

FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of Assurance IQ, LLC's )  
Petition for Expedited Declaratory Ruling )  
)  
)  
In the Matter of Rules and Regulations )  
Implementing the )  
Telephone Consumer Protection Act )  
)

CG Docket No. 02-278  
DA 20-540

Comments of

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

and

Consumer Action  
Consumer Federation of America  
Consumer Reports  
National Association of Consumer Advocates  
Public Knowledge

In Opposition to the Petition for Declaratory Ruling  
Filed by Assurance IQ, LLC

June 22, 2020

By:

**Margot Saunders**

Senior Counsel

[msaunders@nclc.org](mailto:msaunders@nclc.org)

**Carolyn L. Carter**

Deputy Director

[ccarter@nclc.org](mailto:ccarter@nclc.org)

National Consumer Law Center

1001 Connecticut Ave., NW

Washington, D.C. 20036

## Comments

### Summary

Pursuant to the Public Notice<sup>1</sup> issued by the Consumer and Governmental Affairs Bureau, the **National Consumer Law Center** (NCLC)<sup>2</sup> files these comments on behalf of its low-income clients and **Consumer Action, Consumer Federation of America, Consumer Reports, Public Knowledge** and **National Association of Consumer Advocates**, opposing in all respects the petition filed made by Assurance IQ, LLC.<sup>3</sup> In its petition, Assurance IQ, LLC (Assurance) requests an “expedited declaratory ruling (1) confirming that where it is determined that a calling party has sufficient information to establish a “reasonable basis to believe that they have valid express consent of the called party to make the call” the caller may rely on that consent for TCPA purposes until such time as the called party claims to the caller that he or she did not provide the consent; and (2) the playing of a brief, prerecorded introductory message on an otherwise live call does not convert the entire call into a prerecorded or artificial call within the scope of the TCPA.”<sup>4</sup>

We oppose this petition in all of its particulars on these grounds:

- 1) The request for relief in the petition is premised on a scaffold of disputed facts that form the basis for Assurance’s bald statement that it “utilizes a robust process to obtain and confirm the written consent of each person it calls.”<sup>5</sup> As explained below, those factual assertions are highly questionable and strongly contested. The truth of these assertions will be determined in a court of law in the pending litigation.

<sup>1</sup> See Public Notice, Federal Communications Commission, Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Declaratory Ruling Filed by Assurance IQ, LLC, CG Docket No. 02-278, DA 20-540 (Rel. May 21, 2020), *available at* <https://docs.fcc.gov/public/attachments/DA-20-540A1.pdf>.

<sup>2</sup> 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.

<sup>3</sup> Petition for Expedited Declaratory Ruling Regarding the Application of U.S.C. § 227(b)(1)(B) by Assurance IQ, LLC, CG Docket No. 02-278 (filed May 12, 2020) [hereinafter Petition], *available at* <https://ecfsapi.fcc.gov/file/10512089842790/ASSURANCE%20IQ%2C%20LLC%20FCC%20PETITION.pdf>.

<sup>4</sup> Petition at 1.

<sup>5</sup> *Id.* at i.

- 2) The Commission does not have a formal process to take evidence and resolve disputed issues of fact and should not issue a decision based on facts asserted to be true by one party in a contested case.
- 3) As a matter of law, the Telephone Consumer Protection Act (TCPA) does not recognize a “reasonable reliance” safe harbor for callers as a defense to challenges to their automated calling campaigns.
- 4) The TCPA is clear that any call with a prerecorded or artificial voice requires the consent of the called party. Neither of Assurance’s requests is justified; both requests would be contrary to the law; and granting either request would unquestionably encourage more unwanted robocalls to plague consumers’ telephones.

## Table of Contents

I.	The Petition Should be Denied Because it is Premised on Assurance’s Contested Assertions That its Consent Process is Legally Sound.....	1
A.	The FCC Should Not Entertain a Petition That Requires Resolution of Disputed Facts When There is an Ongoing Lawsuit That Will Determine Those Facts.....	1
B.	Assurance’s Website Raises Substantial Questions About Whether Express Consent Could Have Been Provided.....	1
C.	Assurance’s Website Does Not Appear to Comply with TCPA and E-Sign Requirements for Obtaining Express Consent.....	4
II.	Reasonable Reliance is Not a Defense Under the TCPA.....	5
III.	Calls with Prerecorded or Artificial Voices Require Consent.....	7
	Conclusion.....	9
	Appendix – List of Assurance’s “TCPA Partner Companies”.....	10

**I. The Petition Should be Denied Because it is Premised on Assurance’s Contested Assertions That its Consent Process is Legally Sound.**

**A. The FCC Should Not Entertain a Petition That Requires Resolution of Disputed Facts When There is an Ongoing Lawsuit That Will Determine Those Facts.**

Assurance has requested the Federal Communications Commission (FCC or Commission) to issue a declaratory ruling in the midst of pending litigation,<sup>6</sup> on a matter that requires the application of the legal requirements of the TCPA to a set of facts that are in dispute in that case. The petition relies on the description of Assurance’s “robust process to obtain and confirm the written consent of each person it calls.”<sup>7</sup> Indeed, a long recitation of these facts is the basis upon which the request to the FCC for a safe harbor is premised. Yet these same disputed facts are the basis of its defense in the pending litigation.

A trial court, not the FCC, is the appropriate forum for deciding the correct application of the TCPA to a particular set of facts. In a trial court, the decision is based on evidence considered pursuant to clear and uniformly applicable evidentiary rules. A trial court can take sworn testimony from experts and others impacted by the actions of the parties, which can be tested by cross-examination. By contrast, the FCC is not a fact-finding body. It does not have a formal process to review transcripts, hear sworn testimony, and evaluate the facts based on conflicting evidence presented by adversary parties. The FCC does not have the capacity to do the necessary deep dive into the evidence presented by litigants. As a result, the petition should simply be denied as an inappropriate request to an administrative agency.

**B. Assurance’s Website Raises Substantial Questions About Whether Express Consent Could Have Been Provided.**

Assurance’s website is alluring to a shopper of insurance products, as it promises “Intelligent technology and personalized advice, so you always get the perfect plan.”<sup>8</sup> Offerings include life, health, Medicare, auto, home and renters, and even pet insurance. The website offers to “Take care

<sup>6</sup> James Everett Shelton et al. v. Lumico Life Insurance Company and Assurance IQ, Inc., Civ. Action File No. 7:19-cv-6494 (S.D.N.Y. filed July 12, 2019).

<sup>7</sup> Petition at i.

<sup>8</sup> <https://assurance.com/>

of all your coverage needs with a single sign in or call.”<sup>9</sup> Indeed, the website promises that “Our service team is there to help you through the whole process, whether it be selecting coverage, applying, or modifying your coverage.”

However, these promises appear ephemeral—at best. When a person goes through the process of obtaining a quote—for example, for life insurance—the last step is a screen that requires the person to enter their name, phone number, and email.<sup>10</sup> The consumer cannot see the quote for the life insurance without providing these three pieces of information and then clicking a “View My Quote” button. Below the “View My Quote” button, in a tiny font, the website states that, by clicking the button, the user will—

... expressly consent by electronic signature to receive marketing communication, including via calls using an automatic telephone dialing system and artificial or pre-recorded messages, emails, and text messages (SMS), from insurance companies or their agents, the owner of this website and its agents, representatives and affiliates, and partner companies . . . .<sup>11</sup>

What this consent form does not make clear is that by clicking the button, not only has the user agreed to receive marketing calls from “insurance companies or their agents,” plus “the owner of this website and its agents, representatives and affiliates,” but also from *174 partner companies*. (For a full list of these partner companies, see Appendix 1.) The consent form gives the consumer no reason to suspect that clicking the button will bring on such an onslaught.

While some of the partner companies do appear to be in the insurance business, a quick web search indicates that many of these “partners” appear to be selling completely different products and services from insurance, even though Assurance’s website leads the viewer to believe that she is signing up only for insurance information.<sup>12</sup>

A few examples of the subjects of the unrelated marketing calls the consumer unwittingly becomes subject to receiving by clicking on the big blue button “View My Quote” on Assurance’s website are:

<sup>9</sup> *Id.*

<sup>10</sup> [https://smart.assurance.com/198622689/198622689-ZHqxQUiADtxHEFkkoyYCjzjDhNW71AzczHfxDedasB7iaUms84suVA1PxxaMzXj/smart\\_life/Name\\_Phone\\_Email](https://smart.assurance.com/198622689/198622689-ZHqxQUiADtxHEFkkoyYCjzjDhNW71AzczHfxDedasB7iaUms84suVA1PxxaMzXj/smart_life/Name_Phone_Email).

<sup>11</sup> *Id.* (emphasis added).

<sup>12</sup> The only specific product or service mentioned in the disclosure is insurance.

- Debt.com appears to offer “debt relief” from credit card debt, student loan debt, tax debt, and more.<sup>13</sup>
- Get Seen Media offers to “grow your business with the leader in online advertising.”<sup>14</sup>
- Inside Response is a lead generator assisting businesses with access to customers. The website describes itself: “We Help Brands Scale Customer Acquisition – Through online marketing and inside sales we deliver qualified customers through clicks, calls and leads.”<sup>15</sup>
- Nexus Enterprise Solutions describes itself as “a publicly traded data technology company focused on B2B lead generation services for major national brands and ecommerce product development.”<sup>16</sup>

Assurance’s petition requests that “the Commission should reaffirm that, where it is determined that a calling party has sufficient information to establish a ‘reasonable basis to believe that they have valid consent to make the call,’ the caller may rely on that consent for TCPA purposes until the caller is informed otherwise.”<sup>17</sup>

However, the unfortunate consumer who fills in her name, email address, and phone number, thinking that she will then receive a call from an Assurance insurance agent about the product in which she has expressly stated an interest, has actually made herself vulnerable to receiving calls from as many as 174 other companies selling all kinds of products and services.

And, when the viewer tells Assurance or Debt.com to stop calling, neither the website nor Assurance’s petition describes any system, let alone a “robust” one, for stopping calls from the other 174 companies. It is not at all clear that *if* the consumer realized that calls from Assurance’s partners were the result of the consent provided to Assurance, and *if* the consumer then contacted Assurance and requested that the calls from the partners stop, that the request to Assurance would effectively stop the marketing calls from the other 174 companies. This absence of information seriously undermines Assurance’s factual premise that it has a reasonable basis to believe that it has the valid express consent of the called party.

<sup>13</sup> See Debt.com.

<sup>14</sup> <https://getseenmedia.com/>.

<sup>15</sup> <https://www.insideresponse.com/>.

<sup>16</sup> <http://www.nexusenterprisesolutions.com/>.

<sup>17</sup> Petition at 8.

**C. Assurance’s Website Does Not Appear to Comply with TCPA and E-Sign Requirements for Obtaining Express Consent.**

Under FCC rules, a caller must obtain “prior express written consent” before making calls containing “advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice.”<sup>18</sup> The rule requires that a writing that includes a clear and conspicuous disclosure of several important rights, including the fact that the person is not required to sign the agreement as a condition of purchasing any property, goods, or services, be provided to the called party before obtaining the signature indicating such agreement.<sup>19</sup> The FCC’s rule provides that the consumer can sign the agreement electronically “to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.”<sup>20</sup>

Under the Electronic Signatures in Global and National Commerce Act<sup>21</sup> (E-Sign), whenever a statute or regulation requires information regarding a transaction or transactions affecting interstate commerce to be provided to a consumer<sup>22</sup> in writing, it can be provided electronically only if the consumer has affirmatively consented to receive the information electronically, following a specific statutory procedure.<sup>23</sup> Before a required writing can be considered to have been satisfied with an electronic record, E-Sign requires that the consumer must have first have followed the E-Sign consent procedure. This procedure requires the business to provide specific disclosures to the consumer concerning the meaning of the consent to receive electronic records, the ability to request paper copies, and the ability to cancel the consent. Most importantly, E-Sign requires that the consumer to “consent electronically . . . in a manner that reasonably demonstrates that the

<sup>18</sup> 47 C.F.R. § 64.1200(f)(8).

<sup>19</sup> 47 C.F.R. § 64.1200(f)(8)(i).

<sup>20</sup> 47 C.F.R. § 64.1200(f)(8)(ii).

<sup>21</sup> 15 U.S.C. §§ 7001 to 7006.

<sup>22</sup> E-Sign defines a consumer as “an individual who obtains, through a transaction, products or services which are used primarily for personal, family, or household purposes, and also means the legal representative of such an individual.” 15 U.S.C. § 7006(1).

<sup>23</sup> There was a clear congressional intent to cover credit and insurance transactions: “The definition in Section 106(1) is intended to include persons obtaining credit and insurance, even salaries and pensions—because all of these are “products or services which are used primarily for personal, family or household purposes” as the word is defined in the Act.” 146 Cong. Rec. S5230 (daily ed. June 15, 2000) (statement of Senators Hollings, Wyden, and Sarbanes regarding the Electronic Signatures in Global and Nat’l Commerce Act).



consumer can access information in the electronic form that will be used to provide the information.”<sup>24</sup> Without that explicit E-Sign consent process having been followed, the requirement that a writing be provided to a consumer cannot be considered to have been met when it is provided electronically.

Presumably, Assurance is relying on the words displayed on its website below the “View My Quote” button<sup>25</sup> to be the writing necessary to obtain prior express written consent as required by the FCC’s rules.<sup>26</sup> Yet there is no indication on Assurance’s website that E-Sign’s requirements were followed. Without E-Sign compliance, Assurance’s electronic delivery of the TCPA-required disclosures has no effect and the consumer has not provided “prior express written consent.”

Given the serious questions about Assurance’s claim that it has a reliable system for obtaining valid express consent, the Commission should reject its petition.

## **II. Reasonable Reliance is Not a Defense Under the TCPA.**

The federal courts of appeals have been unequivocally clear in their repeated rulings on this question: the TCPA is a strict liability statute.<sup>27</sup> Intent has repeatedly been held to be irrelevant to the determination of whether a caller has failed to comply with the statute’s consent requirement for

<sup>24</sup> 15 U.S.C. § 7001(c)(1)(C)(ii). *See also* 146 Cong. Rec. S5224 (June 15, 2000) (statement of Senators Hollings, Wyden, and Sarbanes) (“The Act requires that consumers consent electronically—or confirm their consent electronically—in either case, in a manner that allows the consumer to test his capacity to access and retain the electronic records that will be provided to him.”).

<sup>25</sup> *See* [https://smart.assurance.com/198622689/198622689-ZHqXQUiADtxHEFkkoyYCjzjDhNW71AzcZHfxDedasB7iaUms84suVA1PxxaMzXj/smart\\_life/Name\\_Phone\\_Email](https://smart.assurance.com/198622689/198622689-ZHqXQUiADtxHEFkkoyYCjzjDhNW71AzcZHfxDedasB7iaUms84suVA1PxxaMzXj/smart_life/Name_Phone_Email).

<sup>26</sup> 47 C.F.R. § 64.1200(f)(8).

<sup>27</sup> *Breda v. Cellco P’ship*, 934 F.3d 1, 4 (1st Cir. 2019); *Alea London Ltd. v. Am. Home Servs., Inc.*, 638 F.3d 768, 776 (11th Cir. 2011); *M.A. by Ashear v. NRA Group, L.L.C.*, 2019 WL 2357767, at \*2 (E.D.N.Y. June 4, 2019); *Krakauer v. DISH Network, L.L.C.*, 2017 WL 2242952, at \*1 (M.D.N.C. May 22, 2017), *aff’d*, 925 F.3d 643, 663 (4th Cir. 2019); *Harrington v. RoundPoint Mortg. Servicing Corp.*, 163 F. Supp. 3d 1240, 1243 (M.D. Fla. 2016); *Jackson v. Caribbean Cruise Line, Inc.*, 88 F. Supp. 3d 129, 134 (E.D.N.Y. 2015); *Echevarria v. Diversified Consultants, Inc.*, 2014 WL 929275, at \*4 (S.D.N.Y. Feb. 28, 2014); *Park Univ. Enters., Inc. v. Am. Cas. Co.*, 314 F. Supp. 2d 1094, 1103 (D. Kan. 2004), *aff’d*, 442 F.3d 1239 (10th Cir. 2006). *See also* *Armstrong v. Investor’s Bus. Daily, Inc.*, 2019 WL 2895621, at \*8-9 (C.D. Cal. Mar. 12, 2019) (holding that detrimental reliance is not an element of a TCPA claim; stating that court is “inclined to agree” that TCPA essentially imposes strict liability).

automated calls.<sup>28</sup> There is no requirement of a showing of intent except when awarding treble damages.<sup>29</sup> There is no bona fide error defense except to violations of the privacy protections, primarily the “do not call” prohibitions.<sup>30</sup>

Moreover, allowing reasonable reliance to be a defense in situations in which the caller cannot prove it actually had the requisite prior express consent would essentially eradicate the possibility that repeated and deliberate violations would lead to treble damages based on willful violations.<sup>31</sup> If “reasonable reliance” is a defense to violations that are not alleged to be willful, the plaintiff would have to prove unreasonable actions by the caller just to obtain statutory damages of \$500 per call.<sup>32</sup> What, then, would be the difference between *un*reasonable actions by the caller and the “willful or knowing” violations that lead to treble damages?

<sup>28</sup> N. L. by Lemos v. Credit One Bank, \_\_\_ F.3d \_\_\_, 2020 WL 2893707, at \*2 (9th Cir. June 3, 2020) (bank's intent to place calls to customer did not render customer the “called party” and did not exempt bank from TCPA liability; “Credit One’s intent to call a customer who had consented to its calls does not exempt Credit One from liability under the TCPA when it calls someone else who did not consent.”); Soppet v. Enhanced Recovery Co., L.L.C., 679 F.3d 637, 641 (7th Cir. 2012) (affirming TCPA liability for calls to phone numbers where the recipient of the call had not given consent, even if the phone number was called due to a typographical error in its entry or because the number previously belonged to a different person); Alea London Ltd. v. Am. Home Servs., Inc., 638 F.3d 768, 776 (11th Cir. 2011).

<sup>29</sup> Alea London Ltd. v. Am. Home Servs., Inc., 638 F.3d 768, 776 (11th Cir. 2011); Penzer v. Transportation Ins. Co., 545 F.3d 1303, 1311 (11th Cir. 2008); Berman v. Freedom Fin. Network, 400 F. Supp. 3d 964, 979-80 (N.D. Cal. 2019); Krakauer v. DISH Network, L.L.C., 2017 WL 2242952, at \*1 (M.D.N.C. May 22, 2017), *aff’d*, 925 F.3d 643, 661-62 (4th Cir. 2019); Harrington v. RoundPoint Mortg. Servicing Corp., 163 F. Supp. 3d 1240, 1243 (M.D. Fla. 2016).

<sup>30</sup> See 47 U.S.C. § 227(c)(5); 47 C.F.R. § 64.1200(c)(2)(i). See also *Denova v. Ocwen Loan Servicing, L.L.C.*, 2018 WL 1832902, at \*1 (bona fide error inapplicable to TCPA claim); *Ahmed v. HSBC USA, Nat’l Ass’n*, 2017 WL 5720548, at \*3 (C.D. Cal. Nov. 6, 2017) (bona fide error is not a defense to a TCPA claim); *Morgan v. Branson Vacation & Travel, L.L.C.*, 2013 WL 5532228, at \*1 (W.D. Okla. Oct. 4, 2013) (defendant offered no legal authority to establish existence of a good faith defense; “Defendant's good faith is immaterial as the statute imposes strict liability for violations.”).

<sup>31</sup> See, e.g., *Universal Underwriters Ins. Co. v. Lou Fusz Auto. Network, Inc.*, 401 F.3d 876, 882 n. 3 (8th Cir. 2005) (“The [TCPA] . . . makes no exception for senders who mistakenly believe that recipients' permission or invitation existed. The issue of intent, or more accurately, the issues of knowledge and willfulness, however, clearly are material to the question of treble damages.”).

<sup>32</sup> 42 U.S.C. § 227(b)(3).

### III. Calls with Prerecorded or Artificial Voices Require Consent.

Assurance's second request seeks a determination similar to that sought by pending petitions filed by Yodel Technologies, LLC<sup>33</sup> and NorthStar Alarm Services, LLC.<sup>34</sup> It seeks a ruling that the TCPA's prior express consent requirement does not apply to a call that starts out with a prerecorded message and then switches to a live caller.

As we said in response to those petitions, the statute is clear: calls with prerecorded voices require consent. The TCPA specifically protects consumers from calls using any prerecorded voice without the prior consent of the called party:

**(b)(1) Prohibitions**

It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States—

...

(B) to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, . . .<sup>35</sup>

Assurance argues in its petition that the “TCPA only applies to fully automated robocalls” that are “*entirely prerecorded*.”<sup>36</sup> Yet the TCPA simply does not contain any statutory requirement that a call be either entirely prerecorded or entirely automated for consent to be required. The triggers for consent are that the call is made either “using any automated telephone dialing system or an artificial or prerecorded voice.”<sup>37</sup>

Assurance argues that the potential for interactivity in its calls excludes these calls from coverage. But there is nothing in the statute about interactivity between the caller and the person called that determines whether calls with a prerecorded voice are covered by the TCPA. Nor is there

<sup>33</sup> Petition for Expedited Declaratory Ruling Regarding the Application of 47 U.S.C. § 227(b)(1)(B) of the Telephone Consumer Protection Act or In The Alternative Retroactive Waiver filed by Yodel Technologies LLC, CG Docket No. 02-278 (filed Sept. 13, 2019), *available at* <https://ecfsapi.fcc.gov/file/1091320379447/Yodel%20Petition%20for%20Expedited%20Declaratory%20Ruling%20Or%20Waiver.PDF>.

<sup>34</sup> Petition for Expedited Declaratory Ruling Clarifying 47 U.S.C. § 227(b)(1)(B) of the Telephone Consumer Protection Act (filed Jan. 2, 2019), *available at* <https://ecfsapi.fcc.gov/file/10103290733918/NorthStar%20FCC%20Petition.pdf>.

<sup>35</sup> 47 U.S.C. § 227(b)(1)(B) (emphasis added).

<sup>36</sup> Petition at 10-11 (emphasis in original).

<sup>37</sup> 47 U.S.C. § 227(b)(1)(A) and (B).

any reason to believe that Congress viewed some robocalls as less bothersome if they contained an interactive feature. After all, the TCPA requires consent for calls made using an automated dialer, even though those calls are entirely interactive once the call is connected.

So, the fact that, in Assurance's calls, a human being may come on the line after the prerecorded voice message plays is irrelevant to any determination of whether the calls using prerecorded voices are covered by the TCPA.

Moreover, the legislative history of the TCPA shows that Congress explicitly considered the issue at the heart of the petition's request: whether a call that includes a prerecorded clip requires prior express consent. The Senate Committee report that was issued at the time of the TCPA's enactment states:

[W]hen a consumer answers the phone, a "live" person can ask the consumer if he or she consents to listening to a recorded or computerized message. If the consumer indicates express consent, the "live" caller may switch to a recorded or computerized message. The Committee does not believe that this consent requirement will be an inordinate regulatory burden on the telemarketer.<sup>38</sup>

In this passage, the Senate directs that the playing of an audio clip does not violate the TCPA *if a live caller obtains express consent before playing the clip*. Thus, the Senate treated the playing of a prerecorded audio clip, even by a live caller, as an act that requires prior express consent.

The petition here amounts to a request that the Commission create an exemption for the calls in question with prerecorded voice. The Commission lacks authority to grant such an exemption. Under the TCPA, the FCC has the authority to dispense with the called party's prior express consent for calls to residential lines that use a prerecorded voice only if the calls *are not made for a commercial purpose*, will not adversely affect the privacy rights that the TCPA is intended to protect, and *do not introduce any advertisements*.<sup>39</sup> Assurance, which admits that it is making marketing calls to sell products and services, cannot possibly qualify for such an exemption.<sup>40</sup>

<sup>38</sup> S. Rep. No. 178, 102d Cong., 1st Sess., at 8 (1991). *See also* 137 Cong. Rec. 16,204 (Nov. 7, 1991) (comments of Senator Hollings upon introduction and passage of the Telephone Consumer Protection Act: "Such consent also could be obtained by a live person who simply asks the called party whether he or she agrees to listen to a recorded message.").

<sup>39</sup> 47 U.S.C. § 227(b)(2)(B).

<sup>40</sup> The FCC's authority under 47 U.S.C. § 226(b)(2)(C) to exempt calls to cell phones with prerecorded voice if they are not charged to the called party is not implicated in this petition, as there is no indication that Assurance is able to make its calls without charging them to the called party.

## Conclusion

The Commission has said repeatedly (including in a tweet<sup>41</sup>) that Unwanted calls—including illegal and spoofed robocalls—are the FCC's top consumer complaint and our top consumer protection priority.<sup>42</sup>

Yet if the Commission were to grant the petition in this case, the result will be the further escalation in unwanted, unconsented-to telemarketing calls to the American public. These telemarketing calls would be based on consents often obtained under misleading pretenses. All of these unconsented-to calls intrude on our privacy. We urge the Commission to deny both of Petitioner's requests.

Respectfully submitted, this the 22st day of June, 2020, by:

**Margot Saunders**

Senior Counsel

[msaunders@nclc.org](mailto:msaunders@nclc.org)

**Carolyn L. Carter**

Deputy Director

[ccarter@nclc.org](mailto:ccarter@nclc.org)

National Consumer Law Center

1001 Connecticut Ave., NW

Washington, D.C. 20036

<sup>41</sup> FCC (@FCC), Twitter (Mar. 13, 2019 1:15 PM), <https://twitter.com/FCC/status/1105880189622517760>.

<sup>42</sup> Federal Communications Comm'n, Stop Unwanted Robocalls and Texts, <https://www.fcc.gov/consumers/guides/stop-unwanted-robocalls-and-texts> (emphasis added).

## Appendix

### List of Assurance's "TCPA Partner Companies"<sup>43</sup>

1. 1st Century
2. Accuquote
3. AIG Direct
4. AIS
5. All Web Leads
6. Alliance
7. Allstate
8. Agentra Healthcare
9. Alieria Healthcare
10. Angelic Marketing Group
11. Alpine Digital Group, Inc.
12. American Adventure Insurance
13. Americare
14. Ameriquote
15. Answer Financial
16. Apollo Interactive
17. Art Institute
18. Avendia
19. Avenge Digital
20. Black Optek
21. BRXTN Digital Media
22. Bantam Connect
23. Bayside
24. Cege Media
25. Choice Direct
26. ClearLink
27. Click 2 Call Network
28. CompareInsuranceQuotes
29. Connect Insurance Brands
30. Contactability
31. Coverage One
32. CS Marketing
33. Debt.com
34. Direct General
35. Discount Insurance Quotes
36. EasyMedicare.com, an affiliate of e-TeleQuote Insurance, Inc
37. Efinancial
38. EPIQ
39. Esurance
40. Excel Impact
41. FirstQuoteHealth.com

<sup>43</sup> <https://assurance.com/tcpa-partner-companies>

42. Florida Blue
43. Fortegra
44. Freeway Insurance Services
45. Gerber Life Insurance Company
46. Get Seen Media
47. Globe Life
48. Go Direct Lead Gen
49. GoHealthInsurance
50. Goji
51. goMedigap
52. Guidetoinsure
53. Hannigan Insurance
54. Health Benefit Center
55. Health Benefits One
56. Health Choice One
57. HealtheDeals
58. Health Insurance Innovations
59. Health Insurance Services
60. Health IQ
61. Health Plans of America
62. Health Solutions One
63. HealthCare, Inc.
64. HealthMarkets
65. HealthPlanOne
66. Home Insurance King
67. Ideal Concepts
68. Inside Response
69. InsuraMatch
70. Insurance Care Direct
71. Insurance Quotes Now
72. Insurance Services
73. IPA Direct
74. iWebQuotes
75. Kanopy Insurance
76. Kelly Klee
77. Leadnomics
78. Liberty Mutual
79. Lighthouse
80. MassNexus
81. Mercury
82. Moss
83. Mutual of Omaha
84. National General
85. Nationwide
86. NetQuote
87. NextGen Leads, LLC
88. Nexus Enterprise Solutions
89. Outlook Advisors

90. Pay Per Call Market
91. Pay Per Call Transfers
92. PEMCO
93. PFP
94. Ping Leads
95. Platform Advertising
96. Plymouth Rock
97. Precursor Media
98. Progressive
99. Quote Engine
100. QuoteWizard
101. Rank Media Agency
102. RevPoint
103. Selective Healthcare
104. SelectMyPolicy.com
105. SelectQuote
106. SolidQuote, LLC
107. State Farm
108. The Insurance Center
109. The Lead Company
110. The Zebra
111. Tranzact
112. Travelers
113. Underground Elephant
114. United Medicare Advisors
115. Velapoint
116. Vital One Health
117. ZQ Auto Insurance
118. Allied Insurance Partners
119. easyMedicare.com, an affiliate of e-TeleQuote Insurance, Inc.
120. American Income Life Insurance Company Family
121. Heritage Life Insurance Company
122. Globe Life Insurance Company of New York
123. Liberty National Life Insurance Company
124. National Income Life Insurance Company
125. United American Insurance Company
126. Gerber Insurance Company
127. Vantis Life
128. Prudential
129. Smart Health Options, LLC
130. American Insurance Company
131. Open Market Quotes
132. Senior Market Quotes
133. Smart Match Insurance Solutions
134. Spring Health Plans
135. Spring Insurance Solutions
136. Tiburon Insurance
137. TrueChoice Insurance Services



138. Senior Life
139. EverQuote, Inc.
140. Quantum3media
141. Q3MInsuranceSolutions
142. Themedicareassistant.com
143. Finalexpanseassistant.com
144. Healthcareassistant.com
145. Benefit Advisors
146. Support First
147. Legacy Insurance Solutions
148. Health Center Marketing
149. Inboxed LLC.
150. The-Solar-Project.com.
151. Clean Energy Concepts
152. Green Home Advantage
153. Bright Home Energy
154. S.B. Fintech Ltd
155. Quotehound
156. Commercial Insurance Center
157. United Insurance Group Agency, Inc.
158. Quote Velocity
159. Purple Dog Marketing LLC
160. Alphatech Resource Holdings s.r.o
161. Policy Scout
162. PolicyScout
163. Disability Advisor
164. National Disability
165. Citizens Disability
166. Premier Disability
167. Heard and Smith
168. Advocator Group
169. STRINGBIT inc.
170. Innovation Direct Group
171. Presidio Interactive
172. Connect Plus
173. Insurance Solutions LLC
174. Innovate Financial Group