

**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

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RM 11712

**Supplemental Comments of Robert Biggerstaff on the the Petition for Rulemaking  
of ACA International (“ACA”) and the Petition for Expedited Declaratory Ruling filed  
by United Healthcare Services, Inc.**

The Commission’s recent Order released March 27, 2014 in the matter of GroupMe, Inc./Skype Communications S.A.R.L Petition for Expedited Declaratory Ruling (“GroupMe Order”) is instructive to the United Healthcare and ACA petitions.

The GroupMe Order makes clear that businesses who chose to rely on representations of a third party that a consumer has expressly consented to calls or messages being sent to that consumer’s particular phone number, are liable for any violations of the TCPA if in fact the representations of express consent by a third party are not accurate. This ensures that a caller such as GroupMe is diligent and responsible in its use of the third parties being relied on. The GroupMe Order now effectively moots the New United and ACA petitions.

In the context of debt collection calls such as are at the core of the ACA petition, the phone number for the debtor must be given to a collector by someone—usually the

creditor. Like GroupMe, which uses an indemnification clause in its terms of use to protect itself from third parties' inaccurate representations, any debt collector can fully protect itself through an indemnification clause regarding anyone who gives a particular number to the collector, representing that it is a debtor's number and that express permission to call that number exists. If the number has been "unknowingly" reassigned, then the collector would be fully protected by the creditor that provided the number to the collector. Furthermore, the creditor itself can be similarly protected if it chooses. Indeed, many consumer contracts include a provision that the consumer must promptly update account information such as phone numbers.<sup>1</sup> This is all, of course, in addition to the market-based solutions discussed in prior comments, such as Neustar and CompliancePoint.

Some commenters have suggested that market-based solutions like Neustar and CompliancePoint are not perfect. However, I am not aware of any TCPA complaints against *any* company for making calls to cell phones based on prior express consent where that company was using the Neustar or Compliance Point products for instant verification of prior express consent. Particularly as businesses become more experienced with these services, and take seriously their obligation to verify that the express consent they obtain is valid, their use will become as commonplace as the Neustar LNP database is today. As one recent industry article put it "[t]he days of 'seat of your pants'" TCPA compliance are over. Resist the temptation to gauge your TCPA compliance by anecdotal comparison to that of

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<sup>1</sup> One typical contract reads: "You agree: a) to give us prompt advance notice of any change in your name, mailing address, phone number, or employer." Another reads "In the event you change or deactivate your mobile telephone number, you agree to promptly update your [vendor] account information to ensure that your messages are not sent to the person that acquires your old number." Some are even more specific, stating "In the event you change or deactivate your mobile telephone number, you will update your account information on the Web Site within 72 hours."

your peers.”<sup>2</sup>

If needed, the Commission can (and should) use its inherent authority to facilitate the reliability of compliance services, such as by ensuring both wireless and wireline reassignments are promptly reported. The bottom line is that first and foremost the Commission’s response should be in enhancing compliance with *existing* rules and maximizing consumer protection. Exemptions, carve-outs, and waivers should be a last resort.

Respectfully submitted, this the 9<sup>th</sup> day of April, 2014.

*/s/ Robert Biggerstaff*

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<sup>2</sup> David O. Klein, *Protect yourself against personal liability under the TCPA*, available at <<http://www.lexology.com/library/detail.aspx?g=2ff25592-0f70-4907-a719-c5ab373c0005>>.