

**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 American Financial Services
Association on the Consumer Bankers Association Petition for Declaratory Ruling**

I hereby submit these reply comments on the comments filed by American Financial Services Association (hereinafter “AFSA”) on the Consumer Bankers Association Petition for Declaratory Ruling. The commentor plays the “informational” calls card when the commentor is in reality an association representing mostly debt collectors.

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 an “intended” called party 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, which create separate causes of action for telephone solicitations and automated calls to

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.

cellular phones.” *Adamcik v. Credit Control Servs., Inc.*, 832 F. Supp. 2d 744, 752 (W.D. Tex. 2011)

Commentor claims that:

“Confirming that only intended recipients are called parties is logical and in line with Congress’ intention. It is also consistent with the Commission’s previous regulations.”

Commentor is wrong about Congressional intent. Called party is used many time is the TCPA and each time it refers to the user of the cell phone. The commentor is blind to the fact that only the called party can be charged for the call, only the called party can be provided with the identity of the caller during a call and only the called party can hang up on a call. The commentor is blind to the fact that an “intended” called party can do none of those things.

Further, previous Commission action has not created 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 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 issue is not about continuing calls after being notified the number has changed hands. There is no requirement for consumers to provide any such notification. It is after all an opt in not opt out statute on cell phone calls. New subscribers cannot read a crystal ball and prevent wrong number calls to their cell number. Only the caller can do so. The commentor wants the Commission to shift responsibility to comply with the TCPA from a business making automatic and prerecorded calls to individuals receiving them. "Adopting Defendant’s position would shift responsibility from a business making automatic and prerecorded calls to individuals receiving them. The Court feels that the stronger public policy to be served by the TCPA is protecting individuals from such calls.” *Olney v. Progressive Casualty Ins. Co.*, 2014 WL 294498 (S.D. Cal., Jan. 24, 2014).

The Commission must 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 that is to blame.

The Commission can and must deny the CBA petition.

Respectfully submitted,

_____/s/_____

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