

November 3, 2020

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street NW
Washington, DC 20554

Re: Notice of Proposed Rulemaking, *Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, 85 Fed. Reg. 64,091

Dear Ms. Dortch:

The American Financial Services Association (AFSA)¹ appreciates the opportunity to file reply comments regarding the Federal Communications Commission's (the Commission) Notice of Proposed Rulemaking (NPRM) to implement Section 8 of the Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act.²

AFSA strongly supports the Commission's efforts to protect individual privacy without preventing calls customers want and need. We previously expressed similar sentiments in our response to the Commission's Report and Order mandating that all originating and terminating voice service providers implement the STIR/SHAKEN caller ID framework by emphasizing the necessity of ensuring that legitimate calls are not blocked or mislabeled.

In our letter, AFSA discusses two exemptions the Commission has carved out to comply with the TRACED Act: the *Non-Commercial Calls to a Residence* (Informational Calls Exemption) and the *Financial-Institution Calls to a Wireless Number* (Financial Institutions Exemption).

I. Background

As you know, the Telephone Consumer Protection Act (TCPA) restricts certain calls and text messages unless the caller has the prior expressed consent of the called party, the calls are for an emergency purpose, or the calls are subject to an exemption. Among the types of communication that are restricted under the TCPA are calls made using an artificial or prerecorded voice, as well as those made by an automatic telephone dialing system (autodialer). The TCPA authorizes the Commission to exempt certain calls from these restrictions and the TRACED Act mandates the Commission to ensure that any exemption to the TCPA include specific requirements with respect to: "(i) the classes of parties that may make such calls; (ii) the classes of parties that may be called;

¹ 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.

² Notice of Proposed Rulemaking, Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, 85 Fed. Reg. 64,091 (Oct. 9, 2020), available at <https://www.govinfo.gov/content/pkg/FR-2020-10-09/pdf/2020-22331.pdf>

and (iii) the number of such calls that a calling party may make to a particular called party.”³

II. Informational Calls Exemption

The Commission is seeking comment on whether to add a numerical limit on the number of calls made to a called party under the exemption for calls “that are not made for a commercial purpose.” AFSA members make many important calls under this exemption, including: calls to customers concerning COVID-19-related forms of relief such as payment deferrals and fee waivers, branch hours and closings, and measures the financial institution is taking to prevent the spread of COVID-19.

Because many of these important, and often time-sensitive, calls are made to protect the financial security and personal health of their customers, we urge the Commission not to limit the number of communications an institution can make. Instituting such a limit could lead to unnecessary risk for consumers. Additionally, implementing a limit could discourage financial institutions from placing important notifications to their customers due to the risk of litigation.

The Commission is also considering an opt-out right for customers. The opt-out right would prohibit the calling party from making additional calls after the request is made. AFSA believes that such an opt-out provision would ultimately harm consumers because they would miss important, timely messages. However, if any opt-out right is granted, it must be via a “clearly-defined and easy-to-use opt-out method[s]” provided by the financial institutions as recommended by the U.S. Court of Appeals for the District of Columbia Circuit in *ACA International v. FCC*.

III. Financial Institutions Exemption

AFSA strongly supports the Financial Institutions Exemption, as it would enable financial institutions to quickly contact their customers to protect their financial security. Communications which require a timely notification to customers include data breach notifications and COVID-19-related calls, as outlined above. The Commission should finalize the exemption but remove the conditions to the exemption it is proposing. The conditions outlined do not comply with section 8 of the TRACED Act and would unnecessarily impede important communication.

AFSA appreciates the Commission’s attention to these issues. Please do not hesitate to contact me at 202-776-7300 or cwinslow@afsamail.org with any questions.

Sincerely,



Celia Winslow
Senior Vice President
American Financial Services Association

³ Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274, § 8 (2019).