We conclude that by addressing a message using the consumer's wireless telephone number (e.g., 5555551111@sprint.messaging.net or entering a message on a web portal to be sent to a consumer's wireless telephone number) and sending a text message to the consumer's wireless telephone number, <u>the equipment dials a telephone number and the user of such technology thereby makes a telephone call to a number assigned to a wireless service as contemplated in section 227(b)(1) of the Act</u>. We disagree, therefore, with the commenter who suggests that equipment used to originate Internet-to-phone text messages does not meet the second element of the TCPA's autodialer definition because that technology does not use a "traditional" dialing technique.[23]

The courts had already made the same determination. In *Satterfield v. Simon & Schuster, Inc.*,[24] the Ninth Circuit addressed the concept of mass texts from a text messaging server and found that a text message is a "call" within the meaning of the TCPA.[25] The Court noted that the dictionary definition of "call" in this context was "'to communicate with or try to get into communication with

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[20] 2015 Ominibus Order at ¶ 113 (emphasis added).

[21] 47 U.S.C. § 227(b)(1)(iii).

[22] AATM Petition at 3.

[23] *Id.* at ¶ 114 (emphasis added).

[24] 569 F.3d 946 (9th Cir. 2009).

[25] *Id.* at 952.

a person by a telephone.'"[26] Based on that definition, the Ninth Circuit found that, when enacting

the TCPA:

> Congress intended to regulate the use of an [automatic telephone dialing system] to communicate or *try to get into communication* with a person by a telephone.[27]

In *Joffe v. Acacia Mortg. Corp.*,[28] the court also addressed the definition of the word "call" in

the TCPA, and expressly rejected the idea that only the usual two-way real-time voice

intercommunication was prohibited, stating:

> It is the act of making a call, that is, of <u>attempting to communicate to a cellular telephone number using certain equipment</u>, that the TCPA prohibits. Whether the call had the potential for a two-way real time voice communication is irrelevant.[29]

As explained by the two communications experts, the systems used by Stratics Networks are,

for all relevant purposes, identical to the email to text mass text messaging systems used in the *Joffe*

case.[30]

The text cases, including the two cited above, are supportive of this premise and consistent

with it. The *Satterfield* court held that mass text messaging was a call and in violation of the TCPA,

and the *Joffe* court held the same for computer-to-email-address text messaging. Computer-

generated texts sent to email addresses or to a carrier's text server are not traditional telephone

handset-to-telephone handset communications, yet they are within the definition of "call" and are

prohibited by the TCPA. RVM messages are no different.

The Stratics technology used to deliver RVM messages makes a data connection to a

voicemail server instead of a text server *by dialing the voicemail server.* The technology then passes the

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[26] *Id.* at 953–954 (quoting Webster's Third New International Dictionary (2002)).

[27] *Id.* at 954 (emphasis added). *See also* Fillichio v. M.R.S. Assocs., Inc., 2010 WL 4261442, at *3 (S.D. Fla. Oct. 19, 2010).

[28] 121 P.3d 831 (Ariz. Ct. App. 2005).

[29] *Id.* at 330 (emphasis added).

[30] *See* Snyder Comments and Hansen Comments.

cellular telephone number of the intended recipient to the voicemail server,[31] in order to identify the particular voice mailbox of the intended recipient-cellular user. This is exactly the same procedure as in the text message scenario. The message is then deposited in the voice mailbox of the intended recipient, just as the text is then deposited in the text message server. The voice mailbox server then alerts the user of a message and the message is retrieved. An alert tone is played, a visual message is displayed, and, with many phones today, a transcription of the message is sent to the phone. All of this is done without the user's consent.

C. Consumers are Charged for RVM Messages.

Even if the transmission of an RVM message were not considered to be a call to the consumer's telephone number, it would still be covered by the TCPA. Section 227(b)(1)(A)(iii) regulates not just calls to a person's cell phone number, but also makes it unlawful for "any person ... to make any call ... to any telephone number assigned to ... any *service* for which the called party is charged for the call" without consent. And, as explained in Section III above, and with more detail in the filings of two telecommunications experts, consumers are charged for these messages, as the voicemail system on a consumer's cell phone plan is part of the cell phone plan, voicemail boxes are limited in size, and receipt of visual voicemail triggered by each new voicemail message using up data allotments.

A cell phone carrier's voicemail box is clearly a service, and the Commission's rulings have repeatedly made it clear that consumers are "charged" when a call or message cuts into a limited number of minutes or a limited amount of data allowed under the consumer's plan. AATM's petition completely ignores this alternate basis for holding a large proportion of RVM messages to fall within the TCPA. Indeed, unless there are carriers that provide an unlimited amount of

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[31] *Id.*

voicemail capacity for their customers, all voicemail messages eat into limits under the consumer's plan.

V.   No Waiver Should be Granted.

The Commission may waive its rules only upon a showing that "[t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest."[32] The Commission may waive any of its rules *only* for good cause shown. A standard for such a waiver is based on whether "(1) special circumstances warrant a deviation from the general rule and (2) the waiver would better serve the public interest than would application of the rule."[33]

There is no good cause to grant a waiver in this instance – let alone a retroactive waiver – and very good cause to deny one. The stated and underlying purpose of the TCPA regulations governing automated calls to cell phones is to protect consumers from invasive, expensive, unwanted calls. RVM messages are exactly the type of calls for which the TCPA was created, and for which the Commission promulgated its implementing rules.[34]

The petitioner in this docket, All About the Message, LLC, describes itself as a "white label distributor of direct to voicemail insertion technology developed by Stratics Networks, Inc. AATM's customers sign up through AATM to use Stratics' software and platform for delivery of voicemail messages directly to consumers' voicemail services."[35]

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[32] 47 C.F.R. § 1.925(b)(3)(ii).

[33] 47 C.F.R. § 1.3.

[34] 47 C.F.R. § 1200(a)(iii).

[35] AATM Petition at 2.

Stratics Networks, the creator of the technology used to deliver RVM messages, makes

perfectly clear to its customers its recognition that <u>consent is required</u> before these messages can be

left in consumers' voice mailboxes. This is evident from the requirement imposed by Stratics

Networks on its customers that <u>they agree to:</u>

> Not send any sales outbound broadcasts to recipients <u>that have not consented to
> receiving</u> such a broadcast.[36]

At the same time, Stratics Networks is advertising this new technology as the best new way

to reach consumers, strongly implying—if not stating overtly—that the TCPA limitation requiring

consent to cell phones is not necessary. Here are excerpts from Stratics' website pushing the RVM

technology:

- When Used Responsibly Ringless Voicemail Drops Are Also 100% TCPA, FCC And CRTC Compliant . . .
- Only a landline to landline session, aka system to voicemail server, is established to drop the message.
- The FCC defines voicemail services as an Enhanced Information Service.
- The FCC has intentionally not regulated Enhanced Information Services.[37]

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[36] https://straticsnetworks.com/compliance-center/ (accessed May 12, 2017) (emphasis added*). See
also* Stratics' statements regarding compliance with the TCPA:

> Your organization qualifies for one or more of the specific exemptions contained in
> the FTC's and FCC's rules, such as:
>
> - you only call to solicit charitable contributions; or
> - you only call consumers with whom you have an established business relationship; or
> - you only call consumers from whom you have received written permission to call; or
> - you only make business-to-business calls.
>
> Note: If you are a for-profit telemarketer, you are NOT an Exempt Organization.
>
> Deciding if your organization is exempt is a decision that requires an understanding
> of the FTC's and FCC's requirements. In making this decision, you may wish to
> consult with a lawyer or attorney. http://straticsnetworks.com/us-telco-compliancy/
> (accessed May 15, 2017) (emphasis added*).*

[37] *See* https://straticsnetworks.com/ringless-voicemail-drops/ (accessed May 15, 2017).

Users of new technology should not be permitted to sell their programs to businesses intimating that the technology is a legal way to reach consumers, in derogation of well-known consumer protections, and *then* be protected from liability for violating those recognized consumer protections. Indeed, that behavior should be explicitly punished, not rewarded. The TCPA is a consumer protection statute, designed to protect consumers from unwanted, invasive, expensive and annoying automated calls. When Congress enacted the TCPA, it stressed both privacy concerns and the costs imposed on cell phone users.[38] Telemarketers and the sellers of technology to telemarketers should not be permitted to make millions (or tens of millions) of illegal calls before they have determined the legality of those calls, and then obtain a retroactive waiver of liability for making the calls that they had every reason were illegal in the first place. The AATM petition is nearly an exact duplicate of the petition filed by VoAPPS Inc. with the Commission on August 4th, 2014.[39] The VoApps petition was then withdrawn ten months later.[40] Obviously, as far back as August 2014, the illegality of ringless voicemail message was clear. The *Satterfield*[41] and *Joffe*[42] cases clarified in 2009 and 2005, respectively, that technology just like RVM messages, only delivering texts to cell phones, were covered under the TCPA. And this determination was reiterated almost two

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[38] Senate Report at 5 (1991), *reprinted in* 1991 U.S.C.C.A.N. 1968, 1969 (1972-1973) ("unsolicited calls placed to fax machines, and cellular or paging telephone numbers often impose a cost on the called party (fax messages require the called party to pay for the paper used, cellular users must pay for each incoming call, and paging customers must pay to return the call to the person who originated the call").

[39] Petition for Expedited Ruling of VoAPPs, Inhttps://ecfsapi.fcc.gov/file/7522895670.pdf c., CG Docket No. 02-278 (2014), *available at* https://ecfsapi.fcc.gov/file/7521750156.pdf; Public Notice, Federal Communications Commission, Consumer and Governmental Affairs Bureau Seeking Comment on Petition For Expedited Declaratory Ruling Filed By VoAPPs, Inc., CG Docket No. 02-278 (Rel. Sept. 3, 2014), *available at* https://ecfsapi.fcc.gov/file/7522895670.pdf.

[40] *See* Letter from Henry Goldberg, Attorney for VoAPPs, Inc., to Marlene Dortch, Secretary, Federal Communications Commission (Jun. 11, 2015), *available at* https://ecfsapi.fcc.gov/file/60001077815.pdf.

[41] 569 F.3d 946 (9th Cir. 2009).

[42] 121 P.3d 831 (Ariz. Ct. App. 2005).

years ago by the Commission in its Omnibus Order of 2015.[43] Any message sender that persisted

and used this technology in the face of this highly suspicious legal basis should be prosecuted for

intentionally violating the TCPA. No retroactive waiver of liability is appropriate.

Respectfully submitted by:

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May 18, 2107

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[43] 2015 Ominibus Order ¶¶ 113 – 122.

EXHIBIT A

Home > Support > Services & Apps > Voicemail > Premium Visual Voicemail > Voicemail Comparison

Basic   **Basic Visual Voicemail**   **Premium Visual Voicemail**   **Voicemail for iPhone**

Voicemail Comparison

	Basic Voicemail (Included)	iPhone® Visual Voicemail (Included)	Voicemail to Text for iPhone ($2.99)	Basic Visual Voicemail (Included)	Premium Visual Voicemail ($2.99)
Storage Capacity	20 messages	40 messages	40 messages	20 messages	40 messages
Message Duration	3 minutes	3 minutes	3 minutes	3 minutes	5 minutes
Voicemail to Text[1,3]	--	--	Yes[4]	--	Yes
Manage Standard Greetings	*86 only	App and *86	App and *86	App and *86	App and *86
Caller Dependent Greetings[2]	--	--	--	--	20
Caller Dependent Greeting members per group	--	--	--	--	50
Call Return	--	Yes	Yes	Yes	Yes
Reply by Text Message and Email	--	Yes	Yes	Yes	Yes
Forward by Text Message and Email	--	--	--	--	Yes
Save Voicemails to Device[5]	--	--	--	Yes	Yes
Contact List Integration	--	Yes	Yes	Yes	Yes

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Feedback

Home > Support > Services & Apps > Voicemail > Premium Visual Voicemail > **Voicemail Comparison**

Basic   **Basic Visual Voicemail**   **Premium Visual Voicemail**   **Voicemail for iPhone**

Fax Support	--	--	--	--	Yes
Distribution Lists	15	--	--	15	20
Distribution Members	10	--	--	10	50
Personal Operator	--	--	--	--	Yes
Mobile Application	--	Yes	Yes	Yes	Yes
Reply by Facetime®	--	Yes	Yes	--	--
Compatible Operating Systems	Basic phones, Android™ smartphones, BlackBerry, Windows Phones	iOS only	iOS only	Android, BlackBerry, Windows Phone	Android, BlackBerry, Windows Phone
Voicemail Platform	AnyPath & Comverse IMS	iPhone IMS	IMS	IMS	IMS

-- Not Available

1. Voicemail to Text: Discreetly read voicemails without listening to them
2. Caller Dependent Greetings: Create personal greetings for a caller or a group of callers
3. Only the first 45 seconds of each voice message will be transcribed
4. Transcribed voicemails will be sent as an SMS
5. Windows Phones that support Visual Voicemail ($2.99), do not support saving voicemails to the device.

Was this helpful? 👍 👎

Still Have Questions?

Visit the Community Forums   **Talk to us on Twitter**   **Connect with us on Facebook**   **Get Help at a Store**

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EXHIBIT B

STRATICS
NETWORKS

Main   **Discover**   **Pricing**   **Contact**

Platform Login   Add Funds   866.635.6918

Features Showdown

With an All-in-one Platform Loaded with features
(New Ones Always in Development), See What
Makes Stratics Networks your ONLY Choice!

Platform Features

Start a Live Call Now!

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Real-Time Reporting

Time Zone Protection

Massive Capacity

Platform Features

Stratics Networks' vs The Competitors

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Landline/Mobile Separator – Scrub Landlines, Duplicates & Malformed Data	YES	LIMITED
Live Support – 7 Days a Week from 9am ET – 11pm ET	YES	NO
Legal Endorsements – Endorsed by 20 Top Telcom Attorneys	YES	NO
Full White Label – Your Own Logos & URL and Logins	YES	NO
RVM On-Demand – Send Targeted Single Drops	YES	LIMITED
==Massive Capacity – Send Out 10,000 RVMs Per Minute==	==YES==	NO
API – Full REST API	YES	LIMITED
All-In-One Platform – Ringless Voicemail, IVR, Polling, Live Transfers, Voice Broadcast	YES	NO
Mobile App – iOS & Android App	YES	NO
==List Uploading – Upload Unlimited Lists and List Sizes==	==YES==	NO
Proprietary Delivery – 4 RVM Delivery Methods	YES	NO
True Ringless – ZERO Rings or Line Taps on Advanced Delivery	YES	NO
Full Management – Detailed Management of All Campaign Aspects	YES	NO
Recordings – Successful RVMS are Recorded for You to Listen To	YES	NO
Inbound IVR – Filter the Best Inbound Leads		

Platform Features

Start a Live Call Now!

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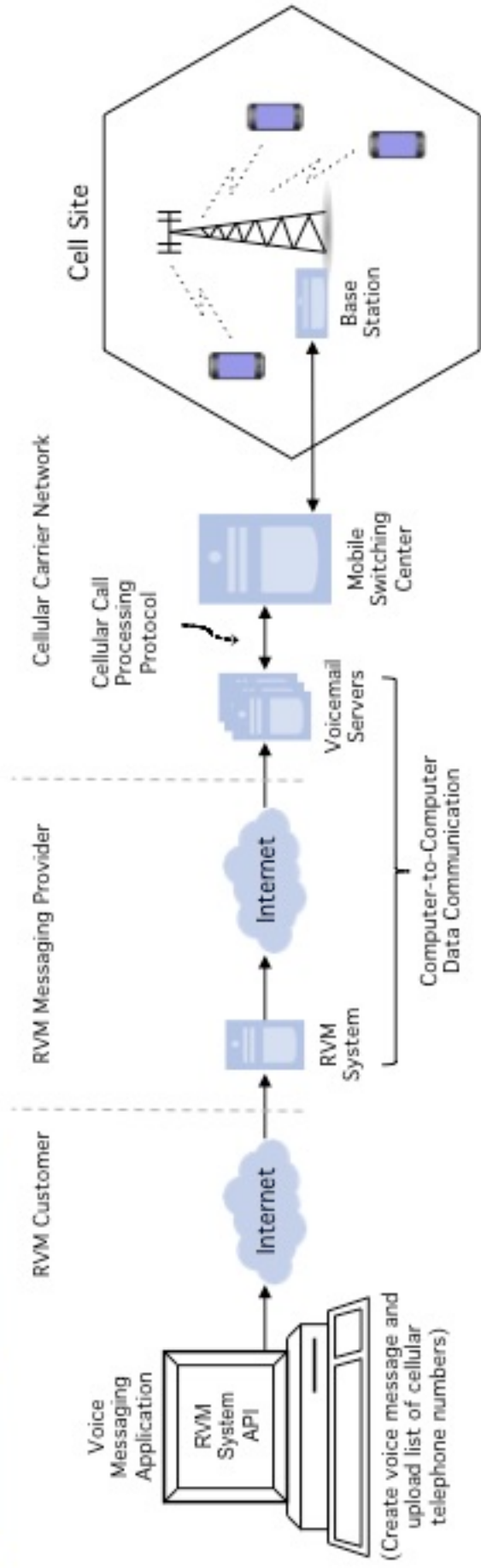|	YES	NO
Suite		
Legal Questions – Access to Top Telcom FCC Attorneys for Legal Options	YES	NO
Expiry Policy – Drops Never Expire	YES	NO
RVM Auto Stop – Automatically Stops Campaign at Desired Targets	YES	NO
No Campaign Limits – Run Multiple Campaigns at Once	YES	NO
Time Zone Compliance Tool – Maps Area Codes and Auto Stops at 9pm	YES	NO
Detailed Field Mapping – Names, Addresses, etc.	YES	NO
Transparent Billing – Only Pay for Successful Drops (each drop is recorded)	YES	NO

Platform Features

Create a Stratics Networks Platform Account Now!

Start a Live Call Now!

EXHIBIT C

RVM Voice Message Call to Subscriber

RVM Customer | **RVM Messaging Provider** | **Cellular Carrier Network**

Voice Messaging Application

RVM System API

(Create voice message and upload list of cellular telephone numbers)

Internet

RVM System

Internet

Voicemail Servers

Computer-to-Computer Data Communication

Cellular Call Processing Protocol

Mobile Switching Center

Cell Site

Base Station

Text Message Call to Subscriber

Text Messaging Customer | **Text Messaging Provider** | **Cellular Carrier Network**

Text Messaging Application

Mobile Messaging System API

(Create text message and upload list of cellular telephone numbers)

Internet

Mobile Messaging System

Internet

Short Message Service Center (SMSC) Servers

Computer-to-Computer Data Communication

Cellular SMS Protocol

Mobile Switching Center

Cell Site

Base Station