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Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
The Telephone Consumer) CC Docket No. 92-90
Protection Act of 1991)

COMMENTS OF THE
CONSUMER BANKERS ASSOCIATION

The Consumer Bankers Association (CBA) hereby submits its comments in response to the Notice of Proposed Rulemaking (NPRM), released by the Commission on April 17, 1992, in the above captioned proceeding.

The Consumer Bankers Association was founded in 1919 to provide a progressive voice for the retail banking industry. CBA represents approximately 700 federally insured banks, savings and loans and credit unions that hold more than 80 percent of all consumer deposits, and more that 70 percent of all consumer credit held by federally insured depository institutions.

I. INTRODUCTION

These comments are submitted on behalf of the Consumer Bankers Association (CBA) regarding the Commission's Notice of Proposed Rulemaking (NPRM), FCC No. 92-90 to implement the Telephone Consumer Protection Act of 1991 (TCPA). Generally, CBA supports the implementation of responsible regulations relating to the use

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of automatic dialing equipment, using both artificial or pre-recorded messages and live operators. CBA believes that the proposal put forth by the Commission strikes the right balance between protecting the legitimate privacy concerns of the public and the need to allow the marketplace to benefit from important technological advances. It is our view that the issues we raise are easily resolvable and that, particularly in the area of debt collection, the applicability of the TCPA has been fairly addressed.

CBA wishes to emphasize the importance of automated dialing and messaging technology to the financial services industry. Use of this technology has become an essential, necessary component of credit card and student loan servicing. Without the efficiencies achieved through use of autodialing technology in these businesses, servicing costs on these loans would be substantially higher. The result would be higher costs for the consumers of both of these valuable products.

II. EXCEPTIONS TO THE PROHIBITED USE OF AUTODIALERS

As directed under Section 227 (B) (2) (B) of the Act, the Commission has tentatively recommended that certain categories of telephone calls be exempted from the prohibition on the use of autodialing equipment. CBA agrees with the Commission's view that debt collection calls do not involve solicitation and represent

a non-telemarketing use of autodialers and therefore were not intended to be prohibited by the TCPA. Furthermore, CBA agrees with the Commission's view that in all debt collection circumstances, a prior or preexisting business relationship has indeed been established between the called party and the calling party or their agent. Such calls are commercial in nature but do not, because of the absence of solicitation, present an invasion of privacy.

The legislative history of the TCPA supports this exemption for debt collection-related calls. Congressman Markey, a key sponsor of the TCPA, referenced student loan collection activities specifically as an example of appropriate application of automated telephone technology when the TCPA conference report was brought before the House of Representatives. Therefore, CBA recommends that in its final rule the Commission clearly state a debt-collection exemption.

III. AUTODIALED CALLS TO EMERGENCY LINES

The NPRM would implement Section 227 (b) (1) (A) of the TCPA by prohibiting autodialed calls to emergency line numbers, paging services, healthcare related facilities, and in any other situation where the called party is charged for the call, unless "prior consent" has been provided by the called party or the call is in response to an emergency. CBA supports the Commission's proposed

prohibition and its desire to eliminate other abusive practices. CBA notes, however, that the final rule should draw a clear distinction between predictive dialing and the automated delivery of a recorded message. Predictive dialing is a technology that allows for the automated dialing of pre-programmed numbers. It is simply a time-saving feature that does not involve the delivery of any message and therefore is not intrusive of privacy.

CBA recommends that the NPRM be clarified to permit autodialed calls to these four categories of telephone listings if the called party has granted consent. Though CBA agrees with the intent behind this prohibition, concerns have been raised about the determination of liability or the imposition of fines where the party placing the call in fact received the number from a debtor or client and was unaware that the location was a prohibited destination. CBA believes that further guidance or clarification should be provided by the Commission to address these and similar circumstances in light of the penalties that could be imposed.

IV. TECHNICAL AND PROCEDURAL STANDARDS

The Commission is mandated under the Act to prescribe technical and procedural standards for systems that are used to transmit any artificial or prerecorded voice message via telephone. Calls which generate an artificial voice message generally are of very short duration and simply state "please hold the line for a

live operator". Their sole purpose is to request that the called party wait on the line to establish a live connection. By mandating that all artificial or prerecorded telephone messages shall, at the beginning of the message, state clearly the identity of the business, individual, or other entity initiating the call, the Commission creates two potential conflicts for calls related to debt collection. First, a live operator is generally available to talk with the called party within moments of making a connection and it is likely the message would be interrupted. Second, debt collection calls are regulated by the Fair Debt Collection Practices Act which specifically prohibits debt collectors from identifying their employers. This prohibition is designed to insure the privacy of the called party.

CBA recommends that the Commission clarify that the technical standards, except for the five second disconnect requirement, do not apply to collection calls when the collection operator uses the autodialer simply to dial a number. In these instances the called party will hear an automated message that requests that they hold the line for a live operator. No solicitation or commercial message is provided. The calls are regulated by the Federal Trade Commission through implementation of the Fair Debt Collection Practices Act and therefore do not warrant further oversight.

V. REGULATORY ALTERNATIVES TO RESTRICTING
TELEPHONE SOLICITATION

The Commission is directed by the Congress under the provisions of the TCPA to compare and evaluate alternative methods and procedures which would provide consumers with protection against telemarketing contacts which they view as intrusive and an invasion of privacy. CBA has reviewed the four alternatives proposed in the NPRM and recommends that the Commission in its final rule endorse the development and use of industry-based or company-specific "do-not-call" listings. This method is the most cost-efficient, readily enforceable strategy presented. As the President himself stated at the signing ceremony for S. 1462, the Commission has the regulatory flexibility to avoid "unnecessary regulation or curtailment of legitimate business activities" and to "ensure that the requirements of the Act are met at the least possible cost to the economy". Clearly, company-specific listings are the only method available at this time which would meet those two important criteria.

A company specific do-not-call requirement would provide consumers the opportunity to inform a company that they do not wish to be called. It would strike the correct balance between protecting consumer privacy interests and allowing companies to engage in appropriate telemarketing activities to those individuals

interested in the goods and services they make available. It should be noted that the majority of businesses which engage in telemarketing already maintain such lists and, as an industry, telemarketers support this requirement. Businesses and customers both have found the do-not-call listings to be effective. Large money center banks generally maintain 800 numbers for credit card holders who do not wish to be contacted. They are informed several times annually of the availability of these listings.

CBA believes that the establishment of a national data base would be unnecessarily costly and would put consumer privacy at even greater risk. Maintaining the accuracy and confidentiality of such a national database would be an extraordinarily expensive and difficult task.

In order to ensure the effective use of in-house do-not-call listings by all businesses, CBA recommends that the following criteria be met in order to establish compliance with such a requirement imposed by the Commission:

- 1) All telemarketing companies must have written policies governing the development, use and upkeep of do-not-call listings.

- 2) All personnel must be informed about the listings and receive training on informing customers about this requirement.

3) Customers should be notified about the existence of such listings and how to have their names added to or deleted from such listings at regularly prescribed intervals.

4) Customers requesting placement on a do-not-call listing at a company within a larger corporation having multiple affiliates and subsidiaries should be required to notify each affiliate of their desire to appear on each affiliate's listing to be so included.

CBA believes that company-specific do-not-call listings, plus reasonable time-of-day restrictions (8:00 a.m. to 9:00 p.m.) as proposed by the Commission, provide adequate protection for consumers against telemarketing abuses and are readily achievable by the industry.

VI. CONCLUSION

CBA commends the Commission's efforts to achieve the privacy concerns outlined in the TCPA through means which will not unnecessarily deter use of technology which has such obvious economic benefits. CBA believes that the final rule should include an explicit exemption for debt collection calls under the TCPA as non-solicitations that are inherently based on a prior business relationship and as adequately regulated by the FTC under the standards prescribed in the Fair Debt Collections Act.

Additionally, CBA endorses the requirement that companies maintain and use in-house do-not-call listings and adhere to reasonable time-of-day restrictions regarding telemarketing practices.

Respectively submitted,

A handwritten signature in cursive script, appearing to read "Joe Belew".

Joe Belew
President
CONSUMER BANKERS ASSOCIATION

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