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March 7, 2017

VIA ECFS and US MAIL

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

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Re: ***Comments of Center for Diagnostic Imaging, Inc. and Insight Health Corp. on the Petition for Rulemaking and Declaratory Ruling Regarding Prior Express Consent Under the Telephone Consumer Protection Act of 1991, GC Docket No. 02-278 and GC Docket No. 05-338.***

Dear Ms. Dortch:

The undersigned (the "Respondent") hereby provides its comments on the above referenced petition (the "Petition") and strongly urges the Federal Communications Commission ("FCC") to deny the Petition. By way of background, the Respondent, Center for Diagnostic Imaging, Inc. and Insight Health Corp., is a health care industry leader, providing medical imaging services to over a million patients per year. Patients served by Respondent rely on the ability to communicate directly and efficiently with their health care providers and would be seriously harmed by the granting of this Petition.

I. **There Is No Rationale for Granting the Petition.**

a. *Granting the Petition Would Hurt, Not Help, Both Consumers and Businesses.*

It is unclear to the Respondent whom the FCC would be protecting if it granted the Petition. The Respondent believes that there are adequate protections in place currently that protect consumers from unwanted communications and has not been able to ascertain any harm to consumers or businesses that would be avoided, or even minimized, if the Petition was granted. In fact, the Respondent argues that the Petition is overly broad and would affect both service providers and consumers in such a negative way, that the net result to both would be harmful. Therefore, the Respondent urges the FCC to act expeditiously to deny the Petition.

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b. Granting the Petition Would Go Against Established Case Law and Guidance.

Courts across the United States have consistently held that consent is sufficient when a consumer has simply listed a cell phone number on certain forms or applications. *See e.g., Reardon v. Uber Technologies, Inc.*, 115 F. Supp 3d 1090 (N.D. Cal 2015); *In re Runyan*, 530 B.R. 801 (M.D. Fla. 2015). This has been expanded to also conclude that provision of a telephone number to a health care provider as part of the hospital admission process amounts to giving prior express consent to receive debt collection calls from medical providers and their agents regarding the debts incurred for the provided services. Consumers "may give 'prior express consent' under the FCC's interpretations of the TCPA when they provide a cell phone number to one entity as part of a commercial transaction, which then provides the number to another related entity from which the consumer incurs a debt that is part and parcel of the reason they gave the number [to the original entity] in the first place." *Balsden v. Credit Adjustments, Inc.*, 813 F.3d 338, 346 (6th Cir. 2016). Therefore, granting the Petition would be more than a clarification of the law, and instead, would be in direct conflict with well-established case law and prior guidance.

c. Granting the Petition Would Go Against the FCC's Prior Guidance.

Further, The Respondent strongly believes that denying the Petition is consistent with the FCC's expressed reluctance against "unnecessarily restrict[ing] consumer access to information communicated through purely informational calls." *Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, Report and Order, 27 FCC Red 1830 ¶ 21. Patients regularly provide their phone numbers to "covered entities" and "business associates" (as those terms are defined in HIPAA) to make it easier on themselves to obtain information about their treatment, payment or other healthcare concerns. Healthcare service providers are able to more effectively assist patients when they have various means with which to directly communicate with those patients. Many times, patients are not aware that the services they receive in a hospital setting are often rendered by different provider groups and that they will therefore receive separate bills for such services. Thus, allowing "covered entities" and their "business associates" to rely on one set of information, the demographic information provided by the patient at the time of service, affords them the opportunity to educate the patient about the billing process and ensure that the patient understands the amounts he/she is being charged.

II. Denying the Petition Would Benefit Consumers and Businesses.

a. Consumers Rely On and Expect Telephonic and Text Communications.

The Respondent agrees with the FCC that it is vital to protect the privacy rights of consumers, but believe that there is no benefit to consumers in this regard by granting the Petition. In today's world, consumers are accustomed to providing their phone numbers to various entities for various purposes, and do so in order that they can expeditiously receive information they deem important. For example, consumers often provide their cell phone numbers to service providers, both medical and otherwise, in order to receive reminders of important upcoming appointments so that they will not miss them and they provide their cell phone numbers to airlines so that they can be notified in real time of any changes to their flight status. The ability to receive information in real time has become a great benefit and convenience to consumers and the Respondent argues that it is one on which many consumers rely. In fact, many consumers complain to service providers when they do not receive a phone call notifying them of important information. Additionally, in the medical debt collection context, consumers appreciate the notice regarding an amount due so that they are able to remedy the matter before they are sent to collections.

b. *There Are Adequate Provisions in Place Currently to Protect Consumers.*

There is a very important difference between "robocalls" and calls from a company with which the consumer has a relationship. Respondent agrees that the FCC should protect consumers from unwanted spam, but argues the current FCC rules are sufficient in this regard. "Covered entities" and their "business associates" just want the ability to contact their patients for the best and most benign of reasons, such as to provide health information, schedule appointments and help them make payments. There are various safeguards in place that protect consumers from unwanted communications, including those related to the permitted nature of consumer contacts and those requiring simple and immediate opt-out mechanisms. The current FCC rules provide consumers with a choice in how they want to be contacted by preventing service providers from contacting them without their consent. Healthcare service providers simply want the ability to continue to contact their consumers/patients in an efficient manner, the way that many prefer and often the only way they can be reached – via phone call or text. Granting the Petition would make it more difficult for consumers to obtain critical information, including healthcare related information.

c. *It Would Be Bad Public Policy To Grant the Petition.*

Further, Respondent argues that there is no legal or policy reason for the FCC to grant the Petition. It is a critical public policy goal to provide effective and efficient medical care to all patients. Granting the Petition would place an unnecessary and unintended burden on the healthcare industry and reduce its efficiency. Service providers would be required to expend more money and deploy more resources in order to simply communicate with their patients and patients would have to wait longer to receive critical information and would have fewer choices in determining the format in which they want to receive such information.

Thank you for the opportunity to provide reply comments on this important matter. If you have questions or if you need additional information, please contact the undersigned.

Center for Diagnostic Imaging, Inc.
Insight Health Corp.

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