

AUG 22 2011

Federal Communications Commission
Office of the Secretary

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

CG Docket No. 02-278

In the Matter of Rules and Regulations
Implementing the Telephone Consumer
Protection Act of 1991

SUPPLEMENTAL REPLY COMMENTS OF ROBERT BIGGERSTAFF

Please accept this filing as a supplement to my reply comments filed June 18, 2010 in this docket.

As reply comments are filed in this Docket, the misunderstandings – some perhaps intentional – of commenters continue to stand out.

Sprint believes that there is, or has been an EBR exemption for prerecorded calls and text messages to cell phones:

The Commission should also clarify that wireless carriers may send free autodialed or prerecorded calls, including text messages, without prior written consent if the calls are intended to inform wireless customers about new products that may suit their needs more effectively, so long as the customer has not expressly opted out of receiving such communications. Under current rules, even if considered telemarketing, *this would be permitted under the established business relationship exception in combination with the rule that permits autodialed or prerecorded calls to wireless customers in cases in which the customer is not charged.*¹

No such exemption has ever existed. The CTIA also believes in the prior existence of this fiction.²

¹ Reply Comments of Sprint at 4 (emphasis added).

² Reply Comments of CTIA at 2-3.

No. of Copies rec'd 0
List ABCDE

MetroPCS Communications, Inc., repeats the worn out euphemisms that plague the industry comments:

Our customers receive great benefit from our billing system, which saves money by cutting costs, and these savings are passed along to our subscribers.³

If this is true, then give the consumer notice and choice and they will jump at the chance to opt-in to such a scheme. Why does the industry go to such lengths to avoid notice and choice, and insist on *forcing* its nuisances onto consumers to whom they purport to be providing a *service*?

Falsehoods also abound on the comments. For example, the combined industry reply claims “[c]ompanies cannot easily distinguish between wireless numbers and residential lines.”⁴ The FCC knows this is a falsehood, and has previously informed uses of autodialers and prerecorded messages to avail themselves of the services of vendors such as Neustar, which provides the Wireless do-not-call service (“WDNC”) as well as the DMA Wireless Number Suppression List.⁵ The same reply comments claim “[a]mong the comments received from consumers to the NPRM, none demonstrated a pervasive problem with receiving autodialed or prerecorded messages.”⁶ Perhaps the industry was reading a different docket that I was, because there certainly were – in this NPRM and prior comment opportunities on this docket – ample comments filed by consumers documenting such abuses.

ACA International admits that the FDCPA does not adequately protect consumers, because it requires to consumer to notify a debt collector *in writing* to stop cell phone calls.⁷

³ Reply Comments of MetroPCS Communications, Inc., at 4.

⁴ Reply Comments of Reply Comments of ACA International, *et al.*, at 5

⁵ See 2007 Declaratory Order at ¶14.

⁶ *Id.* at 9.

⁷ 15 U.S.C. § 1692c(c).

How does a consumer, *who is not the debtor*, stop these calls when the caller refuses to identify themselves? Such “wrong-number” debt collection calls to cell phone are an increasing nuisance.

Unnecessary exemptions breed more unnecessary exemptions. The survey industry wants to make robocalls to cell phones for surveys and force consumers to pay for the privilege. Yet, the bigger issue for the survey industry is not the inability to reach people who have cut the cord, but refusals by consumers to participate in annoying surveys – particularly those conducted by robot. Will the survey industry next expect a change in the law so they can force consumers to respond to surveys? After all, they need it to protect their business model. And therein lies the rub – despite the euphemisms, the industry cares not a whit about consumers or privacy. Each industry comment is a nothing more than an attempt at perpetuating obnoxious business models based on bothering people.

The position of the industry is perfectly illustrated by the Reply Comments of Qwest filed yesterday:

Accordingly, should the Commission determine to adopt an "opt-out" choice mechanism for consumers similar to that adopted by the FTC, it need not -- and should not -- extend that capability to prerecorded calls delivering non-marketing messages.⁸

There it is in black and white. Consumers should be barred from the ability to stop “non-marketing” robocalls. At least Qwest is honest.

The reply comment of the National Association of State Utility Consumer Advocates (“NASUCA”) are throughly on point, and the Commission should be guided by them. In my reply comments, I asked who speaks for consumers before the Commission. I now know that

⁸ Reply Comments of Qwest, at 5 (June 21, 2010)

one voice which does – the NASUCA.

CONCLUSION

Every protestation of the industry is easily solved – they can use their dialers in preview mode, as a “speed dialer” rather than as an autodialer. They can use live callers rather than robots. They can obtain electronically-signed permission from their customers, with whom they seem to be in such close, frequent, and immediate contact with. They can provide notice and choice. They can actually *be* human for a change.

Submitted, this the 22st day of June 2010.

_____/s/_____
Robert Biggerstaff