

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Petition for Declaratory Ruling)	
of the Consumer Bankers Association)	CG Docket No. ____
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	

COMMENTS OF THE AMERICAN BANKERS ASSOCIATION

The American Bankers Association (ABA) urges the Federal Communications Commission (Commission) to grant the Petition for Declaratory Ruling of the Consumer Bankers Association (CBA)¹ and confirm that organizations are not liable under the Telephone Consumer Protection Act (TCPA)² and the Commission’s TCPA rules³ for informational, non-telemarketing autodialed and prerecorded calls to wireless numbers for which prior express consent has been obtained but which, unbeknownst to the calling party, have subsequently been reassigned from one wireless subscriber to another.

I. Background on the banking industry’s use of informational, non-telemarketing calls.

ABA is the voice of the nation’s \$14 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard \$11 trillion in deposits and extend nearly \$8 trillion in loans. As ABA has written on numerous

¹ Petition for Declaratory Ruling of the Consumer Bankers Association, CG Docket No. 02-278 (filed Sep. 19, 2014) (CBA Petition).

² 47 U.S.C. § 227.

³ 47 C.F.R. § 64.1200.

occasions in comments filed in this docket and in its own, pending Petition for Exemption, autodialed and prerecorded messages provide a critical channel for non-telemarketing communications between financial institutions and their customers.⁴ Fraud alerts, notices of address discrepancies, low balance alerts, data security breach notifications, delinquency notifications, loan modification outreach, and other time-critical, non-telemarketing communications must reach large numbers of customers promptly and at reasonable cost. Only automated calling – not manual dialing by live agents – can meet these requirements in a timely, efficient, and economical manner. And, as wireless service continues to replace the landline telephone as consumers’ communication method of choice, an increasing percentage of those automated calls must be placed to mobile devices.

II. It is inconsistent with the letter and purpose of the TCPA to expose callers to the threat of TCPA class action litigation for placing an autodialed call to a number that has been reassigned without the caller’s knowledge.

ABA members exercise care to obtain “prior express consent” from their customers before calls are placed to wireless numbers using an automatic telephone dialing system or a prerecorded voice. Moreover, there is no need or incentive for a bank to place a non-telemarketing, informational call to anyone other than the intended recipient.

⁴ Petition for Exemption of the American Bankers Association (filed Oct. 14, 2014); Reply Comments of the American Bankers Association in Support of the Petition for Declaratory Ruling of the Retail Industry Leaders Association (filed Mar. 10, 2014); Reply Comments of the American Bankers Association in Support of the Petition for Declaratory Ruling of United Healthcare Services, Inc. (filed Mar. 10, 2014); Reply Comments of American Bankers Association and Consumer Bankers Association in Support of Petition for Expedited Declaratory Ruling of GroupMe, Inc./Skype Communications S.A.R.I. (filed Sep. 10, 2012); Reply Comments of American Bankers Association and Consumer Bankers Association in Support of Petition for Expedited Declaratory Ruling of Soundbite Communications, Inc. (filed May 15, 2012); Reply Comments of the Financial Services Roundtable, the American Bankers Association and the Consumer Bankers Association (filed Jun. 21, 2010); Comments of the Financial Services Roundtable, the American Bankers Association, and the Consumer Bankers Association (filed May 21, 2010), all in Docket No. CG 02-278.

However, financial institutions – which place millions of authorized autodialed informational calls annually – cannot completely avoid calling reassigned wireless telephone numbers. As CBA states in its petition, there is no public wireless telephone directory or tool available to identify numbers that have been reassigned.⁵ Consumers who change their wireless number *should* notify the businesses and organizations with whom they interact of the change; however, they often fail to do so. Thus, banks inevitably will call reassigned telephone numbers despite efforts to contact only consumers who provided “prior express consent” to be called on that wireless number.

As ABA has pointed out in previous filings in this docket, the potential liability for calls made in good faith to parties who have consented to receive them, but whose telephone number has subsequently been reassigned without notice to the bank, threatens to curtail important and valued communications between a bank and its customers. ABA urges the Commission to act promptly to confirm that a call inadvertently placed to a person to whom a customer’s mobile telephone number has been reassigned is lawful under the TCPA, as long as the former subscriber to that number was the call’s intended recipient and gave prior express consent to receive the call. As CBA’s Petition explains, the most logical and straightforward means of accomplishing this result is to confirm that the call’s intended recipient — as opposed to any person who happens to answer the call — is the “called party” whose prior express consent must have been obtained. However, resolution of this issue is of such importance to our membership that we also reaffirm our support for the solutions suggested by United

⁵ CBA Petition at 9.

Healthcare Services, Inc.⁶ In the end, what is important is that the Commission resolve the called party question.

Finally, ABA fully agrees with CBA that granting of the relief requested will not encourage continued, autodialed or artificial/prerecorded voice calls to reassigned customer numbers after the callers become aware that those numbers are no longer assigned to the customers who consented to be called.⁷ Automated calls that are placed to reassigned mobile numbers with actual knowledge that those numbers have been reassigned will continue to be subject to enforcement action under the TCPA.

Respectfully submitted,



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⁶ Petition for Expedited Declaratory Ruling of United Healthcare Services, Inc., CG Docket No. 02-278 (Jan. 16, 2014); Reply Comments of the American Bankers Association in Support of the Petition for Expedited Declaratory Ruling of United Healthcare Services, Inc., CG Docket No. 02-278 (filed March 10, 2014).

⁷ *Id.* at 14.