

**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 Stage Store Inc. on the
Consumer Bankers Association Petition for Declaratory Ruling**

I hereby submit these reply comments on the comments filed by Stage Store Inc. (hereinafter “Stage Stores”) on the Consumer Bankers Association Petition for Declaratory Ruling. The commentor expands the petition to include an intended called party exemption for all calls to cell numbers including telemarketing calls.

The Commission has repeatedly refused to create an exemption or safe harbor for all 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).

Commentor repeats the baseless and frivolous claim that callers cannot know when a number has been reassigned. Obviously, prior to a number being reassigned the number will sit in an unassigned pool on average for 90 days. During that time a disconnect message will be reached or in the case of text messages a non-deliverable message will be generated. Consequently, commentor knows when a number has been disconnected.

Further, 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.”¹

Commentors double opt in is a non-starter. Double opt in has nothing to do with wrong number calls. Commentor cannot apply their double opt in procedure to wrong number calls.

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

¹http://www.neustar.biz/information/docs/pdfs/solutionsheets/credit_and_collections_tcpa.pdf

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 Corporation²*

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.

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 that is to blame.

Being sued for violating the TCPA is not a valid reason to limit or neuter the TCPA. Neither is caller efficiency. Those that use technology responsibly can and do enjoy the efficiency that comes with technology. The Commission should not shift responsibility to comply with the TCPA from a business making automatic and prerecorded 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

² <http://www.tmcnet.com/call-center/0503/0503hp.htm>

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 can and must deny the CBA petition.

Respectfully submitted,

_____/s/

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