

**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 American Bankers Association  
and Consumer Bankers Association**

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 American Bankers Association and Consumer Bankers Association that cites Commission decisions out of context.

The American Bankers Association and Consumer Bankers Association goes to great lengths discussing a prior Commission decision on written prior express consent for telemarketing calls that have nothing to do with the TCPA's requirement for prior express consent for autodialed calls to cell phones.

The commentor attempts to obfuscate the true intent of the TCPA – to address ATDS calls no matter the purpose of the call. Again, it is the cost and the invasion of privacy to cell phone users that Congress intended to protect. “The language and purpose of the TCPA support the conclusion that the use of an ATDS **to make any call**, regardless of whether that call is communicated by voice or text, is prohibited.” *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 954 (9th Cir. 2009). "An automated call to a landline phone can be an annoyance; **an automated call to a cell phone adds**

**expense to annoyance.**" *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

Further, The American Bankers Association and Consumer Bankers Association suggests that the Commission rewrite the TCPA to change "capacity" to "present capacity" something the Commission has no authority to do.

The American Bankers Association and Consumer Bankers Association also claim that TCPA litigation somehow interferes with informational communications to consumers. The claim is without merit. Consumers can and do provide prior express consent for informational calls. Consequently, informational calls **with** prior express consent are already allowed. The American Bankers Association and Consumer Bankers Association 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.

Lastly, American Bankers Association and Consumer Bankers Association claim that exempting predictive dialers from the definition of ATDS will not open the door to a flood of unwanted informational calls and texts to cell phones. One need only look to the rise of unwanted automated debt collection, survey and political calls to cell phones in the last year alone. It is already happening and the rise in TCPA litigation proves the point. Neutering the TCPA to allow automated informational calls to cell phones without prior express consent will cause a tidal wave of privacy invading and costly calls to cell phones.

No one has ever suggested that informational calls are not wanted. The TCPA merely requires prior express consent. American Bankers Association and Consumer Bankers Association should support compliance with the statute instead of trying to redefine it to exempt all dialers in use today.

Respectfully submitted,

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