

June 6, 2016

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

***Re: Notice of Proposed Rulemaking, CG Docket No. 02-278***

To Whom It May Concern:

The American Financial Services Association ("AFSA")<sup>1</sup> reiterates its request that the Federal Communications Commission (the "Commission") modernize the regulations implementing the Telephone Consumer Protection Act ("TCPA").<sup>2</sup> Technical advances have morphed the TCPA from providing beneficial consumer and privacy protections into a restrictive web, entangling businesses when they seek to serve their customers, schools when they need to contact parents, medical providers in communicating with patients, and politicians when they try to reach their constituents.

Generally, the TCPA needs to be updated to reflect the changes in technology and demographics since the law's enactment a quarter of a century ago. Specifically, AFSA asks that the Commission grant businesses the same exemption for debt collection calls that it grants to those collecting a debt owed to or guaranteed by the United States. We make this request in light of the Bipartisan Budget Act of 2015 ("Budget Act"),<sup>3</sup> which exempts from the TCPA's consent requirement auto-dialed calls that are made solely to collect a debt owed to or guaranteed by the United States. In the Notice of Proposed Rulemaking ("Notice"), the Commission discusses the regulations that will implement the Budget Act, but does not adequately provide the means by which to insulate legitimate business calls made in good faith and not for a prohibited purpose, from liability for violating the TCPA.

We can all agree that there are circumstances under which it is important that businesses be able to contact their customers on their cell phones. The problem is that as currently interpreted, the TCPA unduly restricts these reasonable and necessary contacts. We emphasize that AFSA members contact their customers to convey important, time-sensitive information. They contact their customers for a variety of reasons – to advise that a payment is due, to remind the consumer to make a payment before incurring a late fee, to offer a work-out plan, to alert that a lease is almost up, or to offer 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 promptly receive mail. Moreover, unlike 25 years ago, if cell phone is not the only way to reach the customer, it is likely the way the customer prefers to be contacted.

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<sup>1</sup> Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

<sup>2</sup> 47 U.S.C. § 227.

<sup>3</sup> Bipartisan Budget Act of 2015, Pub. L. No. 114-74, 129 Stat. 584.

According to the most recent figures from the Centers for Disease Control, over 128 million Americans use cell phones and not land lines, and these figures are even more common among less affluent Americans. People who live at or below the poverty level are more likely to forego landlines.<sup>4</sup> It is therefore critical to allow companies to serve this population to ensure that they do not fall behind on payments and get ensnared in debt (or incur penalties that could have been avoided with a simple reminder or warning message). That consumers often prefer to be contacted via their cell phones is proven by various surveys that show that nearly 90 percent of phone users want to be contacted via all available channels.<sup>5</sup>

## **I. Overview: The TCPA harms consumers and businesses, but is a boon to the plaintiffs' bar.**

There are several major problems with the TCPA and particularly with the Commission's 2015 Declaratory Ruling and Order (the "Order").<sup>6</sup> Specifically: (1) the definition of auto-dialer needs to be modernized and clarified; (2) issues raised by reassigned numbers need to be resolved; and (3) the ways in which a consumer can revoke consent need to be formalized. If these changes are not made, consumers may not get important information from the companies with which they do business, companies will have to choose between complying with conflicting statutes, and the plaintiffs' bar will continue to make millions exploiting statutory loopholes. The lack of clarity continues to be a generator of lawsuits being filed against companies when there is no underlying basis for the lawsuit in the first place. The cost of having to defend against these types of cases is astronomical and unnecessary.

### *A. Auto-dialers*

Enacted in 1991, the TCPA was intended to prevent consumers from being harassed by telemarketers using auto-dialing equipment to randomly contact individuals with unwanted and unsolicited calls. However, the statute's intended purpose is being thwarted. Under the Order, virtually all calls to cell phones are now regulated by the TCPA, even though Congress intended the statute to have only a very limited reach. The problem is that the Order clarifies that any telephone that has the "capacity" to store and dial telephone numbers is an auto-dialer. Therefore, all phones – except rotary phones – are now arguably auto-dialers. This is so because in today's world it is very difficult to use a telephone system that does not have, either as originally configured or as it could be modified, the capacity to generate, store, and dial random or sequential numbers. Every iPhone can, and virtually every modern desktop office phone can in some capacity or another. However, often the phones, while possibly having this capability, are not used in that fashion. This issue is even more complicated when the argument is made that the phone can be linked to a computer system (even if it is not). While this interpretation increases the Commission's power to regulate calls to cell phones, it is not consistent with Congressional intent or the plain language of the statute. More importantly, it deprives callers of a meaningful choice not to use an "auto-dialer," as every modern phone now arguably qualifies.

### *B. Reassigned Numbers*

Gone are the days when you would get one phone number and, barring a move out of state, the number would be yours until the day you died. Instead, each year 35 million phone numbers are reassigned: that's about 100,000 a day.<sup>7</sup>

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<sup>4</sup> Desilver, Drew, CDC: *Two of every five U.S. households have only wireless phones*. Pew Research Center. July 8, 2014. <http://www.pewresearch.org/fact-tank/2014/07/08/two-of-every-five-u-s-households-have-only-wireless-phones/>.

<sup>5</sup> Press Release, *A Phone Call Isn't Enough: New Survey Shows 89 Percent of Consumers Want Fraud Notification via Multiple Channels*, SoundBite Communications Inc., Apr. 5, 2010. <http://globenewswire.com/newsrelease/2010/04/05/417614/187982/en/Photo-Release-A-Phone-Call-Isn-t-Enough-New-Survey-Shows-89-Percentof-Consumers-Want-Fraud-Notification-via-Multiple-Channels.html>.

<sup>6</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Declaratory Ruling and Order.

<sup>7</sup> Notice, p. 22.

AFSA members regularly obtain “prior express consent,” as the TCPA requires, from their customers. However, sometimes cell phone numbers for which AFSA members have obtained consent are reassigned from one subscriber to another. Thus, AFSA members may call a phone number for which they had obtained consent, but reach a person who was reassigned that number and who had not given consent. Unless someone answers the phone and advises that the customer no longer has that phone number, AFSA members cannot completely avoid calling reassigned numbers. It might be different if there were a public cell phone number directory, but there is not. Additionally, AFSA members (and indeed all businesses) face the problem that individuals change their phone numbers without notifying those to whom they provided their numbers (lenders, doctors, schools, etc.), beforehand. Even so, according to the Order, when a business calls a cell phone number without knowledge that the number has been reassigned, it can make only one call to the old number before subsequent calls violate the TCPA – even where the business has no way of knowing that the number is no longer the customer’s number.

This is the height of unfairness. Given this interpretation, one of two things will happen, both of which are bad and neither of which was intended by Congress. One, businesses will choose not to communicate with consumers in order to avoid expensive lawsuits. Result: consumer harm as consumers will not receive important information and they will incur charges (such as late fees) unnecessarily. Two, businesses will choose to continue attempting to serve their customers at the significant risk of expensive litigation. Result: consumer harm as prices will have to be adjusted to offset the payments to plaintiffs’ law firms –the only true beneficiaries of TCPA litigation.

### C. Revocation

Express consent is now just a trap. A business can no longer safely rely on consent because, as noted above, a number may change hands without warning. In addition, a customer may revoke consent by “any reasonable means.”<sup>8</sup> While AFSA does not oppose the idea that consent may be revoked, the problem is that there is no real formula for revocation. What words must be used? What sort of revocation is clear enough to count? The Order does not provide these desperately needed answers. This is chilling speech and ending time-sensitive messages to consumers.

These unfortunate consequences stem from fear that, for instance, a consumer might revoke consent to receive text messages from McDonald’s by telling the employee at the drive-thru window that she does not want any more texts. Or that, after asking an employee in CVS where the wrapping paper is, a consumer may make an off-hand comment, such as, “I wish that CVS wouldn’t call my cell,” and that may count as revoking consent. If the Commission did not intend such results, it certainly failed to say so in the Order. AFSA members cannot risk that some jury may find these examples “reasonable.” In contrast, other statutes such as the Fair Credit Reporting Act or the Fair Debt Collection Practices Act include specific steps a consumer must take to revoke consent. In fairness, the Commission should provide for a reasonable standard, such as requiring revocation in writing.

### D. Consequences

Because of the above referenced short-comings in the TCPA, the law has become fertile ground for class action lawsuits. The TCPA is a strict liability statute where one error, such as a call to a number for which the caller had consent but which was reassigned, can result in a violation. The cost for each violation is steep. It’s a whopping \$500 - \$1,500 per call. This is worse than the penalty in most states for most truly anti-social behaviors – such as parking in a handicap spot or littering. Yet the harm caused by each call is *de minimus*.

While the Commission may wish to regulate calls to cell phones, its expansive re-write of the statute has really just empowered the plaintiff’s class action bar. With “bounties” set up to \$1,500 a call, the number of TCPA lawsuits has been dramatically increasing. “According to the latest report from WebRecon covering the credit industry alone, filings under the TCPA increased by 45 percent in 2015 and reached an all-time high of 3,710. The year-to-year growth has been steady with no end in sight. In 2007, there were only 14

8 FCC Order ¶ 64.

TCPA cases; by 2010, the number increased to 354. In 2011, the cases spiked to 840 and to more than 1,000 starting in 2012.”<sup>9</sup>

And the settlements are expensive for the companies trying to reach their customers. “Since 2012, the TCPA has been used to extract large settlements from many companies, including Capital One for \$75 million; JPMorgan Chase for \$34 million; AT&T for \$45 million; MetLife for \$23 million; Bank of America for \$32 million; Papa John’s Pizza for \$16 million; Walgreen’s Pharmacy for \$11 million, and the list goes on. For smaller, minority- or community-based businesses, a TCPA claim could mark the end of their existence,”<sup>10</sup> even if they have committed no wrong.

Of course, as documented by Hoffman, consumers only see a very, very small portion of this money; plaintiffs’ lawyers are overwhelmingly the beneficiaries of this asset-reallocation scheme: “In 2014, the average consumer received \$4.12 from a TCPA class-action settlement. Plaintiffs’ lawyers received an average of \$2.4 million.”<sup>11</sup>

A recent appellate court opinion involving the TCPA concurred:

“Indeed, these [TCPA] cases are not about how insureds face ruinous liability for their conduct in sending unsolicited fax advertisements or compensating members of the class. Rather, they have everything to do with compensating the lawyers of the class.

“We observe at the outset that the attorneys’ calculation of damages in TCPA class actions is disingenuous. Specifically, the calculated damages (# of faxes x \$500 per fax (or treble that) = liability) do not correspond with the number of class members who are likely to join the class and benefit from the litigation. That is, attorneys in class action TCPA cases are acutely aware that only a handful of persons or entities who receive the offending fax transmissions will actually come forward to pursue a claim. The low response rate can also perhaps be attributed to the method of reaching these class members, which is via yet another unsolicited fax or mailing which they will in all likelihood disregard as ‘junk.’ Class attorneys, however, all too often aim to solidify a fund via the settlement negotiations in order to satisfy their hefty fee petition rather than their fiduciary obligations towards safeguarding class members’ interests.

“This case is typical of the TCPA class action cases.”<sup>12</sup>

The proliferation of these lawsuits has bad public policy consequences. First, as noted above, it has a chilling effect on communication between lenders and borrowers. Lenders are choosing not to make certain useful and informative calls because the risk of a TCPA violation is too great. This is especially true since the “choice” not to use an “auto-dialer” is an illusory one after the Order. The result could be the consumer not receiving information the consumer wants to know, e.g., an account has become delinquent, or fraudulent activity might have occurred on an account.

Second, in an effort to avoid the strict liability that comes with the statute, lenders may (and some already have) decide to move their call centers to countries with low wages where the calls can be made at an affordable rate from rotary or simple push-button phones. This is not a move that American companies want to make, and it is still not a foolproof guarantee against litigation. It is also not in our country’s best interest because many account representative and customer service jobs are good, well-paying jobs. However, the near impossibility of complying with the TCPA and the increase in litigation may force many companies to make these unwelcome decisions.

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9 Hoffman, Adonis. *Does TCPA Stand for ‘Total Cash for Plaintiffs’ Attorneys’?* The Hill. Feb. 17, 2016. <http://thehill.com/blogs/pundits-blog/technology/269656-does-tcpa-stand-for-total-cash-for-plaintiffs-attorneys>

10 *Ibid.*

11 Hoffman, Adonis. *Sorry, Wrong Number, Now Pay Up*. WSJ. June 15, 2015. <http://www.wsj.com/articles/sorry-wrong-number-now-pay-up-1434409610?K>.

12 *First Mercury Insurance Company v. Nationwide Security Services, Inc.*, 2016 IL App (1st) 143924. ¶ 44 - 46.

Third, the TCPA's restrictions force some lenders to choose between competing statutes. For example, the Department of Housing and Urban Development has adopted policies that require servicers of Federal Housing Administration ("FHA") to contact borrowers within 20 days of delinquency.<sup>13</sup> Moreover, Fannie Mae and Freddie Mac, both government sponsored entities, require servicers of their loans to call delinquent borrowers as part of their loss mitigation efforts.<sup>14</sup> And, the Consumer Financial Protection Bureau's ("CFPB") mortgage servicing rules require contact with the borrower.<sup>15</sup> As a result, these mortgage servicers are left with a Hobson's choice: not placing calls to cell phones in order to avoid TCPA liability and accepting liability for failure to perform these loss mitigation requirements, or placing calls to cell phones in order to comply with those laws and risking TCPA liability.

## II. Notice of Proposed Rulemaking

In the best interest of the consumer, the TCPA should be modernized to address the issues discussed above. If the Commission decides not to address those issues, we ask that the Commission still make important changes the proposal laid out in the Notice. We ask that the Commission exempt all debt collection calls, not just those made to collect a debt owed to or guaranteed by the United States. Further, we ask the Commission to honor the Congressional intent of the exemption and remove or expand the restrictive provisions in the Notice. We also ask that the Commission remove the limit on the number of covered calls. And, we ask that the Commission expand the definition for covered calls. We ask that the Commission not limit the duration of the calls. Lastly, we answer the Commission's question about other actions that can be taken to reduce unwanted debt collection calls."

### A. Exemption for All Calls

The Budget Amendment directs the Commission to exempt from the TCPA's consent requirement auto-dialed calls made to collect a debt owed to or guaranteed by the United States. The White House issued the following statement upon the passage of the Budget Amendment: "In an age where more and more Americans rely on cell phones, often exclusively, it is important to be able to alert those who owe money to the government if they are in danger of default, which can harm their ability to secure credit long term. In the case of Federal student loan debt, if loan servicers are able to contact a borrower, they have a much better chance at helping that borrower resolve a delinquency or default."<sup>16</sup> We agree. Early intervention helps consumers, regardless of whether it is a private or government loan. Consumers may not relish receiving debt collection calls, but those calls can help the consumer work out a manageable payment plan – a far better outcome for the consumer than default, with the attendant consequences to the consumer's credit rating. At the very least, private lenders should enjoy the same exemption that government lenders receive under the Budget Act. And there is no reason the Commission cannot or should not apply the same exception to business collection calls.

### B. Limits on the Number of Calls

In its Notice, the Commission proposes limiting the exemption to three calls per month, per delinquency. With this qualification, the Commission stymies the purpose of the Budget Act. Indeed, the Commission opts to apply, wholesale, the restrictions and "clarifications" of its Order onto the calls that Congress specifically intended to remove from TCPA coverage. This is not at all consistent with the amendment Congress passed. As anyone who has tried to reach a delinquent borrower knows, three calls per month are rarely sufficient, especially if those three calls are not answered.

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13 *Methods of Communications with Borrowers*, Mortgagee Letter 2013-39. HUD October 28, 2013.

14 Freddie Mac, *Single-Family Seller/Servicer Guide and Fannie Mae, Servicing Guide*.

15 *Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X)*, 78 Fed. Reg. 10696-01 (Feb. 14, 2013).

16 Trujillo, Mario. *Dems to Push Bill Repealing Robocall Provision of Budget Deal*. The Hill. Oct. 30, 2015. <http://thehill.com/policy/technology/258670-dems-to-push-bill-to-repeal-robocall-provision-of-budget-deal>.

It takes more than three calls to determine why the customer is delinquent, re-establish the relationship with the customer, and determine which loss mitigation option would best benefit a borrower. It could take three or more calls for the borrower to even pick up the phone. Loss mitigation options may be complicated, requiring multiple calls, and many companies cannot simply go out to meet with the consumer face to face to discuss their loan arrangement.

It is important for all lenders to reach their borrowers to help them meet their debt obligations because making payments can save borrowers money; prevent bankruptcy, foreclosure, or repossession; and improve the borrowers' credit scores. There is an added layer of benefit in helping borrowers pay off their federal government debt. When federal government debt is paid, it helps the taxpayer, as well. If federal government debt is not paid, the taxpayer not only loses money, but less money may be available to help other borrowers.

Calls at the early stages of delinquency are particularly important. To "promote prompt and effective contact with [Federal Housing Administration ("FHA")] borrowers," and ensure borrowers are able to communicate with their servicers regarding ... loss mitigation assistance," the Department of Housing and Urban Development ("HUD") has adopted policies that require servicers of FHA loans to commence telephone contact with borrowers within 20 days of delinquency.<sup>17</sup> Ingrid Beckles, vice president of servicing and asset management at Freddie Mac, commented, "We find 30-day delinquencies often cure themselves as homeowners become current after falling behind. Forty-five to 60 days is our sweet spot when we try to refer homeowners for counseling. After 90 days, it's often too late. Legal fees that must be paid are triggered when foreclosure starts and arrearages become difficult to pay off."<sup>18</sup> There is no difference in this regard from between the government's efforts and private businesses' efforts.

Several federal agencies have realized the need for more than three calls to reach delinquent borrowers. For example, HUD has adopted a policy that requires servicers of FHA loans to continue making telephone calls to delinquent borrowers two times a week, at varying days and times, until contact is established or the servicer determines that the property is vacant or abandoned.

In another example, Fannie Mae and Freddie Mac require servicers of their loans to call delinquent borrowers as part of the servicers' loss mitigation efforts. Under Freddie Mac guidelines, servicers must make, "personal contact with the Borrower as early and as often as necessary to cure the delinquency."<sup>19</sup> The guidelines also require the servicers to continue to contact the borrower if satisfactory arrangements have not been made to cure the delinquency or until the servicer determines that foreclosure is appropriate. Fannie Mae has similar requirements.<sup>20</sup> The Freddie Mac guidelines specify that telephonic contact must be the servicer's primary method of contact. Moreover, telephonic contact is mandated at certain times. After a specific event, calls are required every three days and must continue for 36 days until it is clear that the borrower does not want loss mitigation, the delinquency is cured, the borrower returns a response package, or the borrower enters into a repayment plan.<sup>21</sup> Freddie Mac requires servicers to make calls every third day, upon certain triggers.<sup>22</sup> Bill Merrill, managing director of Freddie Mac's nonperforming loan servicing unit, has said, "Outbound phone contact is the most efficient method of communication and has produced the best results to increase contact rates,"<sup>23</sup> Again, these statements apply just as readily to private business as they do to government businesses, and there is no reason to distinguish between the two.

In a third example, even the CFPB has a mortgage servicing rule that *requires* servicers to contact defaulted borrowers and work with them to explore loss mitigation options. Under the rule, servicers *must* "establish

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17 *Mortgagee Letter*.

18 Rolland, Keith L. *Nonprofits Held Freddie Mac and Servicers Reach Borrowers*. Federal Reserve Bank of Philadelphia. Fall 2007.

19 Freddie Mac, *Single-Family Seller/Servicer Guide*, vol. 2, ch. 63.2(b). Sept. 15, 2014.

20 Fannie Mae, *Servicing Guide*, ch. D2-2, at 406-410.

21 *Single-Family Seller/Servicer Guide*, Vol. 2, Ch. 63.2.

22 *Ibid.*

23 *Rolland*.

or make good faith efforts to establish live contact with a delinquent borrower...<sup>24</sup> The CFPB specifies that this may include calling the consumer more than once. It is obvious why this CFPB rule is important: to benefit consumers. There is no difference between the benefit to consumers as a result of CFPB requirements and benefits to consumers as a result of businesses' efforts to help consumers avoid fees or receive other important information in a timely manner.

AFSA members agree with the federal agencies' philosophies discussed above. If AFSA's members can contact their customers, they can work with the customers to explore loss mitigation options. Where there is class action risk because an auto-dialer is, AFSA members may be more likely to simply exercise their remedies if the customers do not resolve their own payment issues. Diminished communications is not a benefit to any consumer who becomes delinquent on an obligation to a creditor.

### C. Covered Calls

The Notice specifies that the Commission is proposing to interpret the phrase, "solely to collect a debt" in the Budget Act to mean only those calls made to obtain payment after the borrower is delinquent on a payment. The Commission is seeking comment on: (1) how it should interpret "delinquent;" (2) whether instead of only capturing calls made to obtain payment after the borrower is delinquent, covered calls should only include those made after the debtor is in default; (3) whether debt servicing calls should be covered; (4) the meaning of the phrase "a debt owed to or guaranteed by the United States."

Because it is important to warn a customer of a possible delinquency or default as soon as possible, covered calls should include calls to both delinquent borrowers and borrowers in default. They should address any calls to service an obligation so the customer is aware of the status of the customer's obligation. Covered calls should include an account the day after the payment is due. The Commission should define "delinquent" as being one day late on a payment. As noted above, the sooner a lender or servicer can reach a borrower; the more likely borrower will make a payment, become current, or explore loss mitigation options.

Borrowers in default also require live contact because of the complexity of loss mitigation discussions and the necessity of information from the consumer. We repeat, though, that the three-call limit is not sufficient for these types of phone calls.

Debt servicing calls should be covered by the exemption as well. To really help consumers keep their good credit rating, or improve a bad one, the Commission should not limit the exemption to calls about delinquent debt, but should include debt servicing calls, which can help consumers avoid trouble before it starts. At a recent field hearing, CFPB Director Cordray emphasized the importance of communicating with customers, saying, "Let me also take a moment to acknowledge another positive development, which is the decision some banks and credit unions have made to provide consumers with real-time information about the funds in their accounts available to be spent. They are doing this through various means, including online banking and text and e-mail alerts, which can reduce the risks that consumers inadvertently overspend their accounts."<sup>25</sup>

Lastly, the Commission seeks comment on what is meant by the phrase "a debt owed to or guaranteed by the United States." This is a complex question and the complexity demonstrates why all calls to collect a debt should be included in the exemption. The question is complex because the federal government backs mortgage debt in many ways. For example, the federal government backs and takes the credit risk on many loans to which it does not hold legal title. Furthermore, although most consumer mortgage loans in this country have federal backing, some do not. However, a loan without federal backing can acquire that backing if it is sold to Fannie Mae or Freddie Mac for securitization. This sale can occur after the loan is originated. In another example, as explained above, the CFPB's mortgage servicing regulation applies to

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<sup>24</sup> *Mortgage Servicing Rules.*

<sup>25</sup> Cordray, Richard. *Remarks of CFPB Director Richard Cordray at a Field Hearing on Checking Account Access.* Feb. 3, 2016.

servicers regardless of whether the loans they service have federal backing. This demonstrates that federal policy supports foreclosure prevention for fully private loans and for federally-backed loans.

#### *D. Limits on the Duration of Calls*

The Commission also considers limiting the duration of the calls. As Commissioner O'Reilly opines in his dissent, "The NPRM reaches the height of absurdity when it asks whether there should be a maximum duration for a voice call, including autodialed calls with a live caller. [emphasis original] It is incredible that the Commission would think of requiring a caller to hang up in the middle of an important conversation with a borrower."<sup>26</sup> It is also unnecessary to limit the length of text messages, as those are kept short anyway. A long text message would get split up into multiple texts and could confuse the borrower. The issue of the difficulty of how one would monitor the durations of calls aside, if a consumer is unhappy with a call they do have the option of simply ending it themselves.

#### *E. Other Actions*

In the Notice, the Commission asks, what other actions it should consider to reduce unwanted debt collection calls. The Commission should leave this task to the CFPB, the agency whose stated mission is to make consumer financial markets work for consumers, responsible providers, and the economy as a whole. That agency is already working on a debt collection rule. Having multiple agencies writing rules on the same issue could result in policies that are inconsistent and confusing for both consumers and lenders.

Furthermore, if the Commission really wants to help consumers, it should focus on "spoofing," which is when a caller deliberately falsifies the information transmitted to the Caller ID display to disguise their identity, or on illegal telemarketing calls made by an entity with no relation with the consumer. As Commissioner Pai states in his dissent, "If there is one thing Americans can agree on, it's that nobody wants to get robocalls. Whether you are sitting down for dinner or trying to unwind at the end of a long day, the last thing you want is to hear 'Rachel from Cardholder Services' on the other end of the line."<sup>27</sup> Providing an exception for companies servicing their debt is not going to have any effect on calls from "Rachel from Cardholder Services." Consumers are very annoyed by calls from "Rachel" and other illegitimate business ignoring the Do Not Call list, but the Commission's Order and this Notice do nothing to stop those kinds of calls.

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26 Notice, p. 26.

27 Notice, p. 22.

### III. Conclusion

The Commission should revise its Order to modernize a statute governing calls to cell phones that was written when cell phones looked like this:



Only a few people had them and the plans were expensive. Now, even some young children have cell phones. The phones have been updated. The plans have been modernized. It's time for the regulations to change, too.

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 written in a cursive, flowing style.

Bill Himpler  
Executive Vice President  
American Financial Services Association