

**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 Letter of the Honorable Congressman Scott
Tipton to Chairman Wheeler**

I hereby respectfully submit these reply comments in response to the Letter from the Honorable Congressman Scott Tipton to Chairman Wheeler on the American Association of Healthcare Administrative Management (hereinafter “AAHAM”) Petition for Declaratory Ruling and Exemption.

I am confused as to why this letter was posted to the proceeding when a similar letter dated January 28th, 2015 also addressed to Chairman Wheeler and signed by fourteen (14) Senators was not¹. The letter I refer to urges the Commission to resist efforts to weaken the TCPA by entities such as the AAHAM. See attached letter.

The Honorable Congressman Tipton misinterprets the intentions of the TCPA. Apparently, the Honorable Congressman Tipton has fallen for the *ad nauseam* claim that the TCPA applies only to telemarketing calls. The original purpose of the TCPA was to regulate certain uses of technology that are abusive and potentially dangerous. “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

¹ The letter was CC’ed to Chairwoman Edith Ramirez and Commissioners Mignon Clyburn, Jessica Rosenworcel, Ajit Pai and Michael O’Rielly

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).

Contrary to the Honorable Congressman Tipton assertions the petition seeks to expand prior express consent to include unnecessary “nuisance” informational calls from 3rd parties. For example, the petition claims that calls that offer insurance coverage are “healthcare calls²”. Calls that offer a service or in this case insurance coverage are telemarketing calls under the TCPA’s definition of telemarketing calls.

And clearly the sought exemption includes healthcare related debt collection calls³. Apparently, the possibility that Honorable Congressman Tipton’s constituents that have suffered medical calamities will be harassed by debt collectors is lost on the Honorable Congressman Tipton.

Further, the petition seeks to eliminate prior express consent entirely for all healthcare related calls including unnecessary “nuisance” informational calls that are not charged to the called party: “In addition, AAHAM asks the Commission to exempt from the TCPA’s “prior express consent” requirement certain non-telemarketing, healthcare calls that are “not charged to the called party.”

An expansion of the Cargo Airline Association Order exemption to health care providers is simply not warranted especially since such calls will unquestionably include debt collection calls. Any “not charged for the call” exemption will undoubtedly be exploited as can be seen by the many cases where such a baseless defense was raised. “This Court agrees with the reasoning employed by numerous other courts—both within

² AAHAM Petition Page 3, list item #10.

³ “...healthcare calls... **by or on behalf** of the healthcare provider.” AAHAM Petition at I; “...as well as its “**business associates**.” AAHAM Petition at page 5.

and outside of this circuit—and concludes, therefore, that plaintiff's failure to prove that he was charged for any of RPM's calls to his cell phone has no bearing on the efficacy of his TCPA claim.” *Levy v. Receivables Performance Mgmt. LLC*, --- F.Supp.2d---, 2013 WL 5310166 (E.D.N.Y. Sept. 23, 2013). This Court has previously determined, in a well-researched and well-reasoned opinion by District Judge Robert N. Scola, that “the TCPA does not require the plaintiff to be ‘charged for’ the calls in order to have standing to sue.” *Gesten v. Stewart Law Grp., LLC*, No. 14-cv-61650-JIC, 2014 WL 7243330, (S.D. Fla. Dec. 19, 2014) Citing *Manno v. Healthcare Revenue Recovery Group, LLC*, 289 F.R.D. 674, 683 (S.D. Fla. 2013).

Because someone is not charged for the call does not lessen the negative and invasive effect automatically dialed calls have on consumer privacy. “To state the obvious, autodialed calls negatively affect residential privacy regardless of whether the called party pays for the call.” *Osorio v. State Farm Bank, F.S.B.*, No. 13-10951, 2014 WL 1258023, --- F.3d --- (11th Cir. March 28, 2014).

If a consumer **has not** provided their cell number to their health care provider then obviously the consumer does not want their health care provider to call them on their cell number. Such health care provider calls should not be forced on consumers even if they are not charged for the call. The Honorable Congressman Tipton entirely misses the point of the petition seeking to force health care provider calls on unwilling recipients!

If a consumer **has** provided their cell number to their health care provider for a limited purpose then obviously the consumer does not want automated calls from 3rd parties that are merely associated with the healthcare provider. Expanding consent to include healthcare provider associates will only increase automated nuisance calls to cell

numbers. Expanding consent provided during a hospital visit to include debt collection calls will inevitably lead to consumers refusing to provide a telephone number or providing a fictitious number that may belong to someone else.

Using automated technology to maximize profits at the expense of consumers is contrary to Congressional intent and the TCPA. Increased efficiency and reduced cost at the expense of consumers is cost shifting something Congress intended to prohibit with the TCPA regardless of the content of the message. Such an exemption amounts to the tyrannical taking of private property without consent.

Obviously the TCPA is working as it was envisioned by Congress. Evidence of the success of TCPA lawsuits is that key players from every possible industry are lobbying the Commission to relax TCPA regulations so that those industries can carry on as usual with little fear of consumer lawsuits. The AAHAM Petition is a good example.

The Commission must exercise its responsibility to protect the privacy and safety of cell phone users. One way the Commission can accomplish that is to deny the AAHAM petition in its entirety.

Respectfully submitted,

_____/s/

Joe Shields
Texas Government & Public Relations Spokesperson for Private Citizen Inc.
16822 Stardale Lane
Friendswood, Texas 77546