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

In the Matter of the	**)**	
	)	
Rules and Regulations Implementing	**)**	
	)	**CG Docket No's. 02-278 and 05-338**
the Telephone Consumer Protection	**)**	
	)	
Act of 1991	**)**	

Reply Comments of Joe Shields on the Bijora Inc. Petition for Declaratory Ruling and/or Waiver

I hereby submit these reply comments in response to the comments filed with the Commission in regard to the Bijora Inc. Petition for Declaratory Ruling and/or Waiver. The petition seeks what the Commission cannot grant.

There appears to be only three (3) comments filed with the Commission in the matter. Notably absent from any comments are comments from the petitioner.

It appears that the comments are unanimous in that the petition is fatally flawed simply because the opt out notice requirement for facsimiles, solicited or unsolicited, does not and cannot apply to text message calls and more importantly has never applied to text message calls.

Consequently, the Commission is not required to issue a declaratory ruling to terminate a controversy or removing uncertainty where no controversy or uncertainty has ever existed. Further, petitioner is not entitled to any waiver as the identification requirements for facsimiles, solicited or unsolicited, does not and cannot apply to text message calls and more importantly has never applied to text message calls.

Petitioner claims the text messages in question were sent with the prior express consent of the called party. The Plaintiff in *Blow v. Bijora*, Case No.: 1:11-cv-03468, (US

District Court, ND IL) contests that claim and petitioner has not shown the court or the Commission that petitioner ever had such consent. Even if petitioner had consent the requested waiver simply has nothing to do with the identification requirements for automated calls.

It is foolish to suggest that facsimile opt out notices could somehow even in someone's wildest imagination apply to test message or prerecorded message calls. The facsimile opt out notices apply to "paper" advertisements and not to test message or prerecorded message calls. Similarly, it is not only foolish but outright frivolous to claim that the facsimile EBR somehow applies to text message calls.

The Commission must deny the petition for Declaratory Ruling and/or Waiver since section 64.1200(a)(4)(iv) does not and cannot apply to text message calls[1]. The Commission should exercise its authority to protect the privacy and safety of cell phone users and deny petitioner's request for Declaratory Ruling and/or Waiver since section 64.1200(a)(4)(iv) does not and cannot apply to text message calls.. The Commission can and should deny the Bijora petition in its entirety since section 64.1200(a)(4)(iv) has never applied to text message calls and does not and cannot apply to text message calls.

Respectfully submitted,

_____/s/_____

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[1] By denying the petition the Commission does not need to address the 1st Amendment or "no harm" claims of the petitioner. If a 1st Amendment or "no harm" defense is raised as a defense in *Blow*, it should be addressed by an applicable intervention.