



Coalition of Higher Education Assistance Organizations  
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Via Electronic Submission

March 10, 2014

Chairman Tom Wheeler  
Commissioner Mignon Clyburn  
Commissioner Jessica Rosenworcel  
Commissioner Ajit Pai  
Commissioner Michael O’Rielly  
Federal Communications Commission  
445 12th Street, SW  
Room TWA325  
Washington, DC 20554

Re: United Healthcare Services, Inc. Petition For Expedited Declaratory Ruling Regarding Reassigned Wireless Telephone Numbers  
CG Docket No. 02-278

Dear Chairman Wheeler and Commissioners Clyburn, Pai, Rosenworcel, and O’Rielly:

The Coalition of Higher Education Assistance Organizations supports the United Healthcare Services Inc. Petition for Expedited Declaratory Ruling Regarding Reassigned Wireless Telephone Numbers.

- I. The FCC should grant the United petition and confirm that parties are not liable under the TCPA for informational, non-telemarketing autodialed and prerecorded calls to wireless telephone numbers that have been reassigned without the caller’s knowledge – as long as the caller previously obtained “prior express consent” to place calls to that specific telephone number.**
  - A. Parties from a variety of industries have repeatedly highlighted the need for the FCC to clarify TCPA provisions that have created widespread confusion and led to results inconsistent with Congressional intent.
  - B. The potential liability for calls made in good faith to parties who have consented to receive them, but whose telephone numbers have subsequently been reassigned, threatens to prevent callers from communicating with their existing contacts. Even a single call recipient can seek to have a nationwide class certified that covers other call recipients.
  - C. To prevent this harmful outcome, the FCC should grant the United Petition.
- II. It is inconsistent with the letter and purpose of the TCPA to expose to litigation callers that dial numbers for which they have obtained “prior express consent” to call just because those numbers have been reassigned without the caller’s knowledge.**
  - A. Organizations cannot completely avoid calling reassigned wireless telephone numbers.

- B. Telephone numbers can be reassigned to a new consumer for a variety of reasons. Millions of numbers change hands each year, and there is no public wireless telephone number directory.
- C. Consumers interact with a variety of organizations for their business and social activities, and they understandably do not notify all of those organizations immediately whenever they change telephone numbers.
- D. No currently available tool can prevent all calls to numbers that once belonged to a client, customer, or other contact but have been reassigned unbeknownst to the caller.
- E. To avoid mistakenly reaching the wrong person, organizations could potentially need to reconfirm the subscriber for a particular telephone number before every single autodialed or prerecorded call. Such a solution is impractical and prohibitively expensive, especially for informational, non-telemarketing calls
- F. Imposing liability on callers that have properly gained consent to call a number and made an unavoidable mistake is unfair and outside the TCPA's purpose.
- G. Callers placing informational, non-telemarketing calls have no need for or incentive to contact anyone other than the intended recipient. They also incur costs for misdirected calls, which they have systems in place to avoid when possible.

**III. Failing to grant United's petition will chill the use of new technologies that facilitate important non-telemarketing, informational communications to wireless subscribers.**

- A. The FCC has recognized that many wireless consumers have come to rely on important informational messages, and it stated in the Robocall Report and Order that it does not want to "impede" or "unnecessarily restrict" purely informational calls to wireless telephone numbers.<sup>1</sup>
- B. If the Petition is not granted, organizations effectively will be required either to expose themselves to potentially serious litigation risk or cease providing non-telemarketing informational messages to consumers.
- C. Failing to grant the petition could prevent consumers from receiving a variety of beneficial communications, including healthcare-related calls; data breach and identity theft notifications; fraudulent activity warnings and updates; shipping and delivery notifications; appointment reminders; calls inquiring about missed payments and advising of the prospect of interrupted service or coverage; service outage or interruption reports; school closure announcements; product recall and safety notifications; and urgent employee communications.
- D. Many of these consumer-friendly notifications provide great benefits to the call recipient but may not be worth the risk if the caller believes that class action liability could result.

**IV. The FCC has ample legal authority to grant the Petition, and it can provide relief through a number of possible avenues.**

- A. As United stated in its Petition, the FCC can issue a declaratory ruling and grant relief through a variety of legal approaches.
- B. For example, the FCC could find that when a caller has obtained valid "prior express consent of the called party" to call that party's telephone number, such "prior express consent" encompasses non-telemarketing, informational calls to the telephone

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<sup>1</sup> See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 27 FCC Rcd 1830 ¶ 21 (2012) (stating that the FCC does not want to "unnecessarily impede" informational calls including, for example, "bank account balance, credit card fraud alert, package delivery, and school closing information").

- number provided until the caller learns that the telephone number has been reassigned.<sup>2</sup>
- C. Alternatively, the FCC could issue a declaratory ruling confirming that the term “called party” encompasses both the consenting party and the new subscriber to a reassigned number, until the caller learns that the two parties are not the same.
  - D. The FCC could also confirm that a good faith exception from TCPA liability exists for informational, non-telemarketing calls to telephone numbers that have been reassigned from a prior express consenting party (until the caller learns of the reassignment).
  - E. These options for granting relief would not alter the caller’s obligation to obtain valid “prior express consent” from the individual that provided his or her telephone number. Moreover, upon learning that a telephone number has been reassigned, the caller would then need to obtain separate “prior express consent” to place additional calls to that telephone number.

Thank you for the opportunity to comment.

Sincerely,

Harrison M. Wadsworth III  
Executive Director  
Coalition of Higher Education Assistance Organizations

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<sup>2</sup> In its Declaratory Ruling granting the petition of SoundBite Communications, Inc., the FCC ruled that the “prior express consent” of a party encompasses a single opt-out confirmation text message delivered shortly after a party requests not to receive future messages. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; SoundBite Communications, Inc. Petition for Expedited Declaratory Ruling*, Declaratory Ruling, 27 FCC Rcd 15391, 15931 (2012).