

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of :
 : CG Docket No. 02-278
 :
United Healthcare Services, Inc. Petition for : DA 14-149
Declaratory Ruling Regarding Reassigned :
Wireless Telephone Numbers : **Comments of Vincent Lucas**
 :
Rules and Regulations Implementing the :
Telephone Consumer Protection Act of 1991 :

SUMMARY

I. Businesses who make automated calls to wireless telephone numbers have a duty to confirm that the number they are calling is still assigned to the person who gave them prior express consent to call.

II. If the Commission does not entirely deny the Petition, the Commission should set a time limit on how long a business can rely on information regarding to whom a telephone number is assigned. After expiration of the time limit, the business must verify that the number has not been reassigned.

III. If the Commission does not entirely deny the Petition, the Commission should require each call to contain a means for the call recipient to notify the caller that the number has been reassigned.

IV. Congress did not intend the restrictions on automated or prerecorded calls to wireless numbers to apply only to telemarketing calls.

V. Granting the Petition as proposed would adversely affect the privacy rights that 47 U.S.C. § 227(b) was designed to protect.

ARGUMENT

I. Businesses who make automated calls to wireless telephone numbers have a duty to confirm that the number they are calling is still assigned to the person who gave them prior express consent to call

United Healthcare’s entire petition is based on the premise that “organizations cannot always know whether a telephone number has been reassigned.” Petition at 5. However, organizations can take reasonable steps to check whether a number has been reassigned. For example, Neustar (the company that administers the Number Portability Administration Center) offers a service that instantly verifies who a number is assigned to.¹ To the extent that United Healthcare argues that the Neustar database is inadequate², I urge the Commission to address the inadequacies of the means of verification currently available to businesses, instead of subjecting wireless users to unwanted, misdirected calls. Doing that would benefit all businesses, not just “information only” callers.

Businesses who make calls to consumers are well aware that telephone numbers can be reassigned and that their calls could be misdirected because of the reassignment. Therefore, a business that uses old telephone contact information, without making an effort to confirm that the information is still accurate, is not complying “in good faith” with the TCPA. United

¹ <http://www.neustar.biz/resources/whitepapers/understand-tcpa-law-and-mitigate-risk>

² The Neustar solution is not the only means by which a business can confirm that a number has not been reassigned. For example, a doctor’s office can (and often does) ask the patient whether their contact information has changed during each patient’s office visit. A pharmacy can ask a patient whether their contact information has changed when the patient orders a prescription fill/refill. Any company can ask the customer to provide the name of the customer’s wireless provider and can attempt to verify from the wireless provider that the number has not been reassigned, and can refrain from using the number if the wireless provider does not provide an automated means of verification.

Healthcare specifically denies any duty to verify telephone contact information, no matter how old the information is. Petition at 5, 8.³

I agree with the premise that a business should not be liable when the business “cannot know” that the number has been reassigned, but with the clarification that the only circumstance in which a business “cannot know” of the reassignment is if the business has availed itself of available means to confirm that the number has not been reassigned, such as the Neustar service, and those means incorrectly tell the business that the telephone number has not been reassigned.

United Healthcare’s petition suggests that businesses that deal with health-care have a special need for the exemption they seek. However, because of the private and sensitive nature of health care information, health-care businesses should be especially vigilant in confirming that their messages are directed to the intended recipient.

II. If the Commission does not entirely deny the Petition, the Commission should set a time limit on how long a business can rely on information regarding to whom a telephone number is assigned. After expiration of the time limit, the business must verify that the number has not been reassigned

United Healthcare’s petition is flawed because it places no time limit on how long businesses can rely on old telephone contact information. *If* the Commission does not entirely deny United Healthcare’s petition, the Commission should place a reasonable time limit on how long a business can rely on information regarding who is assigned a telephone number. If the

³ The Petition at 8 denies that the TCPA imposes any duty to conduct “extensive, expensive, and unreliable checks to confirm that a consenting party’s telephone number has not been changed.” “[T]he Commission has not imposed any requirements on callers to identify reassigned numbers, nor would any such requirements be tenable.”

information is older than the time limit, the business must verify that the number has not been reassigned. After verification, the time limit is reset, and the business can rely on the information until the time limit expires again. As the Petition notes, the Commission has set a 15 day time limit for landlines recently ported to wireless. I personally would consider a 15 day time limit to also be reasonable for reassigned wireless telephone numbers.

I once received a barrage of calls from a debt collector calling for somebody who had not been at the telephone number for more than ten years. I think it is very unreasonable for a business to call my number to speak to that person when the number was reassigned to me more than ten years ago, regardless of what the purpose of the call is.

When I receive a new telephone number, I naturally expect to receive some calls intended for the prior owner⁴ of the number. However, I expect that misdirected calls from businesses should go away within a short period of time without any action on my part. However, under the Petition, a business can rely on old telephone number information in perpetuity, unless the call recipient notifies the business that the number has been reassigned. The protections of the TCPA and FCC's regulations are designed to remove from telephone users the burden of individually notifying every single business that they do not wish to be called. For example, the regulations create a do-not-call database so that consumers do not need to individually tell every business not to call, and the regulations opt-out consumers from automated calls to wireless numbers unless the consumer specifically opts-in. United Healthcare's petition shifts the burden from businesses to consumers, so that consumers have the burden of notifying each business who calls

⁴ Herein, "owner" means the person to whom the telephone number is assigned.

that they are calling the wrong number. This is clearly contrary to how the regulations are designed to work, and is very burdensome for consumers.

III. If the Commission does not entirely deny the Petition, the Commission should require each call to contain a means for the call recipient to notify the caller that the number has been reassigned

If the Commission does not entirely deny the Petition, the Commission should require each call to provide a means for the call recipient to notify the caller that the number has been reassigned so that future calls are stopped *immediately*. Many wireless subscribers are on pre-paid or pay-per-call plans, so that they are charged for every call that they receive. If the Commission adopts a safe harbor period, these subscribers still need a way to stop future calls right away. For telemarketers, the regulations already require that the caller provide a number for the recipient to make a do-not-call request, and also an automated opt-out mechanism that can be invoked during the telemarketer's call. 47 C.F.R. § 64.1200(b)(2) and (3). The regulations should place the same requirements on "information only" calls.

IV. Congress did not intend the restrictions on automated or prerecorded calls to wireless numbers to apply only to telemarketing calls

The Petition claims that Congress only intended the TCPA to target telemarketing calls. In support, the Petition cites statements from two Congressmen.

The most reliable source of information about Congress's intent is the language of what Congress actually enacted. That language is the only thing that one knows with certainty that a majority of both houses of Congress and the President agreed with. Assuming *arguendo* that the

two Congressmen intended for their statements to apply to the automated call provisions of the TCPA, one can only speculate regarding what percentage of Congress would have agreed with the statements made by the two Congressmen.

The original TCPA of 1991 contains specific findings of Congress. Paragraph 10 of the findings says “Evidence compiled by the Congress indicates that residential telephone subscribers consider automated or prerecorded telephone calls, regardless of the content or the initiator of the message, to be a nuisance and an invasion of privacy.” (Emphasis added.) Furthermore, 47 U.S.C. § 227(b)(1)(A)(iii) does not apply only to telemarketing calls. If Congress had so intended, Congress would have so written the statute. What Congress actually enacted directly contradicts the assertion that the prohibitions regarding automated or prerecorded messages were targeted primarily to telemarketing calls. To the contrary, Congress believes that such automated or prerecorded message calls invade privacy rights “regardless of the content or initiator of the message.”

V. Granting the Petition as proposed would adversely affect the privacy rights that 47 U.S.C. § 227(b) was designed to protect

The TCPA allows the Commission to grant exemptions to § 227(b) but only if such exemptions “will not adversely affect the privacy rights that this section is intended to protect”. Granting the Petition will adversely affect these privacy rights. For example, consider the effect of granting United Healthcare’s petition when combined with the Commission’s finding that calls from radio stations encouraging the recipient to listen to a broadcast are not

“advertisements” under the TCPA.⁵ The previous owner of the telephone number could have invited dozens of “shock jocks” and “morning zoo” shows to call. Not just the previous owner, but every person who ever owned the number, might have given such invitations. A consumer could receive several “information only” calls per day from such radio shows. Such calls are not just extremely annoying and an invasion of privacy, but in the case of “shock jocks” might be downright offensive to the call recipient.⁶ Such calls can continue in perpetuity unless the number’s new owner explicitly informs each and every radio station that the number has been reassigned. These “information only” calls clearly would adversely affect the privacy rights that § 227(b) is designed to protect, and therefore the statute does not authorize the exemption that the Petition seeks.

Conclusion

The Commission should deny the Petition as it has been proposed.

Respectfully submitted,

s/ Vincent Lucas

Vincent Lucas, Ph.D.

⁵ *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd. 14014 (July 3, 2003). See also *Leyse v. Clear Channel Broadcasting*, 697 F.3d 360 (6th Cir. 2003)

⁶ I support the right of radio shows to deliver offensive calls to individuals who wish to receive such calls.