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January 10, 2013

**Via Electronic Filing**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Room TW-A325  
Washington, D.C. 20554

**Re: Ex Parte Notice of Ex Parte Communication - GroupMe, Inc.'s  
Petition for Declaratory Ruling and Clarification in CG Docket  
No. 02-278**

Dear Ms. Dortch:

On January 8, 2013, the undersigned and Jason Anderson of GroupMe, Inc./Skype Communications S.A.R.L (“GroupMe”), met with Lyle Elder, Legal Advisor to Chairman Julius Genachowski, Angela Kronenberg, Wireline Legal Advisor to Commissioner Mignon Clyburn, Priscilla Delgado Argeris, Wireline Legal Advisor to Commissioner Jessica Rosenworcel, Christine Kurth, Policy Director and Wireline Counsel to Commissioner Robert McDowell, and a number of individuals from the Consumer and Governmental Affairs Bureau, including: Kris Monteith (Acting Bureau Chief); Mark Stone (Deputy Bureau Chief); Kurt Schroder (Acting Division Chief of the Consumer Policy Division); John B. Adams (Acting Deputy Chief, Consumer Policy Division), and Lynn Follansbee Ratnavale (Senior Attorney); and from the Office of General Counsel, including: Sean Lev (General Counsel), Suzanne Tetreault (Deputy General Counsel), Diane Griffin Holland (Deputy Associate General Counsel), and Marcus Maher (Assistant General Counsel).

During the meetings, we discussed the Commission’s grant of SoundBite Communications, Inc.’s (“SoundBite”) Petition for Expedited Declaratory Ruling.<sup>1</sup> We highlighted that there are numerous significant similarities in the grant of relief to SoundBite as compared with the relief sought by GroupMe. Specifically, the *SoundBite Order* notes existing law that provides telemarketers with a 30-day grace period to process consumers’ opt-out request. Based in part on existing law, the *SoundBite Order*

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<sup>1</sup> See *Rules and Regulations Implementing the Telephone Consumer Protection Act*, Declaratory Ruling, CG Docket No. 02-278 (Nov. 29, 2012) (“*SoundBite Order*”).

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establishes a grace period applicable to the sending of a one-time confirmatory opt-out text message.

As detailed in comments filed by GroupMe, the Commission's do-not-call rules include an exception where a telemarketer has a "personal relationship" with the called party.<sup>2</sup> The Commission found that where a telemarketer has a "personal relationship" with the called party, the telemarketer can place a call even if the called party is on the do-not-call list. The Commission rightfully determined that calls made by parties that have a "personal relationship" with the called party do not have the "two most common sources of consumer frustration associated with telephone solicitations – high volume and unexpected solicitations [.]"<sup>3</sup> GroupMe's request for clarification that it can rely on intermediary consent for non-telemarketing, informational, or administrative text messages is a narrower exception than that provided for in the Commission's existing telemarketing rules as it would only allow for intermediary consent where: (1) the party representing that they have consent from the recipient of a text message must have a "personal relationship" with that party; and (2) it would only allow for sending non-commercial text messages.<sup>4</sup>

The *SoundBite Order* considered the record established by Congress in enacting the Telephone Consumer Protection Act ("TCPA"). The record demonstrated the need for legislation in order to protect consumers from privacy intrusions associated with prerecorded, one-way, generic commercial speech. Also, the TCPA eliminated public safety disruptions caused by auto-dialers randomly or sequentially placing calls to telephone numbers indiscriminately including calls to lines used by emergency service personnel.

GroupMe's service is in the antithesis of one-way, generic, commercial speech. Instead, it is a social media tool that leverages the power of text messaging allowing for personal discourse among a group of people that share something in common.<sup>5</sup> Moreover the text messages triggered by a group creator are non-commercial, informational and administrative text messages. There are no privacy intrusions caused by such messages. Additionally, GroupMe's service and software does not allow for random or sequential

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<sup>2</sup> See, e.g., Reply Comments of GroupMe, 02-278, at 19- 20 (Sept. 10, 2012); Comments of GroupMe, 02-278, at 7-8 (Nov. 15, 2012) (filed in connection with the Cargo Airline Assoc. Pet'n).

<sup>3</sup> See *Rules and Regulations Implementing the Telephone Consumer Protection Act*, Docket No. 02-278, Report and Order, 18 FCC Rcd 14014, 14045; 47 C.F.R. § 64.1200(c)(2)(iii).

<sup>4</sup> See Reply Comments of GroupMe, 02-278, at 19- 20 (Sept. 10, 2012).

<sup>5</sup> See Comments of GroupMe, 02-278, at 9-14 (Aug. 30, 2012).

dialing. In fact, the system is not even capable of sending a text message to every member of a GroupMe group. Instead, GroupMe's text messages are triggered by a group creator where the group creator determines the members of the group. Accordingly, the policy justifications that informed Congress' passage of the TCPA are inapplicable to GroupMe's offering.

The Commission engaged in a cost/benefit analysis in the *SoundBite Order* finding that if there are any incremental costs associated with one-time confirmatory opt-out text messages, such costs are outweighed by the consumer benefits associated with the practice.<sup>6</sup> The Commission also highlighted that many wireless providers offer unlimited text messaging plans and that many consumers subscribe to such plans.<sup>7</sup> The same is true of GroupMe.

GroupMe is an immensely popular service particularly with younger Americans. GroupMe is an innovative offering that works on all mobile devices, feature phones and smartphones alike, allowing those that do not purchase more expensive wireless devices to participate in the service.<sup>8</sup> In relying on the SMS platform for message delivery the service allows those that do not purchase more expensive data plans to participate in group discussions. GroupMe has emerged as an important social media tool relied on by police officers, emergency workers, support groups, students, friends and family members.<sup>9</sup> To the extent that there are any incremental costs associated with the receipt of text messages triggered by group creators, and in most cases there are none, the benefits of the service outweigh such minimal costs.

Finally, we briefly addressed Revolution Messaging, LLC's Petition for an Expedited Clarification and Declaratory Ruling. GroupMe recommends that the Commission clarify the scope of the TCPA, both with respect to the intermediary consent issue and the definition of an automatic telephone dialing system, prior to extending any of the TCPA's provisions to other kinds of messaging services. As the record in this docket makes clear, the proliferation of litigation concerning the TCPA is stifling

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<sup>6</sup> See *SoundBite Order*, at ¶10.

<sup>7</sup> See *id.*, at ¶10 n.45.

<sup>8</sup> GroupMe also offers a free application that users can download and use either on smartphones or computers to participate in GroupMe groups free from carriers' text messaging charges to the extent there are any.

<sup>9</sup> See <http://blog.groupme.com/tagged/stories> (visited Jan. 9, 2013) (displaying uses of the service submitted by wide diversity of users); Ex Parte Letter from Ronald W. Del Sesto, Jr., counsel for GroupMe, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 02-278, at Attachment 1, pages 5, 10 (detailing uses of the service by different user groups).

Ms. Marlene H. Dortch  
January 10, 2013  
Page 4

innovation and frustrating the public interest. For these reasons alone, the Commission must first clarify the TCPA's scope and key definitions prior to subjecting additional services to its ambit.

Please do not hesitate to contact the undersigned with any questions.

Respectfully Submitted,

*/electronically signed/*

Ronald W. Del Sesto, Jr.

#### Attachments

cc: Lyle Elder  
Angela Kronenberg  
Priscilla Delgado Argeris  
Christine Kurth  
Kris Monteith  
Mark Stone  
Kurt Schroder  
John B. Adams  
Lynn Follansbee Ratnavale  
Sean Lev  
Suzanne Tetreault  
Diane Griffin Holland  
Marcus Maher  
Jason Anderson (Skype/GroupMe)