Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS ON THE PETITION OF THE COALITION OF MOBILE ENGAGEMENT PROVIDERS

There is a grave danger in granting the relief sought by the Petition of the Coalition of Mobile Engagement Providers ("Coalition"). It would effectively trap consumers in a time-warp where the prior Commission rules applied to them forever. Those consumers would never realize the salutary benefits of the Commission's amended TCPA rules that harmonized those rules with those of the FTC.

As the Commission noted, "[t]he Coalition thus asks the Commission to clarify that existing customers need not take additional steps to continue receiving the requested communications." If accepted, this proposal would perpetuate the now-defunct EBR exemption for robocalls. It would perpetuate the forcible extraction of adhesive "consent" for robocalls as a condition of doing business. In addition, it would confuse consumers as to what their rights were in response to any particular call—do the old rules or the new rules apply to this call? Unethical marketers would thrive on that confusion.

Consumers have been looking forward to October 16, 2013 when the amended rules would go into effect. They have suffered much too long from aggressive marketers who claimed for years to be complying with the "old" rules. Why would the Commission permit those inadequate "old" rules to continue to control any subset of calls made today?

Compliance with the Commission's amended rules for robocalls and autodialers is not rocket science. These rules were published (77 FR 34233) on June 11, 2012. They

have been implemented in stages, with the last implementation (elimination of EBR, clear and conspicuous written consent, and creation of HIPAA exemption for prerecords) going into effect on October 16, 2013.

During this extended delay in implementation of over 16 months, I personally advised my clients to use this time to reach out to existing contacts from whom they previously obtained express consent, and to secure the necessary express consent to satisfy the amended rules for contacting those customers going forward. I repeatedly saw industry guidance suggesting the same thing. I viewed dozens of web sites where consumers who had "opted-in" to various text or automated calling subscription services were informed that the upcoming Commission rule changes would require them to re-subscribe in a fashion that would comply with the new rules.

In addition, several vendors I personally do business with directly sought updated express consent from me prior to October 16, 2013.

So where was the Coalition during this time? Sixteen months was not enough time to bring their campaigns into compliance? Perhaps they procrastinated so long because they feared these "customers" would exercise their new rights and simply tell them "no" to the continued exploitation of EBRs and adhesive consent.

CONCLUSION

Of all the petitions on this docket, this one seems to be one of the least worthy of consideration. The Coalition's Petition seems to align perfectly with the well-known truism in engineering: "Lack of planning on your part does not constitute an emergency on my part." Marketers had sixteen months to get their houses in order. Those that did not do so should not be rewarded for that negligence.

/s/ Robert Biggerstaff