

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

**REPLY COMMENTS OF ROBERT BIGGERSTAFF TO COMMENTS ON THE  
PETITION OF ACA INTERNATIONAL FOR EXPEDITED DECLARATORY RULING  
SEEKING CLARIFICATION OF THE RULES UNDER THE TELEPHONE  
CONSUMER PROTECTION ACT**

Robert Biggerstaff (“Commenter”) hereby submits these reply comments as timely filed in opposition to the Comments of The Direct Marketing Association (“DMA”) supporting the Petition of ACA International (“ACA”) for Expedited Declaratory Ruling Seeking Clarification of the Rules under the Telephone Consumer Protection Act

The Commission must pay close attention to a very large and obnoxious camel lurking outside the tent. The telemarketing industry, as represented by the Direct Marketing Association, have asked the Commission to “reaffirm that neither the TCPA nor the FCC's implementing rules limit the use of automatic dialing equipment to call a wireless number, for debt collection or otherwise, that the called party has supplied or otherwise consented to be used as a point of contact.” DMA Comments at 4 (emphasis added).

Parsing this statement, the DMA wants carte blanche for anyone to call any person’s cell-number, with any technology (including prerecorded calls) if that person has ever “supplied” that phone number “as a point of contact.”

First of all, the Commission never made the statement that the DMA asks to be “reaffirmed.”

At best, it had limited application to land-lines.<sup>1</sup> Such a concept has *never* been applied to cell-phones and for the reasons stated in this Commenter's other comments, fails when applied to cell-phones.

Second, the law of unintended consequences is in full application here. If a predictive dialer is not an ATDS for debt collectors, it is similarly not an ATDS for telemarketers. If the Commission reverses its 2003 TCPA Order on this point, it will open up cell-phones to virtually unlimited telemarketing.

Furthermore, if the Commission finds that releasing a cell-phone number as a "point of contact" constitutes "express consent," not only would it allow prerecorded calls to cell-phones where the recipient has to pay to receive the call, it would override the presence of that phone number being on the National Do-Not-Call list. Needless to say, the camel is licking its chops waiting to barge into the tent with wild abandon.

Respectively Submitted, this the 22<sup>nd</sup> day of May, 2006.

*/s/ Robert Biggerstaff*

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<sup>1</sup> 1992 TCPA Order at ¶¶ 27-31.