

**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 on the Petition

For Expedited Declaratory Ruling of YouMail, Inc. Petition

I want to thank the Commission for providing the public the opportunity to reply to the comments on the YouMail Inc. petition for an expedited declaratory ruling limiting “capacity” in the TCPA, limiting “initiation” in the TCPA and creating an exemption for implied consent..

In reviewing the comments of the advocates of “limiting” the definition of ATDS there is one common thread. The comments support a definition of ATDS that would exempt most if not all dialers in use today. Further, the advocates for an “intermediary” consent claim getting prior express consent from “...the called party...” is too burdensome and therefore a new exemption should be created.

Seems like everyone that has some mobile app believes their app is beneficial to consumers. Truth be told it’s mostly kids that fall for these apps. And the damage that is caused by these apps is tremendous to say the least.

My niece came to visit and one night came to me looking like she was ready to burst into tears. She gave me her cell phone and I personally observed that she was receiving notices that MMS messages were being sent to her. This was happening every 15 to 20 seconds making her cell phone useless to her. Needless to say I was as powerless

as she was to stop these notices. The next day in speaking with her carrier I discovered that another child that she knows from school but has very little to do with had entered her cell number into one of these group messaging programs. This group messaging program was sending text messages as MMS messages.

We had just gone through bill shock with her carrier and as a precaution data was turned off on her cell phone. She was using our wireless network. It was pure luck that she was using our wireless network as these MMS message would have cost her 40 cents apiece because she was in a roaming area. In that one night alone she received over 100 of these damn MMS messages. If she would have had data turned on she would have incurred a bill of \$40.00 added to her cell phone bill just for that one night. But they didn't stop there. They continued for several days until we were able to reach a parent of the child that had put her number into the group messaging program. I must note her that there is a lot of peer pressure when you are 12. The matter was handled very delicately and we were able to educate the parent and the child on the use of such group messaging programs.

The moral here is that it is imperative to get prior express consent from the called party when it comes to the use of these group messaging or these fancy voicemail apps. As in my example the possibility that someone can cause another to incur tremendous costs is not just a possibility but happens on a regular basis. Therefore, there must be prior express consent from the called party and not from some intermediate party. That some intermediary thinks it would be cool to send automatic responses to callers that leave a voicemail does not warrant creating an exemption for intermediary consent. In

fact it is crucial that consent be obtained from the called party as an intermediary has no idea what calling plan someone else has or where they might be at any given moment.

Personally, I believe that these so called group message or voice mail apps should be entirely illegal given that there is no attempt whatsoever from the creators of such apps to comply with current laws on consent.

In regard to my above example the CTIA comments actually support the fact that only the called party can provide prior express consent. CTIA states: “Importantly, the YouMail application enables parties to respond to incoming calls when they might otherwise be unable to answer the phone or send a text message, without picking up their phone, such as while they are driving or in transit.” Given that the intermediary does not know where the caller maybe, they may have called from a rest stop, the response could easily come when the called party is “...driving or in transit ...”

Contrary to CTIA’s claims the YouMail system is a classic example of an automatic dialing device. It dials numbers without human intervention. It is an automatic system that without human intervention captures caller ID and then automatically makes a telephone call to that captured number. And that is exactly what Congress wanted to regulate i.e. to prohibit the use of such devices without the victim of the automatic system providing prior express consent.

CTIA tries to downplay Congressional intent to broadly cover any system that can automatically dial telephone numbers without human intervention. Yes Congress was concerned with line seizures but that portion that deals with the definition of automatic dialing devices has nothing to do with line seizure. CTIA is mixing apples and oranges

and there is no relationship between the citation of Congress to broadly define an automatic dialing device and any line seizure issues Congress was addressing.

The rise in TCPA law suits is not a bad thing. It is a good thing. Consumers are tired of the incessant get in your face attitudes of corporate America. And when corporate American treats our cell numbers the same way they do landlines they deserve to be held responsible. One need only look at the original filed court complaints that in most cases are well founded. A very good example is the Pappa John text spam case where the text blaster claimed that there was a prior business relationship exemption for automated calls to cell numbers. Another good example are these debt collectors that call a cell number not 2 or 3 times but hundreds of times obtained from skip tracing and never provided by anyone on a loan contract.

CTIA also suggests that YouMail is not the one that initiates the automatically dialed call. The Megan Gold comments completely debunk that claim. Clearly, YouMail is using their voicemail app to advertise their services.

CTIA is yet another entity that believes that the Commission should rewrite the TCPA and create an intermediary consent. My above example of my niece debunks that entirely. CTIA's comment on that aspect can only be described as coming from a sick mind: "...by not blocking caller id..." the called party has given prior express consent. I ask the Commission in what world is there a TCPA that equates prior express consent of the called party with some not blocking caller ID consent?

Several commentators claim that there are now unlimited calling and texting plans for wireless. That may be but that is not an excuse to treat our wireless numbers like landlines. That attitude is exactly why there is such an increase in TCPA claims. Wireless

is not equal to landline. Wireless goes with us everywhere we go. Landlines do not. That is exactly why Congress created the TCPA. To not only address telemarketing abuses but also to regulate automatically dialed calls to wireless devices. Without that regulation wireless could and would become useless.

Who wants to be bothered by incessant informational calls everywhere they go. Congress created an extremely fair approach with the TCPA. Opt in is a fair approach. Opt out is not a fair approach. All these petitioners that want to neuter the TCPA need merely obtain prior express consent of the called party and they can make all the informational calls they want.

Some petitioners even claim that there are: ‘...frivolous class action lawsuits...’ filed for TCPA violations. Commentor Nicor Energy Services makes that claim without a single TCPA being declared by any court to be frivolous. The Commission should not agree with such commentors whose only purpose is to neuter the TCPA. Nicor claims: “Prompt action to eliminate ambiguity in the current regulations is necessary so that legitimate businesses can communicate effectively with consumers without the fear of frivolous litigation.” Nicor fails to admit that they can communicate effectively with consumers without the fear of frivolous litigation as long as they have obtained prior express consent of the called party.

I wish that the Commission would put a stop to these constant attacks on a consumer protection law. All these petitioners can easily comply with the TCPA but would rather neuter the TCPA as it is an obstruction to their treating wireless like landlines. I hope the Commission will not let them do so. The TCPA is one of only a few

laws passed by Congress that benefits consumers. That is why petitioners are hell bent on destroying every aspect of it. Please do not let that happen.

Respectfully submitted,

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