

**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 Comment on the National Council of Higher Education Resources

Letter to Chairman Wheeler

On June 5th 2015, a copy of the National Council of Higher Education Resources (hereinafter “NCOHER”) letter to Chairman Wheeler was posted to the 02-278 proceeding. The letter contains once again the *ad nauseam* claim that all TCPA law suits are frivolous (para. 2 of the letter). The claim is a clear misrepresentation of the legal status of legitimate TCPA litigation.

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 NCOHER stoop to such misrepresentation? The reason is obvious – the misrepresentation is their answer to the effect the TCPA has on their callous and indifferent treatment of cell numbers.

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 NCOHER is an example of how one industry wants the Commission to relax TCPA regulations.

The NCOHER letter falsely claims that there is an implied established business relationship exemption for autodialed or prerecorded/text message calls to cell phone numbers. There is no such established business relationship exemption for autodialed or prerecorded/text message calls to cell phone numbers. There are two exemptions for autodialed or prerecorded/text message calls to cell phone numbers to cell phones: prior express consent or an emergency purpose.

Further, the NCOHER letter suggests that federal consumer protection laws do not apply to federal agencies or those acting on behalf of such federal agencies. Clearly, laws protecting people from job discrimination under the Equal Employment Opportunity Act apply to all state and federal agencies. Similarly, child labor laws also apply to all state and federal agencies. The Drivers Privacy Protection Act applies to all state governments and their release of driver's license and vehicle registration information. Even our elected officials, Congressmen and Senators alike who operate "in the shoes" of the United States government, must comply with the laws of the land. In fact, the Commission has clearly stated that the TCPA applies to automatically dialed or prerecorded message/text political calls.

Not even the President can create an exemption to a federal consumer protection statute! If the President were to attempt to create an exemption from the TCPA such action would violate the Separation of Powers under the U.S. Constitution.

The NCOHER letter falsely suggests that automatically dialed or prerecorded message/text debt collection calls is the most convenient contact method for a called party. Exactly the opposite is true – it is the most convenient way **for a caller** to contact a called party! The NCOHER letter rests on the oft misapplied cost effectiveness for the

caller which entirely ignores the cost to the recipient of the calls. And the privacy of the called party is left entirely out of the picture.

To avoid making calls that violate the TCPA, debt collectors can make a manually dialed call to a cell number and get consent to make automatically dialed or prerecorded message/text debt collection calls to cell numbers. The same holds true for debt collection calls to stale numbers.

Apparently, NCOHER is asking that its debt collection calls be treated as time sensitive and financially critical. Such a misinterpretation of the purpose of debt collection calls is ludicrous and entirely unacceptable. Debt collection calls are not entitled to any emergency exemption under the TCPA. Obviously, NCOHER is riding the coattails of Chairman Wheeler's proposed FTEU "urgent circumstances" exemption.

The Commission must reject any and all attempts to create exemptions for automatically dialed or prerecorded message/text debt collection calls to cell numbers without consent of the called party.

Respectfully submitted,

_____/s/

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