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Via ECFS

March 10, 2017

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: Petition for Rulemaking and Declaratory Ruling Regarding Prior Express Consent under the Telephone Consumer Protection Act of 1991 (CG Docket Nos. 02-278 and 05-338)

Dear Ms. Dortch:

The Independent Community Bankers of America[1] (ICBA) appreciates the opportunity to respond to the *Petition for Rulemaking and Declaratory Ruling ("Petition")* regarding "prior express consent" under the Telephone Consumer Protection Act (TCPA). ICBA urges the Federal Communications Commission ("Commission") to deny the Petition.

The Petitioners, Craig Moskowitz and Craig Cunningham, believe that the Federal Communications Commission's ("Commission") interpretation that *express consent includes implied consent*, is incorrect. They have requested the Commission to require all calls to wireless or residential lines be subject to consent that is expressly stated, specifically to receive autodialed/artificial or prerecorded calls, to a specified number, and in writing.[2]

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[1] The Independent Community Bankers of America®, the nation's voice for more than 5,800 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services.

With 52,000 locations, nationwide, community banks employ 760,000 Americans, hold $4.7 trillion in assets, $3.7 trillion in deposits, and $3.2 trillion in loans to consumers, small businesses, and the agricultural community. For more information, visit ICBA's website at www.icba.org.

[2] 47 U.S. Code § 227(b)(1)(A)(iii), § 227(b)(1)(B)

ICBA urges the Commission to leave, intact, its current interpretation that prior express consent includes implied consent given when a person knowingly provides their phone number "absent instructions to the contrary."[3]

Reversing the interpretation would impede community banks' ability to call customers to discuss important and urgent matters such as those concerning: credit application processing; return calls from customer service; calls notifying customers of account balances and potential overdrafts; calls made pursuant to Bank Secrecy Act monitoring; and, calls pertaining to fraudulent transactions and identity theft. Granting the request could be harmful to consumers, as the placement of calls to discuss the types of scenarios listed above could be rendered nearly impossible.

The Commission should not lose sight of the TCPA's intent which is to address the privacy interests of consumers by placing restrictions on unsolicited and automated calls and faxes made by telemarketers. Financial institutions conducting important and urgent customer service-related calls were not intended to be swept into the prohibitions of the TCPA, and therefore should not be subjected to the burden imposed by this Petition.

ICBA appreciates the opportunity to respond to this Petition. If you have any questions or would like additional information, please contact Rhonda Thomas-Whitely (Rhonda.Thomas-Whitley@icba.org) at 202-659-8111.

Sincerely,

/s/

Rhonda Thomas-Whitley
Assistant Vice President & Regulatory Counsel

[3] 7 FCC Rcd. 8752, 71 Rad. Reg. 2d (1992)