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 National Rural Electric Cooperative Association on the Consumer Bankers Association Petition for Declaratory Ruling

I hereby submit these reply comments on the comments filed by the National Rural Electric Cooperative Association (hereinafter "NRECA") on the Consumer Bankers Association Petition for Declaratory Ruling. The commentor asks the Commission to convert a content neutral statute to a content based statute that would permit "informational" calls to cell numbers without the prior express consent of the called party.

The original purpose of the TCPA was to regulate certain uses of technology that are abusive and potentially dangerous. The TCPA regulates these abuses by prohibiting certain technologies altogether, rather than focusing specifically on the content of the messages being delivered. Contrary to petitioners claim, Congress did foresee the changes in technology that would allow increased access to consumers and in response crafted the TCPA.

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, 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).

Commentors in this proceeding are trying to hold consumers, the TCPA and the Commission hostage. They are claiming that they will stop all consumer requested communications if the Commission does not create an exemption for their wrong number calls. It is the policy of the United States not to negotiate with terrorists. This hostage taking of consumers, the TCPA and the Commission is no different than hostage taking by terrorists. The Commission should not negotiate with those that attempt to hold consumers, the TCPA and the Commission hostage.

Similar threats were made when the Commission sought comments on the National do-not-call registry:

> "**Without a doubt this will cause worldwide economic catastrophe**. I am not an alarmist. But mark my words, when I say the government backing and subsequent free marketing of this list **will plunge the world into depression.**" *Customer Inter@ction Solutions, What More Could "The Industry" Have Done? By Rich Tehrani, Group Editor-In-Chief, Technology Marketing Corporation*[2]

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[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.

[2] http://www.tmcnet.com/call-center/0503/0503hp.htm

Obviously, those threats never came to pass. Making such threats is childish at best and is a disservice to consumers and the Commission. The Commission should not let themselves be coerced by those that are being rightfully sued for violating the TCPA.

Commentor claims that: "…there does not appear to be any credible evidence submitted to the Commission to date demonstrating the existence of any database that could instantaneously provide a caller with real time information on the reassignment of numbers. The claim is false! There are services that provide the identity of the user of a cell phone number. 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." [3]

Commentor regurgitates the lie that: "…courts have defined "called party" inconsistently…" Courts have been unanimous in interpreting called party! This has been repeatedly pointed out in comments which the commentor has seemingly ignored. Thus, the commentor has not provided any legal basis for such a misrepresentation.

Commentor suggests that the Commission create a good faith exception for wrong number calls to cell numbers. 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

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

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).

Commentor wants to shift the responsibility for compliance from the caller to the called party. The Commission should not shift responsibility to comply with the TCPA from a business making automatic and prerecorded calls and text message calls to individuals receiving them. Doing so is not in the best interest of the public. "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 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,

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