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	**)**	

Reply Comments of Joe Shields on the Comments of the American Bankers Association on the Consumer Bankers Association Petition for Declaratory Ruling

I hereby submit these reply comments on the comments filed by the American Bankers Association (hereinafter "ABA") on the Consumer Bankers Association Petition for Declaratory Ruling. The commentor attempts to convert a content neutral statute to a content based statute where "informational" calls are treated differently than all other calls to cell numbers. Such claims are frivolous given that the TCPA regulates the method not the content of calls.

The TCPA is more than just telemarketing regulation; it is an important consumer protection statute. Opening cell phones to more calls through an EBR or similar exemption would drastically increase the amount of calls a consumer could receive. The heightened cost-shifting, privacy, and safety concerns for cell phones justify a continued strict consent scheme with respect to such communications.[1]

"The TCPA is not only directed at telephone solicitations, it is also directed at autodialer calls to cellular phones, as reflected by the different subsections of § 227,

[1] *Heidtke, Daniel B. and Stewart, Jessica and Waller, Spencer Weber, The Telephone Consumer Protection Act of 1991: Adapting Consumer Protection to Changing Technology* (September 17, 2013). Loyola University Chicago School of Law Research Paper No. 2013-016.

which create separate causes of action for telephone solicitations and automated calls to cellular phones." *Adamcik v. Credit Control Servs., Inc*., 832 F. Supp. 2d 744, 752 (W.D. Tex. 2011)

Commentor makes a big deal out of "informational" calls but fails to admit that most of these so called "informational" calls are debt collection calls. But then automated calls to cell numbers with prior express consent of the called party have never been prohibited. Consequently, the relief the commentor seeks is not warranted given that most automated calls to cell numbers with prior express consent of the called party are not prohibited.

In reality what the commentor seeks is a blanket exemption for content based automated calls to cell numbers **without** prior express consent of the called party. See commentors Petition for Exemption filed with the Commission on October 14th, 2014. In simple terms prolific petitioners such as ACA International, Consumer Bankers Association and ABA want to gut the TCPA so they can have unfettered access to everyone's cell phones. These associations care only for their member's greed and care little for the cost shifting and threat to safety unfettered automated calls force upon consumers.

Commentor ABA repeats the lie that there is no way a caller can know when a number has been disconnected. Simply because petitioners and commentors repeat this lie does not magically make the lie a truthful statement. Clearly, everyone is familiar with the doo dah dee signal preceding the disconnected number recording. Commentor members fail to admit that numbers are not immediately recycled. The average is 90 days for a number to be held in the unassigned pool. During that time the easily identifiable

disconnect tones and message are reached or for text messages an undeliverable message is sent.

Further, and which has been repeatedly pointed out, Neustar and several other companies provide a service that identifies the subscriber to a cell number. The Neustar service is much more accurate than any skip tracing technique used by ABA members. According to Becky Burr (Neustar Deputy General Counsel and Chief Privacy Officer and former FTC Attorney-Advisor), Neustar's TCPA compliance services "use continuously updated and **highly accurate phone data** (emphasis added) that gets updated multiple times per minute to tell you instantly . . . whether the subscriber name that you have matches." [2]

Given that there are multiple methods that can be used to avoid calling reassigned numbers commentor cannot claim that its members are acting in good faith. If commentor's members were acting in good faith then there would not be a need to file these frivolous petitions with the Commission. And they are frivolous given the voluminous case law holding that called party is the subscriber and/or user of the cell phone number not some intended called party.

The Commission has repeatedly refused to create an exemption or safe harbor for wrong number calls: "…we reject proposals to create a good faith exception for inadvertent autodialed or prerecorded calls to wireless numbers…" *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order*, ¶ 123, 18 FCC Rcd. 14014, 2003 WL 21517853, 2003 FCC Lexis 3673 (2003). "Indeed, the distinction proffered by AT&T potentially would eviscerate the

[2]http://www.neustar.biz/information/docs/pdfs/solutionsheets/credit_and_collections_tcpa.pdf

policy goals of the statute in protecting telephone subscribers from unwanted telemarketing calls by creating a **virtually irrefutable defense** (emphasis added) that the telemarketer was trying to reach 'someone else' at that number. *In the Matter of Consumer.net v. AT&T*, 15 FCC Rcd. 281, 1999 WL 1256282 (1999), "would eviscerate the policy goals of the statute in protecting telephone subscribers from unwanted telemarketing calls by creating a virtually irrefutable defense that the telemarketer was trying to reach 'someone else' at that number." In re Consumer.Net, 99 F.C.C. 401 (1999).

The Commission must bear in mind that the effectiveness of the TCPA will ultimately be defined by its ability to protect consumers' cell phones. The Commission must also bear in mind that consumers are increasingly experiencing more illegal conduct on their cell phones from legitimate companies than by any other media. The blame is put on the widening use of cell phones. Such blame is misplaced. It is the use of automatic dialing technology and the lack of respect for cell phone privacy that is to blame.

The Commission can and must deny the CBA petition.

Respectfully submitted,

/s/

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