Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of the Joint Petition of Anthem, Inc., Blue Cross Blue Shield Association, WellCare Health Plans, Inc., and the American Association of Healthcare Administrative Management for the Expedited Declaratory Ruling and/or Clarification of the 2015 TCPA Omnibus Declaratory Ruling and Order	)	CG Docket No. 02-278
Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991	)	

Comments of mPulse Mobile, Inc.

In accordance with the Public Notice issued in this proceeding, mPulse Mobile, Inc. ("mPulse") hereby submits its comments in support of the petition for declaratory ruling filed by Anthem, Inc. and others ("Petition" or "Anthem Petition"). In support of the Petition, mPulse first describes its business operations and second explains that clarification of the existing state of the law will support patients and other consumers by alleviating uncertainty perceived by entities seeking to adopt innovative technology to improve the delivery of health care information and patient services.

I. mPulse Mobile, Inc.

mPulse is an Encino, California based mobile engagement solutions provider focused on consumer health and wellness. mPulse works with companies throughout the health care system to improve patient engagement and ultimately health care outcomes. Among others, mPulse works with all types of health care providers, Medicaid, health insurance entities, pharmacies, wellness organizations, governmental entities, and nonprofits. Through mPulse's cloud-based

software platform, mPulse strives to solve many of the health care industries' most expensive challenges, such as missed appointments, medication adherence, and e-adoption.

As a successful technology company deploying innovative communications solutions throughout the health care sector, mPulse naturally has built its business based upon complying with the Health Insurance Portability and Accountability Act ("HIPAA"), the Telephone Consumer Protection Act ("TCPA"), and other federal and state laws. mPulse customers include a large number of HIPAA "Covered Entities" and "Business Associates," all of which rightfully take very seriously consumer protection and legal compliance.

II. The Commission Should Grant The Anthem Petition

The Anthem Petition seeks a clarification of the Commission's existing TCPA rules, not a change in law or a regulatory modification.[1] In its *2015 Declaratory Ruling*,[2] the FCC made it clear that for calls (voice and text) governed by HIPAA, HIPAA regulations would apply and the Commission would not add to that comprehensive set of regulations set forth by the Department of Health and Human Services. Accordingly, the Commission found that the release of a telephone number constitutes prior express consent sufficient to satisfy the TCPA for calls subject to HIPAA regulations.[3] This Commission finding made perfect sense, as HIPAA's comprehensive privacy regime protects individuals, and the record demonstrated no need for additional TCPA regulation.

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[1] Anthem Petition at 1-2.

[2] Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, et al., CG Docket No. 02-278, WC Docket No. 07-135, *Declaratory Ruling and Order*, 30 FCC Rcd. 7961 (2015) ("*2015 Declaratory Ruling*").

[3] *See id.*, ¶¶ 141 and 147.

As outlined in the Anthem Petition, however, some HIPAA Covered Entities, Business Associates, and others have expressed concern about perceived ambiguity in the language of the Commission's *2015 Declaratory Ruling*. Indeed, in working with customers and potential customers, mPulse often has to expend substantial time and resources educating them on the FCC's TCPA regulations and how they work to support, not defeat or add to, HIPAA. Covered Entities and their Business Associates, of course, have firm understandings of HIPAA and its application to their businesses and interaction with consumers and patients. The interplay of HIPAA and TCPA is much less well understood, which creates caution of the type described in the Anthem Petition and the need for a clarification of the existing state of the law by the Commission.

Anthem notes that some have read the Commission's *2015 Declaratory Ruling* as "discourage[ing] and burden[ing] important health care communications that are allowed by the more specific HIPAA regulation, and encouraged by federal and state public health policies."[4] Such an interpretation, however, would stand for the incorrect proposition that an intended effect of the TCPA is to thwart innovation and harm consumers through either over regulation or the promulgation of conflicting regulations. Of course, that is neither what the TCPA intended nor what the FCC did in promulgating its implementing regulations.

The Anthem Petition, of course, is not the only instance where specific industries have come to the Commission seeking clarification. The entire *2015 Declaratory Ruling* emanated from similar industry requests, and more recently the Commission issued a declaratory ruling

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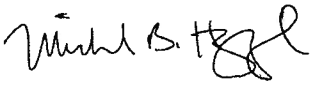
[4] Anthem Petition at 2.

clarifying matters for utilities and educational entities.[5] For the same reasons the Commission granted the requested clarifications in those proceedings, the Commission should similarly grant Anthem's request to remove perceived uncertainty that exists among companies in the health care sector.

III. Conclusion

Consistent with the foregoing, the Commission should grant the Anthem Petition to ensure that health care consumers and patients can be the beneficiary of new technology that assists in improving health care outcomes and in reducing cost.

Respectfully submitted,



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[5] Blackboard, Inc. Petition for Expedited Declaratory Ruling Edison Electric Institute and American Gas Association Petition for Expedited Declaratory Ruling, CG Docket No. 02-278, WC Docket No. 07-135, *Declaratory Ruling* (rel. Aug. 4, 2016).