

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of the)
)
Rules and Regulations Implementing)
) **CG Docket No. 02-278**
the Telephone Consumer Protection)
)
Act of 1991)

**Comments of Joe Shields on the Petition for Expedited Declaratory Ruling of the
National Employment Network Association**

The Commission is seeking comments on yet another in an unending line of petitions that seek to either limit an aspect of the TCPA or neuter the TCPA entirely. The National Employment Network Association (hereinafter “NENA”) petition would neuter the TCPA entirely. The NENA petition asks the Commission to clarify that an established business relationship between a beneficiary of federal benefits and a federal agency “implies” the beneficiary’s consent to receive autodialed and prerecorded message calls and text messages calls under the TCPA, and that such consent includes calls made by a public or private intermediary or associated third party that acts on behalf of the federal government.

The petition falsely claims that there is an implied established business relationship exemption for autodialed prerecorded message and text message calls to cell phone numbers. There is no established business relationship exemption for autodialed prerecorded message and text message calls to cell phone numbers. There are two exemptions for autodialed calls to cell phones: prior express consent or an emergency purpose. The SSA’s Ticket to Work Program is not above those two exemptions. As for an emergency purpose the SSA’s Ticket to Work Program does not constitute an

emergency. As for prior express consent, receiving SSA disability payments does not mean that the recipient of such payments has waived their right to privacy.

Further, the petition suggests that federal agencies are above the law and that federal consumer protection laws do not apply to federal agencies or those acting on behalf of such federal agencies. Clearly, laws protecting people from job discrimination under the Equal Employment Opportunity Act apply to all state and federal agencies. Similarly, child labor laws also apply to all state and federal agencies. The Drivers Privacy Protection Act applies to all state governments and their release of driver's license and vehicle registration information. Even our elected officials, Congressmen and Senators alike who operate "in the shoes" of the United States government, must comply with the laws of the land. In fact, the Commission has clearly stated that the TCPA applies to automatically dialed prerecorded message or text message political calls.

One court addressing petitioners immunity claim held that: "'Where immunity lies, '[a]n injured party with an otherwise meritorious tort claim is denied compensation,' which 'contravenes the basic tenet that individuals be held accountable for their wrongful conduct.'" *Westfall*, 484 U.S. at 295. Accordingly, immunity must be extended with the utmost care. The record contains sufficient evidence that the text messages were contrary to the Navy's policy permitting texts only to persons who had opted in to receive them. Consequently, we decline the invitation to craft a new immunity doctrine or extend an existing one." *Gomez v. Campbell-Ewald Co.*, No. 13-55486, 2014 WL 4654478 (9th Cir. Sept. 19, 2014)

The SSA Ticket to Work program is not mandatory as petitioner claims. In fact the SSA states on its web site that: “Ticket to Work is a **free and voluntary program** that gives beneficiaries real choices that can help them create and lead better lives.¹”

The petitioner falsely suggests that those that are disabled expect unsolicited and unrequested autodialed calls on their cell numbers from employment service providers. No evidence that the disabled expect and want such calls was presented in the petition. It is also entirely unreasonable to claim that the disabled are not charged for these autodialed calls. The petitioner admits that most if not all of the disabled are impoverished and unable to work. The entire petition rests on the oft misapplied cost effectiveness to the caller which entirely ignores the cost to the recipient of the calls. And the privacy of the called party is left entirely out of the picture.

In fact the petitioner themselves stats that: “...Consumers on SSI and SSDI are among the poorest.” Further, petitioner states that: “Once on benefits, historically less than one half of one percent of beneficiaries leaves the rolls to return to work.” These self-confessed facts make it imperative that strict consent be maintained for the calls that NENA suggest be exempted.

As with most if not all of the petitions before the Commission, prior express consent is a monster that interferes with petitioners ambitions. Prior express consent has never been the monster as these petitioners have painted. Prior express consent protects the privacy of the called party. The TCPA ensures that only those that have given prior express consent are contacted on their cell phones for the purpose the called party has requested.

¹ <http://www.ssa.gov/work/>

The TCPA was enacted in 1991. The Ticket to Work and Work Incentives Improvement Act, P.L. 106-170 (hereinafter “TWWIIA”) was enacted 8 years later. Consequently, petitioner cannot claim that there is a need to “retroactively” obtain prior express consent. I know from personal experience that the process for applying for disability includes receiving many letters from the SSA. Despite a folder of letters from the SSA 2 inches thick I have not once been asked for prior express consent for robocalls to my cell phone in any of those letters. The failure of the SSA to seek and obtain prior express consent from the disabled during the application process does not warrant tossing out the prior express consent requirement of the TCPA.

The petitioner makes much about the cost of contacting the disabled yet ignores the costs of the autodialed prerecorded message or text message calls to the disabled. The disabled are more likely to be charged per call than any other segment of the populace due to limited calling plans for those with low incomes.

I have applied for SSA disability and hopefully it will be granted. Whether or not SSA disability is granted, I do not want nor do I expect autodialed prerecorded message or text message calls about job opportunities. I, like the majority of disabled, have a disability that cannot be healed or corrected. It is asinine to suggest that simple because of some business efficiency I should give up my right to be free of unwanted and unrequested autodialed prerecorded message or text message calls about job opportunities.

The TCPA is a statute that requires opt in for autodialed prerecorded message or text message calls. The petitioner wants to uproot that established concept and force the

disabled to opt out of one after another employment agency while paying for each one of the calls.

My question to the Commission is why is the Commission even considering the petition? The petition proposes that the Commission authorize theft from the impoverished and disabled! The facts here are not the same as in the Cargo Airline Association matter. The petitioner, other than claiming that a call costs a recipient 7 cents, has not established that the calls in question are Free to End User (hereinafter "FTEU") calls. And even if they were FTE calls the Commission cannot ignore the privacy aspect when considering FTEU calls. The calls must be expected and requested - neither criterion is met by the petitioner.

The Commission must bear in mind that the effectiveness of the TCPA will ultimately be defined by its ability to protect consumers' cell phones. Caller efficiency is not a valid excuse to neuter the TCPA. It is after all a consumer protection statute and not a business protection statute. The Commission needs to protect consumer's cell phones, especially those of the disabled, and denying the NENA petition would be one way to do so.

Respectfully submitted,

_____/s/_____

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