

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

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

Reply Comments of Joe Shields to the Comments of Varolli

I want to thank the Commission for providing the opportunity to reply to the comments that agree with limiting the definition of ATDS that would neuter the TCPA. Further, a reply is warranted to the comments of the Varolli that misrepresents that the TCPA applies only to telemarketing calls and that seek to limit the definition of ATDS to exempt all autodialers in use today from the TCPA.

I believe the commentor fails to see the significance of its comments. Varolli enjoys a profitable business with the current definition of ATDS. If Varolli's recommendations are accepted by the Commission the medium that Varolli profits from today may change to where carrier filters could block most if not all of their automated communications to cell phone numbers. Varolli should be content with the prior express consent requirement of the TCPA.

Varolli cites the oft used "confusion" claim where there is no confusion. The Commission in 2003 and 2008 made clear what "capacity" means. Congressional intent is also very clear: "It should be noted that the bill's definition of an "automatic telephone dialing system" **is broad**, not only including equipment which is designed or intended to be used to deliver automatically-dialed prerecorded messages, **but also including equipment which has the "capability" to be used in such manner**. The Committee is

aware of concerns that this broad definition could cover the mere ownership of office computers which are capable, perhaps when used in conjunction with other equipment, of delivering automated messages.” H.R. Rep. No. 633, 101st Cong., 2nd Sess. 1990, 1990 WL 259268 (Leg.Hist.). Varolli cites to the same congressional intent and continues with an insignificant section dealing with live person introduction of prerecorded messages and or a live person disconnect capability. Varolli claims: “The only sane thing to do is change the rules.¹” The Commission cannot “change the rules” for the commentor. Congress couldn’t neuter the TCPA and the commentors here should also not be allowed to neuter the TCPA.

Varolli claims that the TCPA definition of ATDS harms consumers and businesses without an iota of evidence to support the claim. The only harm is to those that thumb their nose at the definition of ATDS. Lastly, Varolli cites the often referred to increase in litigation. The real cause for the increase in TCPA litigation (and not confusion, uncertainty or harm) is the fact that those seeking to exempt predictive dialers from the TCPA refuse to accept the fact that cell phones are not for their convenience. Consumers can and do provide prior express consent for informational calls. Consequently, informational calls with prior express consent are already allowed. Commentor suggests that the Commission provide an end run around the consumer’s right to require prior express consent before their privacy is invaded or they suffer the cost of an automated call.

It appears that Varolli uses a predictive dialer (Varolii Interact Cloud Dialer) and contacts many for debts that are not owed. A search at 800notes.com on one Varolli number, 206-315-3010, makes clear in 28 pages of complaints that Varolli with its

¹ <http://varolliiblog.com/varolii-news/catch-22-why-congress-must-modernize-the-tcpa/>

comments seeks insulation from proper TCPA claims. It should also be noted that the commentor supported the now defunct HR 3035 bill that would have gutted the TCPA – see attached web page. It is clear that Varolli is a debt collector that wants unfettered access to consumer cell phones. The Commission must weigh the Varolli self-serving comments for what they really are – yet another attempt to neuter the TCPA.

The debt collection agencies such as Varolli are the worst in TCPA violators. A commentor in the FTC Debt Collection Hearings 2.0² stated: “We don't see collectors seeking consent at all. I've never seen a case where a collector has sought consent, not one.” That commentor also stated that: “I regularly depose debt collectors on the frequency of their calling and the largest debt collectors in America will routinely admit that they dial in excess of 500,000, or in some instances, in excess of one million calls per day.” The commentor also stated: “We had trial testimony in two separate cases where 183 calls to a consumer was -- the debt collector testified that's their normal calling volume and another where they testified that 178 calls was their normal calling volume to a particular person to collect a \$200 debt. Consequently, if the definition of ATDS is changed to exempt all dialers in use today as Varolli wants it is feasible that the number of autodialed calls to cell phones could easily overwhelm the cellular networks.

Simply because more and more consumers are using cell phones or that cell phone calls have gotten cheaper is not a valid reason to neuter the TCPA. Neither is it a valid reason to neuter the TCPA because some businesses cannot accept the fact that the TCPA requires prior express consent for all automated calls to cell phones.. As Spock so eloquently put it in Star Trek II: The Wrath of Khan: “...logic clearly dictates that the needs of the many outweigh the needs of the few.”

² <http://www.ftc.gov/bcp/workshops/debtcollectiontech/docs/transcript.pdf>

Respectfully submitted,

_____/s/_____

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[Finally! Congress considers updating the TCPA](#)

by Brian Moore on September 26, 2011 in [Brian Moore](#), [Varolii News](#) with [No comments](#)

Are you worried that your company may be at legal risk when you communicate with customers on their [mobile](#) phones, even when they should welcome the call or message because it protects them from fraud, missed flights or late payments?

Well, perhaps you should be.

The Telephone Consumer Protection Act (TCPA) requires you to have the prior consent of your customer to autodial, text or deliver recorded messages to their mobile phone. While the FCC (who enforces the TCPA) has declared if a customer provides their mobile number to you when they apply for credit, they are giving their consent for such communications, that's a pretty small needle to thread. So despite the proven benefits of timely and efficient customer contact on the device where they are most likely to be reached, some companies are limiting their communication attempts to the dwindling number of customers with land line phones.

But relief could be on the way. Thanks to the lobbying efforts of broad coalition of industry associations in financial services, air travel, higher education and utilities, a bi-partisan team of congressional representatives have introduced the "[Mobile Informational Call Act of 2011](#)". They propose to modernize the TCPA by exempting informational calls to wireless phones from auto-dialer restrictions, clarifying the "prior express consent" requirement, while continuing the prohibition against the use of assistive technologies to call wireless numbers for telemarketing purposes.

However, just because the bill has been introduced, it's a long way from law. This is where you come in.

Please email your [representatives](#) and [senators](#) to urge their support of the bill. Tell them efficient communications improves service to your customers while lowering your company's costs, allowing you to grow the business and boost our economy.

That's what I am doing as soon as I post this blog.

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Our way of communicating lets you reach and interact with your customers and employees in much the same way as person-to-person dialogue. Only we do it through automated communication. And we do it at a fraction of the cost and time it takes using customer service reps and mail.

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