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May 3, 2016

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street S.W.
Washington, D.C. 20554

Re: Errata to Comments of Professional Association for Customer Engagement in response to the Petition for Declaratory Ruling of Mr. Todd C. Bank in CG Docket No. 02-278.

Dear Ms. Dortch:

On behalf of the Professional Association for Customer Engagement (“PACE”), the undersigned refiles PACE’s Comments in response to the Petition for Declaratory Ruling of Mr. Todd C. Bank in order to remove the “draft” watermark. The attached submission is identical to what was filed yesterday other than the removal of the “draft” watermark.

Please contact the undersigned if you have any questions regarding this submission.

Respectfully submitted,

A handwritten signature in blue ink that reads 'Michele A. Shuster'.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	CG Docket No. 02-278
Rules and Regulations Implementing the)	DA 16-341
Telephone Consumer Protection Act of 1991)	
)	
Petition for Declaratory Ruling)	
of Todd C. Bank)	

Comments of Professional Association for Customer Engagement

Filed May 2, 2016

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I. Introduction

On March 7, 2016, Mr. Todd C. Bank filed a Petition for Declaratory Ruling to Clarify the scope of 47 C.F.R. § 64.1200(a)(2) (the “Petition”). The Petition seeks the Federal Communications Commission’s (“Commission”) creation of a new “bright-line” rule that telephone numbers used for business purposes but registered with a telecommunications carrier as “residential” are treated as “residential” for purposes of the Telephone Consumer Protection Act of 1991 and its implementing regulations (collectively, the “TCPA”). The Professional Association for Customer Engagement (“PACE”) respectfully requests that the Commission deny Mr. Bank’s Petition and adopt a bright-line test that when a telephone number is held out to the public or to the caller as a business number, such telephone number will be treated as a business number for TCPA compliance purposes. This test promotes commerce by reducing regulatory barriers for small businesses that were not intended by Congress when enacting the TCPA, encourages compliance by harmonizing the law with the expectations of business and discourages gamesmanship by untruthful business owners who purchase a residential telephone line for business use.

II. Treating Business Numbers as Consumer Numbers Was Never Intended by Congress

Under Mr. Bank’s model, a business that improperly purchases or uses a “residential” phone number as a business line would be able to claim protections that were not granted by Congress in the TCPA and therefore are not within the Commission’s authority to extend. Congress always intended that residential and business numbers be treated differently. Distinctions are drawn between residential and business numbers in not only the TCPA, but also in other regulations such as Do Not Call and the Telemarketing Sales Rule generally.¹ The Commission, FTC and Congress have also emphasized that the goal of these regulations is to protect consumer privacy.² By adopting a bright-line test that a telephone number held out for

¹ See 16 C.F.R. § 310.6(b)(7) (exempting from TSR calls between a telemarketer and a business to induce the purchase of goods or services by the business, subject to certain exceptions).

² See e.g. Telephone Consumer Protection Act of 1991, P.L. 102-243, § 2(12) (“Banning such automated or prerecorded telephone calls to the *home* . . . is the only effective means of protecting telephone *consumers* from this nuisance and privacy invasion.”) (emphasis added); Telemarketing Sales Rule, 80 Fed. Reg. 239, 77520 (Dec. 14, 2015) (“The TSR is fundamentally an anti-fraud rule that *protects consumers* from deceptive and abusive telemarketing practices.”) (emphasis added); In re Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Declaratory Ruling and Order, CG Docket No. 02-278, WC Docket No. 07-135, FCC 15-72 (July 10, 2015) at page 4 (“The [TCPA] and our rules empower *consumers* to decide which robocalls and text messages they receive...” (emphasis added)).

business purposes is treated as a business line regardless of its registration status, the Commission would be fulfilling the aims of these important *consumer* privacy safeguards. To hold otherwise would be beyond the purpose and intent of the TCPA.

III. Treating Business Numbers as Consumer Numbers will Cause Significant Injury to Businesses Small and Large

Businesses rely on a predictable marketplace. Mr. Bank's proposed test would render the marketplace unpredictable and subject to manipulation by businesses that wish to gain "consumer" protections to which they are not entitled. Allowing a business to hold out its phone number to the public as a business number and then claim consumer protections is simply unfair to the calling business, does not comport with marketplace expectations, and will act as a barrier to the free flow of goods and services between businesses.

Compliance with Mr. Bank's proposed registration-based method would be onerous and near impossible for even the largest of businesses with well-designed compliance departments. At this time, companies are able to purchase data of publicly listed phone numbers by registration characterization (business or residential) from companies that aggregate such data from the telephone carriers. However, this data is full of holes. For example, if a phone number is not publicly listed, it will not appear in the data set. If the carrier does not distinguish between residential or business, it will not appear in the data set or may be mischaracterized. Additionally, no data set is available that identifies telephone numbers registered as residential lines with the carrier but held out to the public as business lines. In an attempt at partial compliance, companies would be required to scrub various incomplete data sources against one another to identify business numbers that have been registered as residential. Even then the scrub process would not produce a list that could be called in compliance with Mr. Bank's request. These flaws in the available data, and the redundant scrubbing methods needed to achieve only partial certainty that a number is a callable business line, render full compliance all but impossible.

Denying Mr. Bank's request promotes commerce by ensuring that phone numbers held out to the public as business numbers are treated as such under the law. It aligns the law with business expectations that a business number is a business number no matter its fictitious registration status with the carrier. Small businesses especially will benefit from the clarity of knowing that if they are provided a business number or the number is held out to public as such,

they can market their products and services to that number without fear of impossible compliance requirements or significant risk of litigation.³ As former FCC Chairman Julius Genachowski has said, “One of the reasons that the U.S. led the world in the global economy in the 20th century is that the federal government and the state governments working together helped create a single national market where goods and services flowed everywhere, where capital could be raised and return on investment could be gotten, and it was, for all of those reasons, by far the best country in the world to launch new products and to both serve and create consumer demand and create this virtuous circle that kept our economy strong.”⁴ The test adopted by the FCC should help keep this virtuous circle intact by ensuring all businesses can meet compliance requirements to market their goods and services to other businesses as intended by Congress when it enacted the TCPA.

Contrary to the FCC’s position espoused by Chairman Genachowski and the FCC’s own broadband expansion initiatives to promote home-based entrepreneurship, Mr. Bank’s proposal would stifle new businesses. By way of example, there are thousands of home-based businesses across the United States and if they are subjected to an impossible to comply with regulatory scheme as proposed by Mr. Bank, these businesses would not be able to solicit business customers by phone without being at risk for business-ending TCPA litigation. Simply, any limitation on calling a business, stifles new business. The test proposed by PACE, on the other hand, would promote the FCC’s home-based entrepreneurship goals by providing a clear and understandable requirement.

IV. Treating Business Numbers as Business Numbers Discourages Gamesmanship

As has been identified, Mr. Bank’s proposed registration-based method would hinder commerce and render full compliance near impossible. It would also allow businesses to “game the system” and be rewarded. Business telephone lines are more expensive than residential telephone lines. Mr. Bank admits that one motivation for using a residential line is “to avoid the

³ Reducing barriers to entry for entrepreneurs has been a goal of the administration of President Obama. The White House Startup America program is designed to accelerate entrepreneurship through several policy initiatives that include, amongst others, reducing barriers and making government work for entrepreneurs and unleashing market opportunities in certain fields (*see* <https://www.whitehouse.gov/economy/business/startup-america>). PACE would encourage the Commission to take into account the Administration’s entrepreneurship goals when considering the adoption of a new business number definition under the TCPA.

⁴ Comments of former FCC Commissioner Julius Genachowski to the American Teleservices Association (nka PACE) on October 11, 2011.

increased charges that are associated with a business listing.”⁵ And while there may be legitimate reasons a business may feel the need to cut costs by using a residential line, no business should be permitted to avail itself of the *consumer* protection laws by fictitiously purchasing a residential telephone line and then holding it out to the public as a business line. By permitting such gamesmanship, the Commission would be both acting contrary to Congressional intent and rewarding behavior that denies carriers the charges to which they are entitled.

V. Conclusion

Respectfully, PACE encourages the Commission to deny Mr. Bank’s petition and, instead, adopt the bright-line test that when a telephone number is held out to the public or to the caller as a business number, such telephone number will be treated as a business number for TCPA compliance purposes. Such a test will promote commerce, encourage compliance, and discourage gamesmanship.

Respectfully submitted,

/s/ Michele A. Shuster

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⁵ Petition, page 2.