



March 16, 2015

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

Re: Petition for Exemption Filed By Citizens Bank Concerning Prior Express Consent Under the Telephone Consumer Protection Act (CG Docket No. 02-278)

To Whom It May Concern:

The American Financial Services Association (“AFSA”)¹ supports the Petition filed by Citizens Bank² (“Petition”) seeking clarification and/or a declaratory ruling regarding the scope of prior express consent under the Telephone Consumer Protection Act (“TCPA”).³ The Petition asks that the Federal Communications Commission (“Commission”) clarify that where a called party purposefully chooses to advertise his or her cell phone number, the called party has provided prior express consent to receive autodialed or prerecorded non-telemarketing informational calls to the number in question.

The Commission should clarify or rule that when a called party has taken purposeful and affirmative steps to advertise her cell phone number – in public advertisements, on business cards, throughout websites, on social media, etc. – as the contact point for normal business communications, non-telemarketing calls made to that cell phone number are exempt from liability under the TCPA. Not only is this basic common sense, but Congressional, Commission, and judicial precedent require the Commission to ensure that the TCPA’s prohibition on telemarketing calls does not unduly burden normal business communications. This is especially the case where – as opposed to the unsolicited telemarketing calls that fueled the TCPA’s passage – the called party has actively invited calls to her cell phone number.

AFSA encourages the Commission to grant this Petition and other, similar petitions.⁴ When the TCPA was passed in 1991, there were about 7.5 million cell phone subscribers in the United

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 *Petition of Citizens Bank, N.A.*, CG Docket No. 02-278, filed on Jan. 16, 2015.

³ The Telephone Consumer Protection Act (TCPA) is codified at 47 U.S.C. § 227.

⁴ For example, *Petition for Rulemaking of ACA International*, CG Docket No. 02-278 (filed Jan. 31, 2014), *Petition for Exemption of the American Bankers Association*, CG Docket No. 02-278 (filed on Oct. 14, 2014), *Petition for Declaratory Ruling of the Consumer Bankers Association*, CG Docket No. 02-278 (filed Sept. 19, 2014), *Petition for Expedited Declaratory Ruling of Santander Consumer USA, Inc.*, CG Docket No. 02-278 (filed on July 10, 2014), *Petition for Declaratory Ruling of the Retail Industry Leaders Association for Declaratory Ruling*, CG Docket No.

States.⁵ Currently, 90 percent of U.S. households use wireless service. Thirty-nine percent of those households are wireless-only and another 16 percent are wireless-majority.⁶ As important as our increased reliance on wireless telephone service is, the subscription cost to consumers for cell phones is significantly lower now than it was in 1991.⁷

Automatic telephone dialing technology benefits both the calling party and the party being called because it helps lower the costs of calling, makes it easier to dial the right number, and tracks the frequency and timing of the calls. Allowing companies to call their customers on their cell phones will not cause an increase in calls; it will only address how calls are made.

Granting this and other petitions will also curb the growing use of the TCPA as a money-making scheme. 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.⁸ 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.⁹ 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.

Some may argue that companies could simply place calls manually. Not only is that inefficient, unrealistic, and prohibitively expensive, but it will not necessarily protect against having to defend frivolous litigation. Some plaintiffs' attorneys are filing lawsuits based on the theory that even if a dialing system is not an automatic system right now, calls made using that system incur TCPA liability as long as the system has the capacity to be turned into an automatic system at some hypothetical point in the future.

* * *

02-278 (filed on Dec. 30, 2013), and *Petition for Expedited Declaratory Ruling of Stage Stores, Inc.*, CG Docket No. 02-278 (filed on June 4, 2014).

⁵ Infoplease, "Cell Phone Subscribers in the U.S., 1985–2010." <http://www.infoplease.com/ipa/A0933563.html>. Accessed on Feb. 19, 2015.

⁶ CTIA, "Wireless Quick Facts." <http://www.ctia.org/your-wireless-life/how-wireless-works/wireless-quick-facts>. Accessed on Feb. 19, 2015.

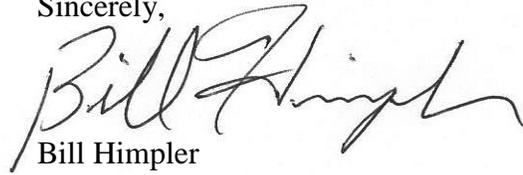
⁷ In 1995, the average U.S. consumer paid \$0.44 per minute for a cell phone call (CTIA Resource Library, <http://www.ctia.org/resource-library/facts-and-infographics/archive/average-consumer-voice-price>). In 2004, the average price per minute was down to \$0.09 (CTIA Resource Library, <http://www.ctia.org/resource-library/facts-and-infographics/archive/average-voice-2004>). Accessed Feb. 19, 2015.

⁸ 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.

⁹ 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.

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 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