



21 August 2018

*VIA EMAIL*

Adam Losey  
alosey@losey.law  
407.906.1605

LOSEY PLLC  
450 S. ORANGE AVE STE 550  
ORLANDO, FL 32801

100 S. ASHLEY DR STE 600  
TAMPA, FL 33602

524 E. COLLEGE AVE STE 100  
TALLAHASSEE, FL 32301

www.losey.law

**Re: Manually Placed Text Messages**

Dear Campaign Representative,

Please be advised we represent JHSM Holdings, LLC, which retained our firm to review matters associated with the text messages on behalf of your campaign.

JHSM Holdings, LLC's technology uses manually-placed text messages; it does not use automated telephone dialing systems ("ATDS") that would be subject to the 47 U.S.C. §227 (b)(1), known as Telephone Consumer Protection Act (the "TCPA"). They do not send "autodialed text messages."

Though some providers do in fact use the ATDS technology to transmit text messages, JHSM does not. The TCPA prohibits certain *autodialed* calls or text messages, as well as prerecorded calls, unless made with the prior express consent of the called party, to any telephone number assigned to a cell phone or other mobile device (such as a pager), with limited exceptions.

The FCC has defined an 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."<sup>1</sup>

---

<sup>1</sup> 47 U.S.C. § 227(a)(1); see also 47 C.F.R. § 64.1200(f)(2) ("The terms automatic telephone dialing system and autodialer mean equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers.")

The FCC has also long held that the basic functions of an ATDS are to “dial numbers without human intervention” and to “dial thousands of numbers in a short period of time.”<sup>2</sup>

The FCC has specifically noted that how the human intervention element applies to a particular piece of equipment is specific to each individual piece of equipment, based on how the equipment functions, and depends on human intervention - and is therefore a case-by-case determination. The FCC has further noted that “manually placed text messages are permissible [.]” and that such manually placed text messages are not synonymous with autodialed calls.<sup>3</sup>

We understand JHSM Holdings manually places text messages for your campaign, according to the FCC’s guidance.

Should you have any questions regarding the foregoing, do not hesitate to contact me.

Very Truly Yours,

A handwritten signature in black ink, appearing to be the initials 'M B' followed by a stylized flourish.

---

<sup>2</sup> *2003 TCPA Order*, 18 FCC Rcd at 14092, para. 132-33; see also *ACA Declaratory Ruling*, 23 FCC Rcd at 566, para. 13; *SoundBite Declaratory Ruling*, 27 FCC Rcd at 15392, para. 2 n.5.

<sup>3</sup> FCC Enforcement Advisory No. 2014-04, at Attachment 2.