

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

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March 24, 2014

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> 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”)<sup>1</sup> respectfully submits these reply comments to the Federal Communications Commission (“Commission”) in response to its Public Notice<sup>2</sup> 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 reiterates its support for 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 Wireless Phone Numbers**

There is no simple fix or solution available that enables a company to verify the continued accuracy of wireless phone numbers listed in its systems before a call is placed and eliminate any chance of dialing a cell phone number for which the company has valid consent to call but has been reassigned without the knowledge of the caller. Contrary to the assertions by

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<sup>1</sup> 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.

<sup>2</sup> 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](http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0206/DA-14-149A1.pdf).

some commenters,<sup>3</sup> Neustar's TCPA product cannot fully protect a company from TCPA litigation tied to this reassigned number issue.

The Neustar document—titled *Understanding TCPA: Maximizing Customer Outreach and Mitigating Risk*—submitted by one of the commenters as an attachment—is an advertising piece, not a “white paper,” designed to encourage companies to buy its product in order to—as the title clearly states—“mitigate” (not eliminate) risk of TCPA litigation.<sup>4</sup> The same commenter claims that “[i]f the petitioner had diligently complied with the TCPA they would have used the services of Neustar.”<sup>5</sup> The comments filed by National Consumer Law Center (NCLC) make the same claim about the Neustar product, and further asserts that the Seventh Circuit and the Commission have both “found” that such reverse-look up searches are effective.<sup>6</sup> However, these comments misrepresent the Neustar marketing piece, exaggerate the capabilities of what is being sold by Neustar, and offer no other “reverse-look up” solutions that companies could use.<sup>7</sup>

The Neustar product claims to employ a proprietary phone data repository to attempt to verify that cell phone numbers are still associated with the consumer who provided the telephone number to a company in the first place. However, even without testing the accuracy of Neustar's advertising claims, it is evident that this company does not have the ability to ensure the accuracy of all cell phone numbers provided to a company. Indeed, there is a quote in the document from a Neustar Vice President of Product Development admitting that the company does not have any information on as many as 30% of wireless numbers.<sup>8</sup>

Even giving the Neustar document the benefit of the doubt, and assuming that the product's claim that it has “access” to about 70% of wireless and hard to find phone numbers means that it can match up and verify ownership of such numbers, that still leaves companies exposed to an unacceptable level of risk if the Commission does not clarify the interpretation of the TCPA to be consistent with its original intent. As a result, a company with millions of customers could end up significantly modifying their existing technology at a massive expense to make their systems and databases compatible with the Neustar product so that information could be provided, checked, and verified in a timely manner before calls can be made, and, yet, face the same class action suits they face today because some number of reassigned numbers in their customer databases fall into that 30% category of omissions in Neustar's database.

Therefore, while a product like the one offered by Neustar—assuming it works as advertised—may help to reduce exposure to lawsuits never intended to be brought under the

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<sup>3</sup> See. Joe Shields Comments and National Consumer Law Center (NCLC) Comments.

<sup>4</sup> Joe Shields Comments, Attachment (filed Mar. 10, 2014).

<sup>5</sup> Shields Comments at 6

<sup>6</sup> NCLC Comments at 2.

<sup>7</sup> While NCLC also states that the Seventh Circuit in 2007 and the FCC in 2003 both found that there was an efficient reverse-look up tool that companies could use, this was not the case. Instead, the Seventh Circuit and the Commission merely noted that IF such a tool existed, it may be able to provide reasonable protection for a company.

<sup>8</sup> See, Shields Comments, Attachment, at 5. (“With access to more than 70 percent of all wireless and hard-to-find phone numbers supported by our proprietary linking logic, you can instantly and accurately verify consumer contact information.”)

TCPA, it certainly cannot eliminate them altogether. This is why the clarification sought by United Healthcare is essential. The Chamber believes that companies who operate in good faith to collect and maintain accurate information from its customers should be able to rely on the accuracy of telephone numbers provided by a customer unless and until the company receives notice that the telephone number has changed.

## **II. Regulatory Relief Regarding Reassigned Numbers Should be Granted by the Commission for All Calls, or, at a Minimum, for Informational, Non-Telemarketing Calls**

As stated in its comments, the Chamber strongly supports United Healthcare's request that parties should not be liable for informational, non-telemarketing calls made to reassigned wireless phone numbers. Additionally, the Chamber agrees with commenters who argue that broader relief also is warranted.<sup>9</sup> Consequently, the Chamber urges the Commission to "confirm that parties should not be liable under the TCPA for any autodialed (and prerecorded or artificial voice) calls, including automated texts, to wireless telephone numbers that have been reassigned without the caller's knowledge, as long as the caller previously obtained [valid consent] prior to plac[ing] calls to that specific telephone number."<sup>10</sup> Relief for all such calls is justified given the "substantial inequity of subjecting legitimate businesses" to TCPA liability for calls made in good faith to wireless phone numbers that a company believed it had valid consent to contact.<sup>11</sup>

Granting such relief would be analogous to the Commission's decision creating a safe harbor from the restrictions on autodialed or prerecorded calls made to wireless numbers recently ported from wireline.<sup>12</sup> The Commission explained that the safe harbor was designed to "ensure that callers have a reasonable opportunity to comply with our rules while continuing to protect consumer privacy interests,"<sup>13</sup> and that absent such relief, "the statute would demand the impossible" of callers.<sup>14</sup> By failing to declare that dialing a reassigned number in these circumstances is not a violation of TCPA, the Commission would be demanding "the impossible of callers"<sup>15</sup> by requiring them to be aware of facts not in their possession. Thus, granting such relief would offer callers the "reasonable opportunity to comply with the Commission's rules."<sup>16</sup>

## **III. 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

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<sup>9</sup> See, Time Warner Cable Comments (filed Mar. 10, 2014) and Comcast Comments (filed Mar. 10, 2014).

<sup>10</sup> Comcast Comments at 1-2.

<sup>11</sup> Time Warner Cable Comments at 2.

<sup>12</sup> See, *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Order, 19 FCC Rcd 19215 (2004).

<sup>13</sup> *Id.* ¶ 1.

<sup>14</sup> *Id.* ¶ 9 (internal quotations marks and citations omitted).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* ¶ 1.

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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,

A handwritten signature in black ink, appearing to read "William L. Kovacs", is centered on the page. The signature is written in a cursive style with a prominent initial "W".

William L. Kovacs