

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
National Employment Network Association	)	CG Docket No.
Petition for Expedited Declaratory Ruling	)	
Regarding Non-Telemarketing Employment	)	
Opportunity Notification	)	
	)	
Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991	)	

**PETITION FOR EXPEDITED DECLARATORY RULING**

The National Employment Network Association (“NENA”),<sup>1</sup> pursuant to Section 1.2 of the Federal Communication Commission’s (“Commission”) rules,<sup>2</sup> hereby respectfully submits this Petition for Expedited Declaratory Ruling regarding the Telephone Consumer Protection Act (“TCPA”)<sup>3</sup> and the Commission’s TCPA rules.<sup>4</sup> NENA requests that the Commission clarify that, in certain limited circumstances, a long-standing relationship with a federal agency logically implies consent to receive autodialed and prerecorded non-telemarketing calls and text messages under the TCPA, and calls can be made through a public or private intermediary or associated third party that “stands in the shoes” of the federal government. Specifically, the Commission should confirm that Employment

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<sup>1</sup> NENA represents more than 650 individual providers of employment services to beneficiaries receiving Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) payments due to a qualifying disability.

<sup>2</sup> 47 C.F.R. § 1.2.

<sup>3</sup> 47 U.S.C. § 227.

<sup>4</sup> 47 C.F.R. § 64.1200 *et seq.*

Networks (“ENs”)<sup>5</sup> under contract with the Social Security Administration’s (“SSA”) Ticket to Work Program<sup>6</sup> have a mandate to contact program-eligible beneficiaries to inform them about their options for returning to self-supporting employment, and are thus exempt from the Commission’s TCPA rules that restrict autodialed and prerecorded calls and text messages to wireless telephone numbers.

**I. BENEFICIARIES RECEIVING SUPPLEMENTAL SECURITY INCOME (SSI) AND SOCIAL SECURITY DISABILITY INSURANCE (SSDI) PAYMENTS NEED INFORMATION ABOUT RETURN-TO-WORK OPPORTUNITIES TO RAISE THEMSELVES OUT OF POVERTY.**

As of June 30, 2014 SSA estimates there are nearly 14 million Americans of working age receiving SSI and SSDI benefits due to disability.<sup>7</sup> All of those on SSI receive a maximum monthly Federal cash benefit of only \$721, 26% below the Federal Poverty Level (FPL) for a family of one. SSDI beneficiaries’ benefits are paid based on a formula derived from their work history. The average benefit in 2014 is \$1,148, 13% below the FPL for a family of two.<sup>8</sup>

Once on benefits, historically less than one half of one percent of beneficiaries leaves the rolls to return to work.<sup>9</sup> To respond to this dilemma, Congress passed the Ticket to Work and Work Incentives Improvement Act (TWWIIA) of 1999. TWWIIA mandates the SSA to contract with public and private employment services providers called Employment Networks (“ENs”) to conduct outreach to beneficiaries and offer them free services and supports to return to self-supporting work and to retain the work for extended periods.

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<sup>5</sup> Employment Networks are qualified providers of employment services to SSA disability program beneficiaries under a Blanket Purchase Agreement (BPA).

<sup>6</sup> Ticket to Work and Work Incentives Improvement Act, P.L. 106-170. (TWWIIA)

<sup>7</sup> [www.ssa.gov/policy/docs](http://www.ssa.gov/policy/docs). “Research, Statistics, and Policy Analysis.” Monthly statistical snapshot for June, 2014.

<sup>8</sup> U.S. Dept. of Health and Human Services, “2014 Poverty Guidelines.”

<sup>9</sup> TWWIIA Sec. 2.(8)

SSA offers a number of work incentives that allow a beneficiary to attempt to return to work without risking benefits. Each month a participating EN receives a CD containing the necessary contact information for beneficiaries living in the EN's service delivery area. SSA approves a Blanket Purchase Agreement (BPA) with each EN to provide services at no charge to beneficiaries. Among other things, the BPA specifically requires ENs to contact beneficiaries and discuss the work incentives and other questions they might have about returning to work.

We submit that using the most cost-effective means of disseminating information of a non-commercial nature that is mandated by law and for the purpose of lifting people out of poverty and contributing to the economy is in the public interest and, therefore, allowable under the Commission's rules.

## **II. RETROACTIVELY SEEKING EXPRESS CONSENT FROM BENEFICIARIES IS NOT FEASIBLE.**

Beneficiaries are approved for benefits based on an illness or injury that is expected to last more than 12 months or result in death. The approval process is rigorous and sometimes takes years to finalize. Once on benefits, beneficiaries often harbor fear and distrust to attempt using any residual work capacity to return to work. Because the initial injury or illness is long-term to begin with, it generally takes significant time for a beneficiary to recover enough to consider working. During that time, they are generally disengaged from any communication with SSA other than receiving a deposit each month in their bank account. After 12 years of operating the Ticket to Work Program, anecdotal information suggests that learning about the work incentives alleviates fear and encourages beneficiaries to consider working.

As a practical matter SSA now asks new benefits applicants for an e-mail address as an additional means of contact. It seems logical that a beneficiary would expect to be contacted periodically by SSA for one or more reasons. However, the Commission's rules were promulgated after most beneficiaries who now have recovered enough to consider working are ready to do so. They have no contact with SSA and were not asked for e-mail addresses or alternative phone numbers that are not wireless because previous to these rules there was no reason to ask. It is not feasible for SSA to seek such information retroactively for 14 million beneficiaries. Further, the rules for non-wireless phones allow non-commercial calls where a prior established relationship exists, and is not charged to the called party.<sup>10</sup> That is now denied for calls to wireless phones. SSA has a prior established relationship with all SSI and SSDI beneficiaries. Calls made on behalf of the Ticket to Work program are non-commercial and are not charged to the called party.

We submit that a beneficiary awarded benefits would expect to be kept informed of opportunities available to them through SSA even though they did not give express consent for contacting them on their wireless phones prior to the effective date of the Commission's rules.

**III. COSTS TO BENEFICIARIES ARE NEGLIGIBLE AND FAR MORE COST EFFECTIVE THAN MAKING INDIVIDUAL CALLS WITHOUT USING AN AUTODIALER.**

The policies and procedures affecting benefits when a beneficiary returns to work can be complicated. There are multiple cost considerations when disseminating this information.

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<sup>10</sup> 47 CFR Part 64 Subpart L §64.1200(a)(2)(ii), (v).

- A. Most beneficiaries contacted will not be initially interested in returning to work. A call made using an autodialer is usually 30-60 seconds. The four major wireless carriers<sup>11</sup> have similar service plans. On average a one-minute call costs 7¢. One minute is plenty of time for a message that gives the called party a website to get more detailed information, a direct toll-free number to call the EN, and a number to opt-out from future calls.
- B. As referenced earlier, making calls to beneficiaries without using autodialers is allowed by the Commission's rules. However, due to the complexity of the topic, aside from telephone tag potential, such a call could last up to 30 minutes and information consistency would be lacking. Restrictions in calling cell phones using autodialers actually costs more to the called party because the calls are longer. Further, it reduces ENs' willingness to make the calls at all because of the extra time on the phone or the inefficiencies inherent in telephone tag.
- C. Marketing statistics historically suggest that it takes multiple contacts for a message to be actually heard and acted upon. Call frequency has a significant impact on whether a beneficiary will act on the information provided. Autodialers are much more cost effective than sending individual letters or making individual phone calls. Autodialed messages generally cost approximately 2¢ depending on the service used and call volume.

We request that the Commissioner allow a maximum of four contacts per year to each beneficiary unless they opt-out first.

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<sup>11</sup> Verizon, Sprint, T-Mobile, and Cricket

#### **IV. ALTERNATIVE FORMS OF OUTREACH ARE NOT TIMELY OR COST EFFECTIVE.**

The CD provided by SSA includes reliable contact information. ENs can and do use this information to send targeted letters to beneficiaries. However, this limits its timeliness and cost effectiveness.

- A. ENs use demographic information from the CD to target specific beneficiaries based on their business model. Some target by age, type of disability, specific zip code, services it can offer, etc. This targeting can cut down on costs significantly. But considering the cost of letterhead and envelopes as well as time to produce the letters and cost of mailing, an EN is likely to be much more choosy about who to contact, thus leaving out some beneficiaries from getting information that might be very useful to them. Because autodialed calls are so much less expensive more beneficiaries are likely to get information they can use and get it more than once.
- B. Occasionally a larger employer has a need for a large number of employees. ENs use the CD to recruit beneficiaries near the employer's site. This outreach generally has a very short time window, especially because the employer has contacted other referral sources as well. Using auto-dialers for specific recruitment activities serves three functions: 1) It gets the message out en masse quickly; 2) It costs less per contact; 3) It is a very attractive way to generate beneficiary interest in the program even if that particular job is not the right fit.
- C. Preparing and mailing letters is not only more expensive to produce, but cumbersome for an individual EN. Because of the Privacy Act of 1974<sup>12</sup>, ENs cannot have an outside service that specializes in mass mailings do the job. Such

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<sup>12</sup> P.L. 93-579.

services are not allowed to see any personally identifiable information, including beneficiary names and addresses.

**V. A process can easily be implemented allowing called beneficiaries to opt-out of receiving future calls.**

Typically an autodialer service maintains a do-not-call list and an option for called parties to opt-out of future calls. The called party is offered the option during the call by pressing “9,” for example. This takes the call to a specific number that puts the called party on a do-not-call list for that EN’s specific account. If the EN uploads that number again in the future, the autodialer service will block it.

In this case, only the specific EN that initiated the call will be blocked. All other ENs serving that area will have a CD with the same beneficiaries included. There can be as many as 100 ENs serving their area. A wireless phone user will still get calls from another EN, likely creating frustration.

NENA has requested SSA to establish an opt-out phone station to collect those requests, thus scrubbing that number from the CD and preventing calls from other ENs. Currently, the CDs are mailed to ENs monthly.

**VI. CONCLUSION**

Wireless phones have become much more prevalent in households as the only type of phone used. This is true of people without much income.<sup>13</sup> Consumers on SSI and SSDI are among the poorest. They should not be deprived of knowing fully all their options for making a better life simply because of the type of phone they choose to use.

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<sup>13</sup> Centers for Disease Control website, [www.cdc.gov](http://www.cdc.gov). Stephen J Blumberg, Ph.D. and Julian V. Luke, “Wireless Substitution: Early Release of Estimates from the National Health Interview Survey: January – June, 2013.” Division of Health Interview Statistics, National Center for Health Statistics.

For all the forgoing reasons, NENA urges the Commission to confirm that calls made to SSI and SSDI beneficiaries to inform them of ways to leave poverty behind is in the public's best interest. As such, the Commission should allow Ticket to Work Program Employment Networks to make non-commercial calls to wireless phones.

Respectfully submitted,



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August 5, 2014