

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
Rules and Regulations Implementing ) CG Docket No. 02-278  
the Telephone Consumer Protection )  
Act of 1991 )

**Comments of the National Consumer Law Center  
On behalf of its low-income clients and the  
National Association of Consumer Advocates**

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These comments are submitted by the National Consumer Law Center,<sup>1</sup> on behalf of its low-income clients, and the National Association of Consumer Advocates.<sup>2</sup> These comments are in response to the Commission’s request for comments<sup>3</sup> on the Petition for Expedited Declaratory Ruling and/or Expedited Rulemaking filed by United Healthcare Services, Inc. (“United Healthcare”).

United Healthcare Services, Inc. seeks a ruling to allow it to avoid putting in basic systems and policies that would detect when a cellular telephone has been reassigned to a different consumer where it previously had express consent to call that number in order to allow it to make “information or non-telemarketing calls.” In short, it seeks immunity for calls that would harm consumers and would otherwise violate the Telephone Consumer Protection Act (TCPA).

As an initial matter, United Health does not provide medical care, but is instead an insurance company. As such, it is not making calls relating to medical care, but can only be making calls relating to medical billing. Further, if United Healthcare is calling old telephone numbers that have subsequently been reassigned, it is unlikely that United Healthcare is making calls related to a current health coverage issue, especially as it usually takes months before a cellular number is reassigned. As such, if United Health Care is calling old numbers and reaching a new user, it is more likely that United is making debt collection calls or “informational” calls promoting services that have nothing to do with any current health issues.

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<sup>1</sup> The **National Consumer Law Center (NCLC)** is a non-profit corporation founded in 1969 to assist legal services, consumer law attorneys, consumer advocates and public policy makers in using the powerful and complex tools of consumer law for just and fair treatment for all in the economic marketplace. NCLC has expertise in protecting low-income customer access to telecommunications, energy and water services in proceedings at the FCC and state utility commission and publishes *Access to Utility Service* (5<sup>th</sup> edition, 2011) as well as NCLC’s *Guide to the Rights of Utility Consumers* and *Guide to Surviving Debt*. For questions about these comments, please contact NCLC attorney Margot Saunders, [msaunders@nclc.org](mailto:msaunders@nclc.org).

<sup>2</sup> The National Association of Consumer Advocates (NACA) is a non-profit association of consumer advocates and attorney members who represent hundreds of thousands of consumers victimized by fraudulent, abusive and predatory business practices. As an organization fully committed to promoting justice for consumers, NACA’s members and their clients are actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means.

<sup>3</sup> See <http://www.fcc.gov/document/cgb-seeks-comment-petition-expedited-rulemaking-pace>.

United is simply wrong when it states that it cannot always know if the number has been reassigned. United Healthcare can take simple and cost effective steps to avoid making calls to cellular telephone numbers that have been reassigned. As recognized by the FCC<sup>4</sup> in 2004 and Seventh Circuit, United Healthcare can use a reverse-look up service to verify that the cellular telephone numbers it robocalls actually do belong to its customers.<sup>5</sup> For example, Neustar, Inc. has a service that allows businesses to determine if a number has been reassigned in real time.<sup>6</sup> United also has the simple option of manually calling the cellular telephone number first to verify that it is still assigned to the person who it contends consented to the calls.

It appears that United Healthcare seeks to avoid the small expense to comply with the TCPA even though its prerecorded calls are going to old numbers. Unfortunately for the recipient, many pre-recorded calls do not contain any method to opt out and even when consumers call back to be connected to a real person, the requests to stop calling are often ignored. This scenario adversely impacts the people who least can afford it— the low income consumers who have prepaid phones. These robocalls eat up precious and costly minutes of their phone service.

### **1. A Primary Purpose of the TCPA is to Protect Consumers from Unwanted Calls**

The TCPA was passed as a direct response to the explosion of abuses of telephone and facsimile technology in the 1980s and 90s. These abuses included the use of autodialers to clog telephone lines with unwanted calls, “robocalls” that leave unsolicited or unwanted, prerecorded messages, and “junk faxes” that consume the recipients’ paper and ink and interfere with the transmission of legitimate messages. As the Supreme Court explained it: “[v]oluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.”<sup>7</sup>

Statutory text and legislative and regulatory history show that the TCPA’s purpose is to promote privacy by providing consumers with informed choice as to what types of calls they receive. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may call them, and made specific findings that “[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are costly and unlikely to be enforced, or place an inordinate burden on the consumer.”<sup>8</sup> Congress found that –

the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call....<sup>9</sup>

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<sup>4</sup> The Commission previously rejected this same proposal to create a good faith exception for inadvertent calls to wireless numbers, finding that there are adequate solutions in the marketplace to allow business to identify reassigned wireless numbers. 2004 Safe Harbor Order, 19 FCC Red. 19215 at 4 (citing 2003 TCPA Order, 18 FCC Red at 14117-18, at 172).

<sup>5</sup> See *Soppet*, 679 F.3d at 642 (explaining that bill collectors can “use a reverse lookup to identify the current subscriber to Cell Number”).

<sup>6</sup> According to Neustar, it instantly provides organizations with accurate phone data intelligence through proprietary relationships with telecommunications providers. See [http://www.neustar.biz/information/docs/pdfs/whitepapers/neustar\\_guide\\_to\\_tcpa\\_compliance.pdf](http://www.neustar.biz/information/docs/pdfs/whitepapers/neustar_guide_to_tcpa_compliance.pdf).

<sup>7</sup> *Mims v. Arrow Financial Services, LLC*, 132 S.Ct. 740, 744 (2012).

<sup>8</sup> TCPA, Pub.L. No. 102–243, § 11.

<sup>9</sup> *Id.* at §§ 12-13.

In regards to the use of automated dialers to cellphones, Judge Easterbrook of the Seventh Circuit stated it this way:

The Telephone Consumer Protection Act ... curtails the use of automated dialers and prerecorded messages to cell phones, whose subscribers often are billed by the minute as soon as the call is answered—and routing a call to voicemail counts as answering the call. An automated call to a landline phone can be an annoyance; an automated call to a cell phone adds expense to annoyance.<sup>10</sup>

FCC Commissioners have also explicitly explained the deliberate interplay between the TCPA and protection from these invasions of privacy:

Few rights are so fundamental as the right to privacy in our daily lives, yet few are under such frontal assault. Our dinners are disrupted by unwanted phone calls. Our computer accounts are besieged with bothersome spam. Our mailboxes are swollen with advertisements for products, goods and services. We conduct our whole lives against the white noise of commercial solicitation. These intrusions exhaust us, irritate us and threaten our cherished right to be left alone.

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The TCPA is about tools. It gives consumers the tools they need to build a high and strong fence around their homes to protect them from unsolicited telephone calls and faxes. It also allows other consumers to have a lower fence or no fence at all, if they wish to take advantage of these commercial messages.<sup>11</sup>

## **2. Precluding Calls to Reassigned Telephone Numbers Furthers the Purposes of the TCPA.**

Recognizing that automated calls to cellular telephones are particularly invasive of privacy, insidious and expensive, Congress created more relaxed rules for calls to residential lines. 47 U.S.C. §227(b)(1)(B), which governs calls to residential lines, contains no restrictions on use of automatic telephone dialing systems (ATDSs) at all, and prohibits only prerecorded calls to residential lines. And although it contains a similar “prior express consent” exception, the Commission has used the broad rulemaking power conferred by 47 U.S.C. § 227(b)(2)(B) to issue regulations exempting certain “classes or categories of calls.”<sup>12</sup>

This comparison makes clear what the FCC has known all along: Congress specifically intended that the categories of phones listed in section 227(b)(1)(A)(iii), including cellular telephones, are entitled to the TCPA’s protections “regardless of the content of the call.”<sup>13</sup> In its 2008 Order, the Commission also noted that “Congress found that automated or prerecorded

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<sup>10</sup> *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir.2012).

<sup>11</sup> Separate statements of: *Commissioner Michael Copps and Chairman Michael K. Powell, Re: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278 18 FCC Rcd. 14,014, 14,176; 14,174 (July 3, 2003).

<sup>12</sup> See 47 C.F.R. § 64.1200(a)(ii), (iii), (iv).

<sup>13</sup> *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, 23 FCC Rcd. 559, 565; ¶ 11 (Jan. 4, 2008); also 2003 TCPA Order, 18 FCC Rcd at 14,115, para. 165.

telephone calls [to wireless numbers] were a greater nuisance and invasion of privacy than live solicitation calls, and that such calls can be costly and inconvenient....”<sup>14</sup>

### **III. Allowing Automated Calls to Cell Phones Would Frustrate the Lifeline Program and Harm Low-Income Consumers**

Many residential wireless products, especially those used by payment troubled and poor households, employ the “per minute of use” billing structure. Wireless consumers are often billed for incoming calls in addition to outgoing calls. As a result, these consumers are extremely sensitive to incoming calls – especially calls that they do not want.

Wireless bill shock to consumers is caused by unexpected increases in their phone bills.<sup>15</sup> In a recent examination of the problem, the Commission found that one of the causes of bill shock is when the limits on their voice, text or data plans have been exceeded, which in turn causes higher charges at a per-minute rate. Lower-income wireless consumers are especially sensitive to bill shock – as one extra-large cell phone bill can wreck a family’s monthly budget. One monthly budget exceeded in a low-income household can cause negative repercussions for many subsequent months.

Pre-paid wireless plans have been growing in popularity.<sup>16</sup> The wireless marketplace targets prepaid, low-end phone service products to low-income consumers and consumers with poor credit profiles.<sup>17</sup> The low-end prepaid wireless products provide a set number of minutes, and often texts, for a set price. Consumers must purchase a package of new minutes periodically to maintain their service.

Over 16 million low-income households maintain essential telephone service through the federal Lifeline Assistance program.<sup>18</sup> The low-end prepaid wireless plans are a popular product for the majority of these assisted consumers. Over three-quarters of Lifeline participants choose a prepaid wireless Lifeline program, which most commonly consists of 250 minutes a month for the entire household.<sup>19</sup>

Consumer advocates have argued that 250 minutes a month is not sufficient to meet the basic monthly communication needs of a household. Any policy or practice that would open the door to depletion of these scarce subsidized minutes allowing the receipt of unwanted calls which were not consented to by the consumer will further deplete the scarce minutes available for the entire Lifeline household.<sup>20</sup> Lifeline households use their Lifeline phones to find work or a doctor

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<sup>14</sup> 2008 TCPA Order, 23 F.C.C.R. at 559; ¶ 7.

<sup>15</sup> See FCC Consumer and Governmental Affairs Bureau, White Paper on Bill Shock (Oct.13, 2013).

<sup>16</sup> See Sixteenth Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, WT Docket No. 11-186 (Rel. Mar.21, 2013), FCC 13-34 at para.98; See Fifteenth Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, WT Docket No. 11-186 (Rel. June 27, 2011), FCC 11-103 at para.167.

<sup>17</sup> See Sixteenth Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, WT Docket No. 11-186 (Rel. Mar.21, 2013), FCC 13-34 at para.159.

<sup>18</sup> See 2012 Annual Report, Universal Services Administrative Company at 9.

<sup>19</sup> See <http://www.fcc.gov/guides/lifeline-and-link-affordable-telephone-service-income-eligible-consumers>; see also *Low Income Support Mechanism Wireless Disbursement as a Percentage of Total Disbursements 3Q2013*, Universal Service Administrative Company.

<sup>20</sup> Lifeline is limited to one-per-household. See 47 C.F.R. § 54.409(c).

or access necessary services. Loss of subsidized minutes will also jeopardize health and safety, for example the ability to talk to a nurse or doctor or for a school to call a parent about a sick child.

### **Conclusion**

For the reasons explained above, we respectfully request that United Healthcare's petition be denied.

Respectfully submitted by,

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