

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

**In the Matter of** )  
 )  
 )  
**Rules and Regulations Implementing** ) **CG Docket No. 02-278**  
**the Telephone Consumer Protection** )  
**Act of 1991** )

**COMMENTS OF JOE SHIELDS ON  
FURTHER NOTICE OF PROPOSED RULEMAKING**

**I. INTRODUCTION**

My name is Joe Shields. I am a resident of Harris County, Texas. I want to thank the Commission for providing the opportunity for the public to comment on the Commission's Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991

**II. BACKGROUND**

**THE TELEPHONE CONSUMER PROTECTION ACT**

The Commission seeks additional comments on telemarketing calls to wireless telephone numbers that have been recently ported from landlines and implementation of a monthly download of the telephone numbers on the National Do Not Call registry (Further Notice of Proposed Rule Making 02-278).

**III. FURTHER NPRM CG 02-278**

**SAFE HARBOR FOR CALLS TO PORTED CELL PHONE NUMBERS**

The TCPA prohibits telemarketing calls (autodialed or prerecorded messages) to a telephone number assigned to a cellular telephone service when the called party is charged for the call. Specifically:

- 47 § 227 (b)(1) It shall be unlawful for any person 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 any automatic telephone dialing system or an artificial or prerecorded voice --

(iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call;

The telemarketing industry has requested that the Commission consider creating a safe harbor for telemarketing calls to cellular telephone numbers recently ported from landlines. The request if granted would create an exemption from violations of the TCPA. The statute does not contain such an exemption. Neither has Congress amended the TCPA to exempt any telemarketing call to a telephone number assigned to a cellular telephone service when the called party is charged for the call. Congress did authorize the Commission to consider limited exemptions only if the called party is not charged for the call:

47 § 227 (b)(2) The Commission shall prescribe regulations to implement the requirements of this subsection. In implementing the requirements of this subsection, the Commission--

(C) may, by rule or order, exempt from the requirements of paragraph (1)(A)(iii) of this subsection calls to a telephone number assigned to a cellular telephone service **that are not charged to the called party**, subject to such conditions as the Commission may prescribe as necessary in the interest of the privacy rights this section is intended to protect.

Cellular service providers begin charging for cellular service upon activation of the cellular service account including a ported telephone number. Therefore a telemarketing call to a ported number will be charged to the called party. That singular fact appears to have been intentionally overlooked by those requesting a safe harbor!

Furthermore, no safe harbor is warranted because telemarketers have in their own hands the ability to 100% completely avoid the TCPA's ambit – they can simply make their calls by a human being dialing the calls by hand. Of course, the telemarketing industry doesn't like this responsible solution. It would rather continue to impose its unwanted automated telemarketing calls on cell phone users, who will collectively pay millions of dollars to receive such calls.

As such, the request for a safe harbor is wrongly placed before the Commission – only Congress can create such an exemption. The telemarketing industry must make their request to Congress. I seriously doubt that Congress would create such an exemption for the telemarketing industry – making consumers pay to receive telemarketing calls on their cellular telephone numbers. It is obvious, given prior telemarketing history, that the telemarketing industry is attempting to back door the TCPA with a Commission exemption which would surely be exploited as a loophole in the law.

Consequently, I respectfully request that the Commission deny the telemarketing industry's request for creating a safe harbor for telemarketing calls to cellular telephone numbers recently ported from landlines.

## **NATIONAL DNC LIST MONTHLY UPDATES**

The Consolidated Appropriations Act of 2004 created a requirement to download the telephone numbers on the National Do Not Call registry on a monthly basis vice the current quarterly download.

My title is Senior Systems Engineer. For the past fifteen years I have worked with the design, implementation and use of computer systems and software at a NASA facility. I believe I have the expertise to state indisputably that if a telemarketer has properly implemented tools to comply with the National Do Not Call registry then there is no additional cost to download and implement the telephone number list monthly vice quarterly. Additionally, as the process is mostly automated, little extra manpower resources will be necessary to download and implement the telephone number list monthly vice quarterly.

Consequently, I respectfully request that the Commission implement rules requiring monthly downloads and implementation of the telephone numbers on the National Do Not Call registry.

### **IV. CONCLUSION**

In closing I want to again thank the Commission for providing the opportunity for the public to comment on the Commission's Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991.

Respectfully submitted,

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