

**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)

Joe Shields Submission For The Record on the American Bankers Association

Petition for Exemption

The Commission has requested comments on the American Bankers Association Petition for Exemption. The petition asks that the Commission exempt time sensitive informational calls from the prior express consent of the called party requirement. I am submitting a recent news article that exposes the so called “time sensitive” nature of the breaches the petitioner relies on.

The take away from the article is twofold. For one the responsibility for the breaches lies squarely with the banking institutions. In the case of the attached news article the breach was caused by JP Morgan. Breach notifications would never have solved the problem.

The second takeaway is that we are all too familiar with the mantra that “...no evidence of fraud...” was caused by the breach. Consequently, since there never seems to be any sign of fraud what reason would there be to categorizing breach notifications as time sensitive? As pointed out in my reply comments these alleged “time sensitive” breach notifications are more customer relationship marketing then they are real time notices of some fraudulent event.

Lastly, the news article notes that together with the JP Morgan breach only two other financial institutions suffered some kind of breach and even those breaches were relatively minor. Consequently, why should financial institutions be granted an exemption when the exemption would not serve any of the purpose ABA claims?

I suspect that the petition is a precursor for another petition that will seek to exempt debt collection robocalls to cell numbers as long as the called party is not charged for the call. As I pointed out in my comments on the Cargo Airline Association petition a flood of petitions seeking an exemption for robocalls to cell numbers as long as the called party is not charged for the call will surely follow. What I foretold is occurring as another petition seeking to exempt health care related robocalls to cell numbers as long as the called party is not charged for the call has been filed¹. Surely more will follow.

The Commission has started down a slippery slope with this new “not charged for the call” based on content of the calls exemption. The Commission needs to put a stop to these “not charged for the call” based on content of the calls exemption. Congress never intended to create such a broad content based exemption from the TCPA. The Commission must maintain the content neutral aspect of the TCPA.

For that reason the Commission can and should deny the ABA petition in its entirety.

Respectfully submitted,

_____/s/_____

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¹ American Association of Healthcare Administrative Management Petition