

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

WILLIAM L. KOVACS
SENIOR VICE PRESIDENT
ENVIRONMENT, TECHNOLOGY &
REGULATORY AFFAIRS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062
(202) 463-5457

March 10, 2014

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *In the Matter of Application of Rules and Regulations Implementing the Telephone Consumer Protection Act: United Healthcare Services, Inc. Petition for Expedited Declaratory Ruling Regarding Reassigned Wireless Telephone Numbers; CG Docket No. 02-278*

Dear Ms. Dortch:

The U.S. Chamber of Commerce (“Chamber”)¹ respectfully submits these comments to the Federal Communications Commission (“Commission”) in response to its Public Notice² requesting comment on the Petition for Expedited Declaratory Ruling filed by United Healthcare Services, Inc. (“United Healthcare Petition”) in the above-referenced docket. The Chamber strongly urges the Commission to grant the United Healthcare Petition because businesses and other organizations need clarity that there is no liability under the Telephone Consumer Protection Act (“TCPA”) for a call made to a wireless number for which the caller has obtained valid consent to call but has been reassigned, unbeknownst to the caller, to a new consumer.

I. There is no Practical Way to Avoid Making Calls to Reassigned Telephone Numbers, and Exposing Calling Parties to TCPA Liability for These Types of Calls Would Run Counter to Purpose of the TCPA

For a variety of reasons, telephone numbers can be reassigned to a new customer. As many as 37 million telephone numbers are recycled each year by telephone companies.³

¹ The U.S. Chamber of Commerce is the world’s largest business federation, representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America’s free enterprise system.

² Public Notice, *Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Expedited Declaratory Ruling from United Healthcare Services, Inc.*, CG Docket No. 02-278, DA 14-149 (rel. Feb. 6, 2014), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0206/DA-14-149A1.pdf.

³ Alyssa Abkowitz, “Wrong Number? Blame Companies’ Recycling,” *The Wall Street Journal* (Dec. 1, 2011), available at <http://online.wsj.com/news/articles/SB10001424052970204012004577070122687462582>.

Consumers communicate with a variety of organizations and businesses but, often, do not immediately, if ever, provide those entities with updated telephone number contact information. There is no single, authoritative wireless telephone number directory or currently available tool that can prevent all calls to phone numbers that once belonged to a client, customer, or other contact but have been reassigned without the knowledge of the caller.

To avoid inadvertently dialing a customer's phone number—where consent has been obtained—that has been reassigned to someone else, a business or organization would potentially need to verify the subscriber information for each number before placing every autodialed or prerecorded call. The Chamber agrees with United Healthcare that “such a solution is impractical and prohibitively expensive, especially for informational, non-telemarketing calls.”⁴

It would be nonsensical for a statute intended to reduce unwanted communications to require companies to repeatedly reach out to consumers to determine if their phone numbers have changed. Callers are not required by the Commission to identify reassigned numbers. In the TCPA,⁵ Congress did not require that callers “continually conduct extensive, expensive, and unreliable checks” to confirm that there had been no change to the phone number associated with the person who has given consent to be called at that number.⁶

II. Regulatory Clarity Regarding Reassigned Numbers is Desperately Needed

The Chamber⁷ and many others from a variety of industry sectors have previously and frequently highlighted TCPA litigation abuses that could be ameliorated by Commission action. There is, unfortunately, a tsunami of class action TCPA lawsuits driven not by aggrieved consumers, but by opportunist plaintiffs' firms taking advantage of uncertainty in the law to rake in attorney fees. TCPA lawsuits against businesses are skyrocketing. There were 208 TCPA lawsuits filed in January 2014 compared to 160 in January 2013, an increase of 30%.⁸

Confusion over TCPA liability for calls to reassigned phone numbers is an emerging area of TCPA litigation. Even a recipient of a single call can seek to have a nationwide class certified that covers other call recipients. The significant and growing litigation risk from such calls made in good faith exposes businesses to potentially annihilating “class actions lawsuits for technical

⁴ United Healthcare Services, Inc., Petition for Expedited Declaratory Ruling, CG Docket No. 02-278 (filed Jan. 16, 2014) at 5. (“United Healthcare Petition”).

⁵ 47 U.S.C. § 227.

⁶ United Healthcare Petition at 8.

⁷ See U.S. Chamber Comments on Communication Innovators' Petition for Declaratory Ruling (filed Nov. 15, 2012), available at <http://apps.fcc.gov/ecfs/document/view?id=7022056396>, U.S. Chamber Comments on GroupMe's Petition for Declaratory Ruling (filed Aug. 30, 2012), available at <http://apps.fcc.gov/ecfs/document/view?id=7022008729>, and U.S. Chamber Comments on PACE's Petition for Expedited Declaratory Ruling and/or Expedited Rulemaking (filed Dec. 19, 2013), available at <http://apps.fcc.gov/ecfs/document/view?id=7520963837>.

⁸ Jack Gordon, *Debt Collection Litigation & CFPB Complaint Statistics, January 2014*, Interactivecredit.com, Feb. 24, 2014, available at <http://interactivecredit.com/?p=2110>.

violations that cause no actual injury or harm to any consumer.”⁹ Therefore, guidance from the Commission on this issue would provide regulatory certainty.

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. In particular, failure to grant the United Healthcare Petition would harm consumers by the hindering calls and texts containing non-marketing, important, time-sensitive information (e.g., alerts concerning data breaches, fraud, prescription refills, flight delays, power outages, package delivery, billing issues, and appointments).

III. The Commission has Ample Legal Authority to Grant the Petition

There are multiple legal approaches that the Commission could use to issue a declaratory ruling that would grant the requested relief. The Chamber agrees with United Healthcare that the Commission could find that when “a caller has obtained valid consent to call that party’s telephone number, such consent applies to the telephone number provided until the caller learns that the telephone number has been reassigned.”¹⁰ The Chamber also concurs that the Commission could issue a declaratory ruling confirming that the term “called party”—until the caller learns that the two parties are not the same—encompasses both the consenting party and the new subscriber to a reassigned number.¹¹ Additionally, the Chamber would support Commission adoption of a good faith exception from TCPA liability related to telephone numbers that the caller has obtained consent to call but have been reassigned—until the calling party learns of the reassignment.¹²

IV. Conclusion

The Chamber urges the Commission to clarify that calls—made with good faith and with valid consent—to reassigned numbers do not result in liability under the TCPA. By granting the United Healthcare Petition, the Commission can help curtail abusive lawsuits, provide American businesses with desperately needed certainty, and ensure that businesses maintain the ability to communicate in the manner that best meets the demands of their customers.

Sincerely,



William L. Kovacs

⁹ Becca J. Wahlquist, *The Juggernaut of TCPA Litigation: The Problems with Uncapped Statutory Damages* (prepared for the U.S. Chamber Institute for Legal Reform) at 1, (Oct. 2013), available at http://www.instituteforlegalreform.com/uploads/sites/1/TheJuggernautofTCPALit_WEB.PDF.

¹⁰ United Healthcare Petition at 10.

¹¹ *Id.*

¹² *Id.*