



November 17, 2014

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

***Re: Petition for Declaratory Ruling From Consumer Bankers Association
(CG Docket No. 02-278)***

To whom it may concern:

The American Financial Services Association (“AFSA”)¹ supports the Petition for Declaratory Ruling (“Petition”)² filed by the Consumer Bankers Association (“CBA”). The Petition asks the Federal Communications Commission (“Commission”) to clarify that “called party,” for purposes of the Telephone Consumer Protection Act (“TCPA”)³ and the Commission’s rules,⁴ refers to the intended recipient of the call.

Like CBA members, 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 many of 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.

AFSA members obtain the required “prior express consent” from their customers before placing calls or sending text messages to wireless telephone numbers using an automatic telephone dialing system or an artificial or prerecorded voice, as specified by the TCPA and the Commission’s rules.

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 or text a phone number for which they had obtained prior express consent (the intended recipient), but reach a person who was reassigned that number and who had not given consent (the called party). AFSA members cannot completely avoid calling or texting reassigned wireless telephone

¹ 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.

² See *Consumer Bankers Association*, Petition for Declaratory Ruling, CG Docket No. 02-278 (filed Sept. 19, 2014).

³ Codified as 47 U.S.C. § 227.

⁴ 47 C.F.R. § 64.1200.

numbers because there is no public wireless telephone number directory, and individuals may change their phone numbers without notifying callers beforehand.

There are arguably two ways for a company to avoid violating the law in the case of reassignments. First, companies could discontinue important and often requested calls. This is contrary to the Commission's goal of making "sure the TCPA is not interpreted to inhibit communications consumers may want and that do not implicate the harms TCPA was designed to prevent."⁵ Second, companies could manually place calls. Manually placing calls is inefficient, unrealistic, and prohibitively expensive. As the Petition notes, manually placing calls ultimately imposes greater financial strain on consumers because it makes it impossible to reach a large number of consumers quickly, as is needed in the case of a data breach.⁶

In order to preserve important communications between financial institutions and their customers, the Commission should confirm that only intended recipients are called parties. Confirming that only intended recipients are called parties is logical and in line with Congress' intention. It is also consistent with the Commission's previous regulations.

The relief requested in the Petition is necessary because penalties of up to \$1500 per violation of the TCPA have provided plaintiffs' attorneys with fodder for lawsuits that enrich the attorneys rather than compensate their clients.⁷ 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.⁸ 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. In addition, the growing litigation could be a perverse incentive for subscribers not to notify callers that a telephone number has been reassigned.

Of course, AFSA understands that the Commission is concerned about protecting consumer privacy. We support the Petition's position that the requested relief would not permit institutions to continue calling a number once they are aware that it has been reassigned to someone other than the intended recipient. Once the caller learns that a number has been reassigned, further calls will justifiably be subject to TCPA litigation.

⁵ FCC Declaratory Ruling in the matter of GroupMe, Inc./Skype Communications (March 27, 2014) CG Docket No. 02-278.

⁶ *Petition* at 8.

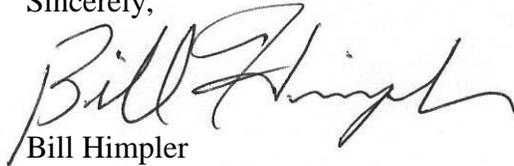
⁷ In fact, one law firm has developed an app, Block Calls Get Cash, in an attempt to encourage consumers to file TCPA claims. The app is available at <http://www.blockcallsgetcash.com/>. The website claims, "With a few taps, Block Calls Get Cash tracks potentially illegal calls from telemarketers and debt collectors and delivers the information about the call to Lemberg Law, the top consumer law firm in the country and to other participating law firms." The creation of the app demonstrates how eager plaintiffs' attorneys are to try to find TCPA violations.

⁸ Erin Hoffman, 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.

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We look forward to working with the Commission on this Petition. Please contact me by phone, 202-466-8616, or e-mail, bhimpler@afsamail.org, with any questions.

Sincerely,

A handwritten signature in black ink that reads "Bill Himpler". The signature is written in a cursive style with a large, sweeping "B" and "H".

Bill Himpler
Executive Vice President
American Financial Services Association