



February 2, 2015

**VIA ELECTRONIC DELIVERY**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Room TWA325  
Washington, D.C. 20554

RE: Reply Comments on AAHAM TCPA Petition  
CG Docket No. 02-278

Dear Ms. Dortch:

The American Association of Healthcare Administrative Management (AAHAM), on behalf of its more than 3,000 members, hereby submits these reply comments in response to comments filed by Mr. Joe Shields in opposition to our Telephone Consumer Protection Act (TCPA) Petition,<sup>1</sup> and also to highlight the numerous supportive comments encouraging the Federal Communications Commission to grant the Petition.

As the FCC has recognized, healthcare communications serve an important public purpose and should be protected and encouraged. The current abuse of the TCPA by those seeking to exploit its ambiguities for commercial gain creates a strong chilling effect on such communications. Using a statute that was meant to address the abuses of telemarketing to interfere with the effective flow of healthcare information should not be allowed.

Our Petition was meant to eliminate this interference and the shadow of sanctions hovering over the healthcare community. As described in the Petition, we are seeking an expedited declaratory ruling that if a patient provides his or her wireless telephone number to a healthcare provider, that act constitutes “prior express consent” under the TCPA<sup>2</sup> and the FCC’s TCPA rules<sup>3</sup> for the receipt of non-telemarketing healthcare calls (as such calls are described in the Petition) by or on behalf of that provider.<sup>4</sup> In addition, we have asked the FCC to exercise its authority under the TCPA to grant a

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<sup>1</sup> *Petition for Expedited Declaratory Ruling and Exemption*, American Association of Healthcare Administrative Management, CG Docket No. 02-278 (filed Oct. 21, 2014) (“Petition”).

<sup>2</sup> 47 U.S.C. § 227.

<sup>3</sup> 47 C.F.R. § 64.1200.

<sup>4</sup> See Petition.

narrow exemption from the TCPA’s “prior express consent” requirement for certain non-telemarketing, healthcare calls that are “not charged to the called party.”<sup>5</sup> The declaratory ruling request is consistent with established precedent of the Commission and numerous courts, and the exemption request is consistent with the FCC’s *Cargo Airline Association Order*<sup>6</sup> – and contains numerous conditions to protect consumers.

As stated on pages 2-3 of our Petition, the communications that concern us include, for example, essential informational calls involving appointment and exam confirmations, pre-operative instructions, post-discharge follow up, and prescription notifications. Within the context of consumer healthcare needs, this type of information is at the forefront.

Mr. Shields’ comments, which contain unnecessary vitriol, suggest that our Petition attempts to convert a “content-neutral” statute to a “content-based” statute.<sup>7</sup> At page 2 of his comments, Mr. Shields makes the erroneous statement that “[t]he TCPA regulates these abuses by prohibiting certain technologies altogether, rather than focusing specifically on the content of the message being delivered.” In fact, the TCPA does not prohibit the use of automatic telephone dialing systems or prerecorded voice calls. Instead, it requires callers to obtain “prior express consent” in certain circumstances (including when placing autodialed or prerecorded calls to wireless telephone numbers, absent an emergency) and specifically authorizes the FCC to exempt certain calls from the consent requirements.<sup>8</sup> Mr. Shields presumably would have the Commission blindfold itself to both the statutory language and the importance and consumer benefits of the healthcare calls being made.

Contrary to Mr. Shields’ further assertions, AAHAM is not seeking to “expand” the meaning of “prior express consent” in any way. Instead, we are asking the Commission to confirm, consistent with its prior statements, that in the healthcare context, the provision of a telephone number to the caller is sufficient to demonstrate “prior express consent” for non-telemarketing healthcare calls by or on behalf of the caller. As Rite Aid states in its comments, there is “ample” authority for the Commission to make this confirmation, which can help “ensure that critical healthcare information – such as prescription recalls and updates, upcoming health screenings, and immunization availability – is made known to patients as quickly as possible but with no accompanying uptick in unwanted telemarketing or abusive calls.”<sup>9</sup> Moreover, as noted in the Petition, the calls must be by or on behalf of the healthcare provider – a separate entity calling for its own purposes would not be able to rely on the underlying consent granted to the original healthcare provider.

Our exemption request is also narrowly tailored to help facilitate healthcare calls while continuing to protect consumers. As described in the Petition, AAHAM supports the following conditions for each free-to-end-user call or text message utilizing any exemption for healthcare calls,

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<sup>5</sup> *Id.*

<sup>6</sup> *Cargo Airline Association Petition for Expedited Declaratory Ruling Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Order, 29 FCC Rcd 3432 (2014). (“*Cargo Airline Association Order*”).

<sup>7</sup> Comments of Joe Shields, CG Docket No. 02-278 (filed Jan. 16, 2015).

<sup>8</sup> See 47 U.S.C. § 227(b)(2)(C).

<sup>9</sup> Comments of Rite Aid, CG Docket No. 02-278 (filed Jan. 16, 2015); see also Comments of the National Association of Chain Drug Stores, CG Docket No. 02-278, 3-7 (filed Jan. 16, 2015) (“NACDS Comments”).

consistent with the conditions that the Commission adopted in the *Cargo Airline Association Order*<sup>10</sup>:

1. A call or text message must be sent, if at all, only to the telephone number provided for the patient;
2. Calls and text messages must identify the name of the healthcare provider and include contact information for the healthcare provider; for voice calls, these disclosures would need to be made at the beginning of the call;
3. Calls and text messages must not include any telemarketing, solicitation, or advertising content;
4. Text messages and prerecorded calls must be concise, generally one minute or less in length for voice calls and one message of 160 characters or less in length for text messages;
5. Each healthcare provider shall send or place only one call or text message per day, up to a maximum of three calls or text messages combined per week from a specific healthcare provider;
6. Healthcare providers relying on this exemption must offer parties the ability to opt out of receiving future autodialed or prerecorded healthcare calls and text messages and must honor the opt-out requests within a reasonable time from the date such request is made, not to exceed thirty days; and
7. Each call or text message must include information on how to opt out of future autodialed or prerecorded healthcare calls; voice calls that could be answered by a live person must include an automated, interactive voice- and/or key press-activated opt-out mechanism that enables the called person to make an opt-out request prior to terminating the call; voice calls that could be answered by an answering machine or voice mail service must include a toll-free number that the consumer can call to opt out of future healthcare calls; text messages must include the ability for the recipient to opt out by replying “STOP.”

AAHAM is pleased that many parties filed supportive comments encouraging the FCC to grant the Petition. For example, as the National Association of Chain Drug Stores states, granting the Petition is “reasonable and necessary to achieve positive health outcomes without compromising any reasonable privacy expectations” and would not generate marketing campaigns or substantial additional calls.<sup>11</sup> In addition, as commenters note, calling patients by telephone is specifically sanctioned by law and may be required in some instances.<sup>12</sup> Moreover, the looming threat of TCPA class action liability can increase healthcare costs and divert limited resources away from patient operations, and the Petition is consumer-friendly attempt to help to alleviate this litigation threat when attempting to place healthcare calls.<sup>13</sup>

Finally, we note that a few of our members may have inadvertently omitted certain contact or captioning details when filing supportive comments. Some of those filings were later corrected, but we encourage the Commission not to let the unintended errors impact negatively its consideration of our Petition.

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<sup>10</sup> *Cargo Airline Association Order* ¶ 18.

<sup>11</sup> NACDS Comments at 1-2, 8.

<sup>12</sup> See, e.g., Comments of the Pharmaceutical Care Management Association, CG Docket No. 02-278, 2 (filed Jan. 16, 2015); see also Comments of Waverly Health Center, CG Docket No. 02-278, 1-2 (filed Jan. 8, 2015) (“Waverly Health Center Comments”).

<sup>13</sup> See, e.g., Waverly Health Center Comments at 2; Comments of Miller Wenhold Capital Strategies, LLC at 1-2.

For these reasons and those stated in the Petition, we again urge the FCC to grant the Petition and thank the Commission for its consideration.

Sincerely,

A handwritten signature in black ink that reads "Victoria DiTomaso". The signature is written in a cursive style with a large initial 'V'.

Victoria DiTomaso, CRCE-I  
President, American Association of Healthcare Administrative Management