

Gerald Roylance
1168 Blackfield Way
Mountain View, CA 94040-2305
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**Before the
Federal Communications Commission
Washington DC 20544**

In the matter of United Healthcare Service's Petition for Expedited Declaratory Ruling	CG Docket No. 02-278 Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 DA 14-149 February 6, 2014
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Gerald Roylance's Comments re United Healthcare Service's Petition

I. Introduction

In DA 14-149,¹ the FCC seeks comment about the United Healthcare Service's (UHS) October 18, 2013 Petition.² Generally, UHS wants to avoid liability when it delivers autodialed or prerecorded calls to cellular telephone subscribers who have not given their prior express consent. That request is clearly against the plain statutory. UHS wants to justify these calls with the prior express consent of an unrelated third person who previously held the telephone number.

UHS states that it is a party to a class action lawsuit. UHS does not identify the suit nor supply the complaint or answer. UHS wants the FCC to rule in the dark. The petition should be denied as forum shopping. If I were a defense attorney in a TCPA case, one of the first things I'd do is file a petition with the FCC. I know the FCC sits on these petitions for years.

¹ FCC, 6 February 2014, *Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Expedited Declaratory Ruling from United Healthcare Services*, <http://apps.fcc.gov/ecfs/document/view?id=7521071380>

² United Healthcare Services, January 16, 2014, *Petition for Expedited Declaratory Ruling*, <http://apps.fcc.gov/ecfs/document/view?id=7521066367>

UHS claims “there is no public wireless telephone directory, and individuals may change their phone numbers without notifying callers beforehand.” (Petition p. 3.) The directory comment is irrelevant, and UHS may learn about reassigned telephone numbers from Neustar almost immediately.

UHS also wants an essentially unlimited exemption. There are no time bounds. There are no limits on the number of calls an entity can make. There are no comments about efforts that UHS or others should undertake to avoid calling reassigned telephone numbers.

UHS claims the exemption should run until the caller learns the number has been reassigned. (Petition p. 4.) UHS wants to place the burden on the new recipient. What is the new recipient supposed to do when bombarded with automated calls? My pharmacy doesn't give me a key to press to opt-out of future messages. The automated messages I get from my doctors are horrendously designed. They often just remind away without confirming they are talking to the patient. One gives an ominous warning that if I don't confirm now, the appointment will be canceled. The healthcare industry is inept when it comes to automated calls. A few lawsuits might be appropriate to straighten it out.

A bill collector could use the reassigned number argument forever by claiming it never learned of any reassignment. If the luckless new owner of the phone number says he's not the guy, then the bill collector can claim he didn't believe the new owner because debtors always lie. Bill collectors will claim if they provided an automated opt-out due to reassignment, then all debtors would select that option.

The FCC has no enumerated power to exempt these calls if the called party is billed for the call. The called party has not given consent.

UHS's claim that the FCC has the power to define what “called party” means would be a knife through the heart of the TCPA. (Petition p 4.) Telemarketers already use the we-were-trying-to-reach-somebody-else defense. Telemarketers will claim that somebody submitted the information on the web or in a contest.

UHS states that 37 million telephone numbers are recycled each year. (Petition p. 5.) Instead of a reason to excuse making illegal calls, that sounds like a reason that those who use automated calls need to be especially careful about whom they call.

UHS points to the 15-day safe harbor for wireline to wireless porting. (Petition p 6.) That misses the point. If one has prior express consent to call the wireline, then one would also have prior express consent to call the wireless number. If one does not have the consent, then one has 15-days to learn about the port from Neustar. When numbers are reassigned, those numbers are not immediately reassigned. There's a fallow period which is probably more than 15 days. If one is placing automated calls to a cellular phone during that fallow period, then one should get the SIT for disconnected number. The caller should then immediately recognize that it no longer has consent.

The problem is when the automated caller does not call the number for long periods of time. In that case, the caller is unlikely to catch the SIT interval. In those situations, a prudent caller should either consult Neustar or place the call live.

One could also ask, if UHS is not placing calls for long periods of time, then why does it need to use automated calls?

UHS gives a long list reasons to call. (Petition p. 2.) Prescription refills sound in telemarketing but I believe are healthcare compliant. I have had bad experiences with a pharmacy automatically putting drugs on “autofill” and then continuing to refill the drug even after being told the drug was no longer being taken. Of course, the prerecorded messages that the store sends out do not identify which drug has been refilled. Vaccine reminders also sound in telemarketing; they would also have long dormant periods (e.g., annual flu shot).

Many items on the list seem low risk as long as the telephone number has been confirmed recently. Pre-op and Post-op instructions usually have short time scales. Medical appointments are often short time scales. Dental appointments are usually on a 6-month scale. But how many dental appointments are scheduled in one day?

Petition page 7 is confused about the TCPA’s goals. The TCPA not only wants to prevent unwanted automated telemarketing, but it also wants to prevent cost shifting and invasions of privacy. Even political campaigns (which are not telemarketing) are not permitted to cellular telephones.

Contrary to the claims on page 8, Neustar’s database would not be unreliable. Placing manual live calls to a cellular telephone is also an easy way to check that a number is still in service. When I visit my doctor, he wants to be sure that my insurance information is still up-to-date. Maybe he should check the telephone number is still good, too. (As it happens, internist and dentist are small practices and place manual calls.)

The FCC has no authority to exempt these calls. The calls do not fall into the impossible-to-know problem that wireline porting presented (the law may not require an impossibility). Callers can learn the information.

While one may want to be sympathetic to healthcare related calls, those entities that use automated calling are doing it to save expenses. They should apply some portion of those saved expenses to making sure the prior express consents that they have acquired are still valid.