

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)	
)	
Stage Stores, Inc. Petition)	
For Declaratory Ruling Regarding)	CG Docket No. CG 02-278
Reassigned Wireless Telephone Numbers)	
)	

COMMENTS OF NOBLE SYSTEMS CORPORATION

I. INTRODUCTION AND SUMMARY

Noble Systems Corporation (“NSC”) submits these comments in response to the Public Notice from the Federal Communications Commission (“Commission”) seeking comments to a Petition for Expedited Declaratory Ruling filed by Stage Stores, Inc. (“SSI”).¹ SSI asked the Commission to clarify the applicability of the Telephone Consumer Protection Act (“TCPA”) and the Commission’s rules as to “a marketing text message sent to a wireless number for which the caller obtained prior express consent but where the wireless number has been reassigned from the consenting consumer to another person without notice or knowledge to the caller.”² NSC supports the goal of the Petition and requests the Commission grant relief consistent with the relief requested by SSI.

II. DISCUSSION

The situation addressed in the Petition arises when a called individual having a wireless number who has granted prior express consent to be contacted by a caller relinquishes their wireless number and the wireless carrier later reassigns that number after a time period to a new

¹ See, *Stage Stores, Inc.*, Petition for Expedited Declaratory Ruling, CG Docket No. 02-278 (received June 4, 2014) (“*Petition*”).

² *Id.* at page 1.

wireless subscriber who has not granted the caller express consent to be contacted. Thus, a caller may inadvertently place a call to that wireless number, intended for the prior subscriber, but which is received by the new subscriber. The situation addressed by SSI is similar to that of a prior petition by United Healthcare Services.³ In that petition, the call instead involved a voice call placed to a reassigned wireless number.

The TCPA statute must be read so that any consent received from the called party applies only to calls made to the wireless number associated with the called party.⁴ Otherwise, the prior express consent provided by the called party would be interpreted as granting consent to the caller to call anyone's wireless telephone number. Clearly, the statute's intent was that a called party granting consent authorizes only calls to that called party's wireless telephone number. Thus, while the statute indicates the express written consent is provided from the called party, the statute implicitly requires that the consent is associated with the wireless number of the called party.

The Commission should view the requirements of obtaining and relinquishing express consent with a degree of symmetry. The Commission has indicated that the process for obtaining express consent from an individual required obtaining consent to call that individual at a designated wireless number.⁵ This reflects, in part, that an individual providing consent to be called at one number does not automatically grant consent to be called at another number. For example, an individual may have two mobile devices and may grant consent to be called at one wireless number, but not at the other wireless number. Thus, the Commission recognizes the need to require a specific association between the consent granted, the individual granting the consent, and the individual's wireless number for which consent is granted.

Once the caller has received consent, liability should not accrue to the caller while

³ See, Petition for Expedited Declaratory Ruling submitted by United Healthcare Services, Inc., CG Docket No. 02-278 (filed Jan. 16, 2014) ("United Healthcare Petition").

⁴ 47 U.S.C. § 227 (b)(A).

⁵ See, e.g., FCC 12-21, par. 33.

relying on this consent when placing a call to that individual using the wireless number associated with the consent. While an individual may revoke their consent at any time, there should be a clear communication of the revocation to the caller, including indication of the wireless number involved, for the revocation to take effect.⁶ Any number of communication channels can be used by the individual to communicate such revocation, but it is incumbent on the individual to explicitly communicate the revocation to the caller. Once the caller is aware of the revocation, the caller should act upon this immediately and make no further calls to the individual using the wireless number.

When an individual terminates their wireless service resulting in relinquishing their wireless number, that action may be viewed as an implied revocation of consent to all callers. However, it is unreasonable to place liability on a caller for not knowing this implied revocation has taken place when the revocation has not been communicated to the caller. Further, there are no readily available comprehensive resources (e.g., nationwide databases) that can be relied upon to verify that the wireless number has been reassigned to a new individual. Various approaches for placing the onus on the caller have been mentioned (such as establishing a nationwide wireless directory database), but to date, these approaches are not feasible, not practical, nor even desirable by many wireless subscribers.

In such cases when the caller unknowingly initiates a call to a reassigned number, the caller should be relieved of any liability under the TCPA, up to and including the first occurrence of communication with the new subscriber assigned to that number. Once communication with the new subscriber is achieved and the new subscriber has informed the caller that the number has been reassigned, this should serve as an explicit, (albeit *ex post facto*), notification of revocation of consent by the prior subscriber. At this point, the caller should consider the prior express consent revoked and discontinue calls to the reassigned number. This

⁶ See also NSC's comments submitted in response to *Petition for Declaratory Ruling Regarding Revocation of Prior Express Consent for Non-Telemarketing Calls*, filed by Santander Consumer USA, Inc., CG Docket No. 02-278 (received July 10, 2014) ("Santander Petition").

process mirrors aspects of the Commission's recent decision finding that consent can be conveyed by an intermediary (see, e.g., GroupMe Order⁷). In the present case, the revocation of consent is conveyed by an intermediary, namely by the new subscriber associated with the reassigned wireless number.

With respect to the new subscriber receiving the wireless number and who may receive a call intended for the prior subscriber, the Commission should recognize (as the public has long recognized) that such inadvertent calls may occur when telephone numbers are "recycled." Telephone numbers are not an unlimited resource, and the industry and telecommunication regulators have long found it preferable to reassign telephone numbers as opposed to opening new area codes and/or central office codes in order to allocate unassigned telephone numbers each time a new subscriber needs a telephone number. Recycling telephone numbers aids in avoiding number exhaustion and provides a significant public benefit.

However, it has been long recognized that a consequence of this uncontroversial practice is that a new subscriber receiving a "recycled" wireless number may on occasion receive an inadvertent call intended for the prior subscriber. The harm to the new subscriber is minimal compared to the benefit to the public of reusing telephone numbers. The industry has attempted to ameliorate the impact of new subscribers receiving inadvertent calls by waiting a minimum time period before reassigning numbers. However, such practice does not always eliminate all inadvertent calls.

Generally, receiving a recycled wireless number is not a serious problem for wireless subscribers for at least two reasons. First, the caller who intended to communicate with the prior subscriber is generally not interested in communicating with the new subscriber. Once the caller finds out the number is reassigned, they have no reason to continue calling the new subscriber. Second, with the advent of number portability, wireless subscribers have much less of a need to change their wireless number. It is almost becoming a *defacto* practice that once an

⁷ See, e.g., FCC 14-33, released March 27, 2014, par. 11.

individual receives a wireless number, they keep that number for the rest of their life. There is no need to change that number when moving, obtaining a new smart phone, or changing service providers. Thus, occurrences of new subscribers obtaining recycled numbers and receiving inadvertent calls intended for prior subscribers are diminishing. Such calls simply are not a burgeoning problem for which the public is clamoring protection from, nor a problem that motivated Congress to pass the TCPA. However, this occasional circumstance has provided opportunity for TCPA suits, including class action suits, which are not punishing the bad actors, but only those making such calls.

The reassignment of a wireless number from one subscriber to another should be treated as a “status change” of the wireless number, similar to the status change associated when a wireline number is ported to a wireless carrier. The Commission deemed that the status change when porting a wireline number to a wireless carrier warranted an accommodation (in the form of a 15 day grace period).⁸ Similarly, the Commission should deem that a status change involving a wireless number reassignment also warrants an accommodation of sort. In this case, the accommodation is that a caller is not liable until informed of the revocation of consent by the prior subscriber, e.g., being informed by the new subscriber that the wireless number is no longer associated with the prior subscriber.⁹

After the caller has successfully reached the new subscriber and has been informed of the reassignment of the wireless number (either verbally if a voice call, or by replying, e.g., “STOP” to a text call), the caller should stop placing calls to the wireless number. At that point, any further calls placed by the caller to that wireless number may subject the caller to liability under the TCPA. Accordingly, if the caller ignores the notification of reassignment provided by the new subscriber and continues to place calls to the number, the caller may likely (and rightfully) become a defendant in a TCPA suit. Thus, this rule only protects those callers that

⁸ See, generally FCC04-204.

⁹ A 15 day grace period would not be appropriate, since the new number would typically not even be reassigned during this window.

do not abuse the accommodation.

Because the circumstance of a new subscriber having a reassigned wireless number receiving a call intended for a prior subscriber appears to be relatively infrequent, the Commission should not define any new requirements for a national database of wireless numbers, nor require all callers to first check such a database prior to placing a call. The circumstances of a subscriber occasionally obtaining a recycled number and receiving an inadvertent call presents a prime opportunity for the Commission to apply a “rule of reason” and grant an exception to liability under the TCPA, *provided* the caller placing the inadvertent call does not place another call to the number after being informed of the circumstances. NSC believes that the Commission should adopt some sort of “good faith exception,” and further believes that this should apply to voice as well as text calls.

To facilitate certainty as to how a called party inadvertently receiving a text call can convey to a caller that the number has been reassigned, the Commission should define an approach for the party to communicate that no further text calls should be sent. A called party may indicate this desire by texting a standard response (such as “STOP”).¹⁰ Defining a standard word/phrase to indicate that no further text calls should be sent would provide certainty to individuals and callers alike. Furthermore, the Commission can define that once such a “STOP” response is received from the called party, any subsequent text calls made to the called party using an autodialer may subject the caller to liability under the TCPA.

Finally, there is a question as to whether a called party informing the caller of the number reassignment should stop sending both voice and text calls to that number. It appears reasonable to assume that when the caller is aware of the reassignment, the caller should cease sending either text or voice calls to that number. Thus, the revocation of consent for a number would apply to both call types (voice and text).

¹⁰ This mechanism could also be defined for revoking previously provided express written consent when the number has not been reassigned. See, e.g., NSC’s comments to the Santander Petition.

III. CONCLUSION

NSC urges the Commission to grant an exception to liability under the TCPA when:

- a caller makes a call using an autodialer to a wireless number believed to be associated with a first individual, wherein the first individual has previously granted consent to the caller for such calls,
- but where the caller is not aware that the wireless number has been reassigned to a second individual who has not granted consent to the caller, and who receives the call, and
- where the caller, upon being informed by the second individual that the wireless number has been reassigned, does not initiate any further calls to that number.

Respectfully submitted,
Noble Systems Corporation.

By: /Karl Koster /

Karl Koster

Noble Systems Corporation

August 8, 2014