

**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 Reply Comments of Global Tel*Link
Corporation on Global Tel*Link Corporation’s Petition for Expedited Clarification
and Declaratory Ruling**

On June 5th, 2015 Global Tel*Link (Hereinafter “GTL”) Corporation submitted reply comments on my comments on GTL Corporation’s Supplement to its Petition for an Expedited Clarification and Declaratory Ruling. GTL Corporation is asking that the Commission clarify or issue a declaratory ruling that prerecorded messages to cell phones that attempt to set up a collect call are exempt from the TCPA’s requirement of prior express consent for prerecorded message calls to cell phones.

GTL Corporation submitted a list of cases I have filed in Federal District court. GTL Corporation does not provide a reason for listing the cases other than stating I am the plaintiff in those cases. Since GTL Corporation repeatedly makes the *ad nauseam* claims that all TCPA law suits are frivolous¹ then they must by inference be insinuating

¹ “...subject to potential liability from numerous **frivolous lawsuits** under the TCPA.” GTL Petition Supplement at Page 2 Para. 1; “...free from the threat of **frivolous and misapplied lawsuits** brought under the TCPA.” GTL Petition at Para. 1; “...the defense of **frivolous lawsuits** at the state level that causes GTL the most economic harm.” GTL Petition, Page 17 Para. 3; “...which will eliminate or minimize **frivolous lawsuits** under the TCPA.” GTL Reply To Comments 07-26-10, Page 2 Para. 1; GTL Comments 11-15-12, “...**“frivolous” lawsuits** often result from a provider's use of an informational notification.”, Page 5 Para. 1;

that all of the listed cases are also frivolous. Contrary to such insinuation not one case that I have filed in state or federal courts since 1998 has ever been found to be frivolous. The inference that should be taken from the list of cases is that my efforts in enforcing the TCPA as Congress intended has put an end to millions of unauthorized prerecorded calls to people's homes and cell phones.

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 GTL Corporation petition is an example of how one industry wants the Commission to relax TCPA regulations.

Relaxing TCPA regulations at this point will interfere with ongoing legitimate TCPA litigation that GTL Corporation is involved in. Other than claiming all TCPA litigation is frivolous, GTL Corporation has not provided any legal or factual basis that its prerecorded messages are exempt or should be exempt from the restrictions of prerecorded message calls to cell phones without prior consent of the called party.

In previous comments it has been repeatedly pointed out to the Commission that if all TCPA cases are indeed frivolous then the Commission needs take no action because the courts will properly address frivolous cases. Since the vast majority of TCPA claims are **not** frivolous then why would GTL Corporation make such misrepresentations to the Commission? The reason is simple - to down play at all costs, even to stooping to misrepresentations of the legal status of TCPA litigation, the effect legitimate TCPA litigation has.

Very few attorneys are willing to file individual TCPA lawsuits and Commission enforcement has been lackluster at best. Those facts have led to the callous and indifferent treatment of cell numbers by legitimate companies forcing consumers to seek recourse through class action representation. Such is the case in the GTL Corporation litigation.

Class action TCPA law suits have led to increased awareness of the illegal behavior of legitimate companies in regards to their callous and indifferent treatment of cell numbers. “if class actions can be said to have a main point, it is to allow the aggregation of many small claims that would otherwise not be worth bringing, and thus to help deter lawless defendants from committing piecemeal highway robbery, a nickel here and a nickel there, that adds up to real money, but which would not be worth the while of an individual plaintiff to sue on.” *Miller v. McCalla*, 198 F.R.D. 503, 506 (N.D. Ill. 2001).

GTL Corporation claims that I did not provide any legal or factual basis for any of my comments on their Supplement to their Petition. Obviously I did provide facts – if an inmate’s dialing of numbers connected directly to the called party then the inmate made the call. As I pointed out, GTL Corporation’s system intercepts the call, compares it to a list of numbers, then takes the action of dialing the number to deliver the call if an account has been set up, dialing the number and delivering the call if the call can be charged as a collect call to a landline or dialing the number and delivering a prerecorded message if the number is a cell number. GTL Corporation has full control over the call once a telephone number is dialed by an inmate.

The number the inmate dialed is unquestionably captured by GTL Corporation's system which then dials the number and delivers a prerecorded message to cell phone numbers. GTL Corporation even admits this fact in a roundabout manner. GTL Corporation states that the initial inmate dialed call "...is sent to the telephone number that has been dialed by an inmate..." Sending is no different than dialing to any layman. And obviously the GTL Corporation system delivers a prerecorded message to a cell number.

"It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States - (A) **to make any call...** (other than a call made for emergency purposes or made with the prior express consent of the called party) **using... an artificial or prerecorded voice** (iii) **to any telephone number assigned to a... cellular telephone service...**" 47 U.S.C. §227(A)(iii)

GTL Corporation artfully tries to evade the above by claiming its system is not an automatic dialer. Whether the call was automatically or manually dialed is not the issue. The issue is the delivery of prerecorded messages to cellular telephone numbers without consent of the called party.

Clearly there is an "or" in the TCPA making either automatically dialed calls or prerecorded message calls to cellular telephone numbers without consent separate violations of the TCPA. That same "or" was used by the FCC in the Correctional Billing citation².

Prior to enacting the TCPA, "[t]here was significant evidence before Congress of consumer concerns about telephone solicitation in general and about automated calls in particular." Moser v. F.C.C., 46 F.3d 974 (9th Cir. 1995). Congress made extensive findings and included in the bill a statement that "telephone subscribers consider

² Correctional Billing d/b/a Evercom Systems, Citation, FCC File EB-07-TC-683, DA 07-1034, March 5th 2007

automated **or** prerecorded telephone calls, regardless of the content or the initiator of the message, to be a nuisance and an invasion of privacy.” Telephone Consumer Protection Act of 1991, Pub.L. 102-243 § 2(10); see also S. Rep. No. 102-178 at 2. Even Congress distinguished prerecorded calls from automated calls!

GTL Corporation contests the fact that it determines 1. whether or not to use a prerecorded message, 2. the content of the prerecorded message and 3. whether or not to deliver the prerecorded messages to cellular telephone numbers. GTL Corporation insists it is bound by contracts to do the above and can therefore violate the TCPA with impunity. GTL Corporation cannot point to a correctional facility policy as reverse preempting a federal consumer protection statute. This nonsensical argument has been repeatedly raised and repeatedly struck down in regard to any less restrictive state law or policy requirements.

What is relevant, is whether or not a state law (or some state correctional facility policy) can “reverse-preempt” a federal law. GTL Corporation argues the absurd position that a state law (or some state correctional facility policy) can somehow direct someone to do something that is flatly prohibited by federal law.

A state law that purports to do so is ipso facto invalid. *Printz v. United States*, 521 U.S. 898, 913 (1997). “If Congress has not entirely displaced state regulation over the matter in question, state law is still pre-empted to the extent it actually conflicts with federal law, that is, when it is impossible to comply with both state and federal law, or where the state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress.” *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 248 (1984) (citation omitted) (emphasis added).

To put it concisely, state law (or some state correctional facility policy) cannot allow an activity that is wholly prohibited by federal law. Any portion of state law (or some state correctional facility policy) interpreted as permitting prerecorded message calls to cell numbers prohibited by the TCPA, would not only directly conflict with the federal law, and must be preempted, but would “stand[] as an obstacle to the accomplishment of the full purposes and objectives of Congress.”

GTL Corporation contradicts itself when it insists that it cannot make live calls to a called party. GTL Corporation claims it cannot speak with inmates but that is not what I suggested. I never said anything about a live operator speaking with an inmate. I suggested that a live operator speak with the called party when a cell phone number is called. GTL Corporation admits that their system allows the called party to speak with a GTL Corporation representative”: “...called parties who receive IVR Notifications are always given the option of calling a live customer service representative of GTL...” GTL Reply Comments Footnote 15. Clearly, GTL Corporation admits that a GTL Corporation representative can speak with a called party. Thus, GTL Corporation can manually dial cell numbers. The argument that GTL Corporation representatives cannot speak with inmates is not legal or factual support to reject the fact that a live GTL Corporation representative can speak with the called party.

Obviously I provided legal support for my argument that consent must come from the called party not some inmate. I cited to the specific language of the *GroupMe, Inc./Skype Communications Declaratory Ruling*: “We stress that our clarification in no way mitigates GroupMe’s duty (or that of any other caller), except in emergencies, to obtain the prior express consent **of the called party** before placing an autodialed or

prerecorded call to that party's wireless telephone number. The TCPA holds a caller liable for TCPA violations even when relying upon the assertion of an intermediary that the consumer has consented to the call." *In re GroupMe, Inc./Skype Communications S.A.R.L. Petition for Expedited Declaratory Ruling*, CG Docket No. 02-278, FCC 14-33 (March 27, 2014). How is this citation not legal support for the position that consent must be obtained from the called party?

There is no legal or factual basis to deny that the GTL Corporation prerecorded message announces the availability of GTL Corporation's services. For example the prerecorded message I received in the *Shields v. TIP Systems LLC and Mark A. Styron Individually*, No. 14:14-cv-03592, (S.D. TX., filed Dec. 16, 2014)³ case was an advertisement for the availability and quality of the callers services: "...to hear call rates press three..." One can assume with certainty that since GTL Corporation hasn't provided a transcript of its prerecorded message in any of its half dozen submissions to the proceeding that the GTL Corporation prerecorded message also announces the availability and/or quality of GTL Corporation's services. GTL Corporation argues their prerecorded message is not an advertisement but fails to provide any legal or factual support for their argument.

GTL Corporation again mixes apples and oranges when it asserts that prerecorded messages to potential customers are the same as the prerecorded messages to existing customers. The latter may be made with provable consent of the called party.

The TCPA was enacted for precisely this situation – to ensure that only consenting cell phone users pay for prerecorded calls that offer to provide a service. GTL

³ Three prerecorded message were delivered within an 8 minute time period 00:37 a.m., 00:40 a.m. and 00:45 a.m. by the defendant(s) to my cell number. A claim for such illegal behavior cannot in anyone's wildest dreams be considered frivolous!

Corporation can easily use live callers to obtain consent. Relying on an automated system to obtain consent clearly violates the TCPA.

Granting the petition will inflict substantial and clear harm on inmate family's and wrong number cell phone accounts. The Commission cannot justify allowing GTL Corporation to evade the prior express consent requirement of the TCPA and inflict substantial and clear harm to cell phone user's accounts. The Commission must affirmatively deny the absurd petition and protect cell phone users from prerecorded collect calls. As I stated before, granting an exemption for prerecorded collect calls to cell phones is an absurd notion and may make the Commission the butt of comedian's jokes worldwide!

Respectfully submitted,

_____/s/_____

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