



March 10, 2014

Commission's Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, DC 20554

***Re: Petition for Expedited Declaratory Ruling From United Healthcare Services, Inc. (CG Docket No. 02-278)***

To whom it may concern:

The American Financial Services Association (“AFSA”) supports the Petition for Expedited Declaratory Ruling (“Petition”)<sup>1</sup> filed by United Healthcare Services, Inc. (“United”). The Petition asks the Federal Communications Commission (“Commission”) to clarify the applicability of the Telephone Consumer Protection Act (“TCPA”)<sup>2</sup> and the Commission’s TCPA rules<sup>3</sup> “to informational, non-telemarketing autodialed and prerecorded calls to wireless numbers for which valid prior express consent has been obtained but which, unbeknownst to the calling party, have subsequently been reassigned from one wireless subscriber to another.”<sup>4</sup>

AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its more than 350 members include consumer and commercial finance companies, auto finance/leasing companies, mortgage lenders, mortgage servicers, credit card issuers, industrial banks and industry suppliers.

Like United, AFSA members contact their customers to convey important, time-sensitive information. AFSA members contact their customers for a variety of reasons – to tell the customer that there is a fraud alert on an account, that a payment is due, that a work-out plan is available, that a lease is almost up, or with some other account servicing message. The most expedient and effective way to reach these customers is to call or text them on their cell phones, especially if they travel or work out of town and may not receive mail for a period of time. If it is not the only way to reach the customer, it is likely the way that the customer prefers to be contacted.

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<sup>1</sup> See *United Healthcare Services, Inc.* Petition for Expedited Declaratory Ruling, CG Docket No. 02-278 (filed Jan. 16, 2014).

<sup>2</sup> 47 C.F.R. §227.

<sup>3</sup> 47 C.F.R. § 64.1200.

<sup>4</sup> *Petition at 1.*

AFSA members obtain the required “prior express consent” from their customers before placing calls to wireless telephone numbers using an automatic telephone dialing system (“ATDS”) or an artificial or prerecorded voice, as specified by the TCPA and the FCC’s TCPA rules.<sup>5</sup>

However, sometimes wireless telephone numbers for which AFSA members have obtained “prior express consent” are reassigned from one subscriber to another. Thus, AFSA members may call a phone number for which they had obtained “prior express consent” to call, but reach a person who was reassigned that number and who had not given the consent. AFSA members cannot completely avoid calling reassigned wireless telephone numbers because there is no public wireless telephone number directory, and individuals may change their phone numbers without notifying callers beforehand.

Companies are now facing expensive class action lawsuits on the grounds that they did not have “prior express consent” to call the reassigned number. Penalties of up to \$1500 per violation of the TCPA have provided plaintiff’s attorneys with fodder for lawsuits that enrich the attorneys rather than compensate their clients. In several TCPA class actions, companies settled for millions of dollars. Each class action member only received a few dollars, while the attorneys walked away with millions.<sup>6</sup> Instead of receiving compensation from class action litigation, consumers will experience rising costs as businesses struggle to make up the massive legal fees incurred during TCPA litigation. Even when companies prevail, the cost of defending a TCPA class action most often exceeds \$100,000, which may be devastating for small and mid-size companies.

As the Petition states, “It is inconsistent with the letter and purpose of the TCPA to expose to litigation callers that dial numbers for which they have obtained ‘prior express consent’ to call just because those numbers have been reassigned without the caller’s knowledge.”<sup>7</sup> Moreover, imposing liability for calls to reassigned numbers could reduce the delivery of important, non-telemarketing, informational calls, such as fraud alerts, to wireless customers, to individuals that have expressly consented to receiving those calls.

AFSA strongly urges the Commission to issue a declaratory ruling confirming that parties are not liable under the TCPA for informational, non-telemarketing calls to telephone numbers that have been reassigned without the caller’s knowledge, as long as the caller previously obtained valid “prior express consent” to place calls to that telephone number.

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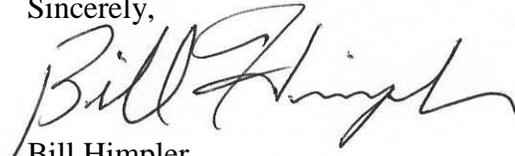
<sup>5</sup> As AFSA has explained in prior filings in this docket, many predictive dialers used by its members do not meet the statutory definition of an ATDS. The FCC should grant the separate Communication Innovators TCPA petition and confirm that a predictive dialer that does not meet the ATDS statutory definition is not an ATDS.

<sup>6</sup> Hoffman, Erin, Eileen Hunter, and Aaron Van Oort. “Recent Developments in TCPA Litigation.” *Faegre Baker Daniels*. April 5, 2013. [http://www.minncle.org/attendeemats/30313/10\\_VAN%20OORT.pdf](http://www.minncle.org/attendeemats/30313/10_VAN%20OORT.pdf)

<sup>7</sup> *Petition at 3.*

We look forward to working with the FCC on this Petition. Please contact me by phone, 202-466-8616, or e-mail, [bhimpler@afsamail.org](mailto:bhimpler@afsamail.org), with any questions.

Sincerely,

A handwritten signature in black ink that reads "Bill Himpler". The signature is fluid and cursive, with the first name "Bill" being larger and more prominent than the last name "Himpler".

Bill Himpler  
Executive Vice President  
American Financial Services Association