



April 2, 2009

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-B204
Washington, DC 20554

RE: CG Docket No. 02-278 (Paul D. S. Edwards's Petition for an Expedited Clarification and Declaratory Ruling Concerning the Telephone Consumer Protection Act Rules)

Dear Ms. Dortch:

The Consumer Bankers Association ("CBA") appreciates the opportunity to comment on Mr. Paul D. S. Edwards' ("Mr. Edwards") Petition for an Expedited Clarification and Declaratory Ruling Concerning the Telephone Consumer Protection Act ("TCPA") Rules.

CBA is the recognized voice on retail banking issues in the nation's capital. CBA's member institutions are the leaders in consumer, auto, home equity and education finance, electronic retail delivery systems, privacy, fair lending, bank sales of investment products, small business services and community development. The organization was founded in 1919 to provide a progressive voice in the retail banking industry. CBA represents over 750 federally insured financial institutions that collectively hold more than 70% of all consumer credit, and approximately 75% of insured deposits, held by federally insured depository institutions in the United States.

The question now before the Commission is straightforward: Does the "porting" of a phone number from a landline to a wireless phone somehow negate consent to call that number, including consent to call using an autodialer and/or prerecorded message, that was given prior to the porting of that number? (Hereinafter for the sake of brevity, references to "consent" will be understood to mean "consent to call using an autodialer and/or prerecorded message.")

Mr. Edwards argues that in order for such consent to be valid, the phone number in question must have been a wireless number at the time the consent was given, claiming that result is "self-evident" from the wording of the Commission's January 4, 2008 Declaratory Ruling in this Docket Number (the "Commission's Ruling"). The same "logic" would imply that consent could never be given as to a later-acquired wireless phone number, no matter how clearly the intent to do so is expressed.

Nothing in either the Commission's Ruling or TCPA itself supports that assertion, and such a result would not be in the best interests of either consumers or the companies with which they do business.

Mr. Edwards' argument rests on the unspoken premise that when a consumer ports a number from a landline to a cell phone, he or she does not want calls that had been coming to that number to continue coming to that same number. In fact, precisely the opposite is true. If a consumer does not want calls previously made to the landline number to follow to the cell phone, he or she can achieve that result by simply not taking the necessary steps to port the old landline number. By taking the extra steps needed to port the number, the consumer is affirmatively evidencing the desire that those calls come to the now wireless number.

A look at some of the types of calls made by financial institutions such as the members of CBA using autodialers and prerecorded messages shows why this is a sound decision on the part of a consumer. Among them are calls made to: warn the customer of suspicious activity on accounts such as credit card accounts; notify the consumer that account statements have been returned as undeliverable; respond to assertions of billing errors; advise consumers of outreach activities in their community (e.g. HOPE NOW events); offer payment modification plans to prevent foreclosures; etc. Making such calls using live operators who must individually dial the consumer's phone number is much slower and much more expensive. In some cases, even if the financial institution makes a call manually, the consumer will still pay any resulting charge; in others, the call will not be made and important information will only reach the consumer by mail days later or not at all.

The importance of this issue is underscored by the increasing number of households with cellular only phone service. As of June 2008, 16 percent of the U.S. population had ONLY cellular phone service (see www.telecomasia.net/article.php?id_article=8992) and that number is steadily increasing. At the same time, it appears that cellular service providers are increasingly offering "flat rate" plans so customers have the option to avoid additional charges for incoming calls. We submit that these changes in the marketplace support the proposition that the Commission make it easier to make important servicing and informational calls to cell phones, not harder.

For the reasons noted, CBA urges the Commission NOT to issue the "clarification" sought by Mr. Edwards but rather, if it believes any clarification of the January 4, 2008, Ruling is needed, to declare that porting a number from a landline to a wireless phone does NOT negate any previously obtained consent with respect to such number.

CBA appreciates the opportunity to comment on this matter. If you have any questions regarding the foregoing, please feel free to contact the undersigned at (703) 276-3873 or msullivan@cbanet.org.

Very truly yours,

Marcia Z. Sullivan
Director, Government Relations