

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C.

ORIGINAL
FILE

In the Matter of

Rules and Regulations Implementing)
the Telephone Consumer Protection)
Act of 1991)

CC Docket No. 92-90

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To: The Commission

PETITION FOR RECONSIDERATION AND CLARIFICATION

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Household International ("Household"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, hereby petitions the Commission to reconsider and clarify, in part, the Report and Order in the captioned proceeding.¹ For its petition, Household states as follows:

PROCEDURAL MATTERS

Certain of Household's business activities will be affected by the rules and policies promulgated in the R&O. Household previously attempted to protect its interests in the subject proceeding through the timely filing of both comments and reply comments in response to the Notice of Proposed Rulemaking initiating this proceeding.² Household, therefore, has standing to seek reconsideration and clarification of the R&O.

¹ Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CC Docket No. 92-90, FCC 92-443, 57 Fed. Reg. 48333 (1992) ("R&O").

² Notice of Proposed Rulemaking, 7 FCC Rcd 2736 (1992) ("NPRM").

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The R&Q was released October 16, 1992, and a summary thereof was published in the Federal Register on October 23, 1992. Accordingly, this petition is timely filed pursuant to the provisions of Section 1.4 of the Commission's Rules.

DEBT COLLECTION CALLS

Established Business Relationship

In its comments and reply comments, Household urged the Commission to adopt a specific exemption from the prohibitions of the Telephone Consumer Protection Act of 1991 ("TCPA")³ for debt collection calls. In the R&Q, however, the Commission concluded that such an express exemption was unnecessary because debt collection calls were "adequately covered" by other exemptions adopted by the R&Q.⁴ Specifically, the Commission found debt collection calls to be exempt as: "(1) calls from a party with whom the consumer has an established business relationship, and (2) commercial calls which do not adversely affect privacy rights and which do not transmit an unsolicited advertisement."⁵

While concurring in the Commission's determination that debt collection calls are covered by both of the above-cited exemptions, Household finds that certain other statements set forth in the R&Q require clarification so as to prevent the inequitable termination of the established business relationship

³ 47 U.S.C. Section 227.

⁴ R&Q, at para. 39.

⁵ Id.

exemption, at least as applicable to debt collection activities. Specifically, Household's concern in this regard arises from repeated statements in the R&O, and the rules promulgated by the R&O, indicating telephone subscribers are allowed to unilaterally "terminate" or "sever" business relationships.⁶

⁶ The language of the R&O and the Rules which concerns Household includes:

The term "established business relationship" means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party (emphasis added).

Section 64.1200(f)(4), as promulgated by the R&O;

The definition of "telephone solicitation" in Section 227(a)(3) [of the TCPA] also excludes calls made to parties with whom the caller has an established business relationship and calls for which the calling party has received the called party's prior express invitation or permission. We emphasize, however, that subscribers may sever any business relationship, i.e., revoke consent to any future solicitations, by requesting that they not receive further calls from a telemarketer, thus subjecting that telemarketer to the requirements of Section 64.1200(e) (emphasis added).

R&O, at n. 47; and

We emphasize, however, that a business may not make telephone solicitations to an existing or former customer who has asked to be placed on that company's do-not-call-list. A customer's request to be placed on the company's do-not-call-list terminates the business relationship between the company and that customer for the purpose of any future solicitation (emphasis added).

R&O, at n. 63.

Household does not believe the Commission intended to impair the ability of creditors to utilize debt collection calls by subjecting debtor-creditor relationships to unilateral termination prior to complete payment of the debts giving rise to such relationships. Instead, the Commission probably intended simply to allow a subscriber to block uninvited solicitations to new transactions by terminating any relationship based upon a prior, but completed, transaction between the subscriber and a calling party.⁷

In light of the R&O's failure to specifically address this issue, Household petitions the Commission to provide unequivocal clarification that the continued existence of an unpaid debt affords a creditor an "existing business relationship" exemption for debt collection calls, despite any attempt by the debtor to "terminate" or "sever" the relationship for other purposes. In the event Household is incorrect as to the Commission's intent in this regard, it is hereby requested that the Commission reconsider this aspect of the R&O and promulgate either (1) an

⁷ Footnote 47 to the R&O infers that a debtor, by "severing" any established business relationship between himself and a creditor, may block that creditor from making telephone "solicitations" seeking new transactions. That footnote does not make clear, however, that the creditor may continue to make debt collection calls to the debtor in reliance upon the still existing business relationship arising out of the unpaid debt, despite the "severance" of the relationship for purposes of solicitation. Likewise, Footnote 63 to the R&O, while clearly barring "solicitations" after a subscriber's "termination" of an established business relationship, does not indicate whether the creditor may continue debt collection calls to that subscriber in reliance upon the unpaid debt obligation.

express exemption from TCPA's prohibitions for debt collection calls, or (2) a rule providing that an "established business relationship" survives a debtor's "severance" or "termination" thereof, but only for the limited purpose of exempting calls made solely to further the collection of a continuing debt.

Compliance with the Fair Debt Collection Practices Act

As recognized by the Commission in the NPRM, identification requirements for recorded messages under TCPA appear to conflict with certain privacy measures required of creditors by the Fair Debt Collection Practices Act ("FDCPA").⁸ In responding to the NPRM, numerous commentors, including Household, proposed that the Commission make specific provision in its rules for the use of recorded momentary hold messages, without caller identification, at the beginning of debt collection calls.⁹

In the R&O, the Commission rejected those proposals as "unnecessary."¹⁰ In doing so the Commission "emphasize[d] that the identification requirements will not apply to debt collection calls because such calls are not autodialer calls (i.e., dialed using a random or sequential number generator) and hence are not

⁸ 15 U.S.C. Section 1629b-c.

⁹ Prerecorded momentary hold messages are used to request that a called party remain on the line until a live operator is available to handle the call. Such messages impart no substantive information, and may be immediately terminated by the called party hanging up its telephone.

¹⁰ R&O, at para. 39.

subject to the identification requirements for prerecorded messages in 64.1200(e)(4) of our rules" (emphasis added).¹¹

Household is constrained to point out that the vast majority of debt collection calls are originated through the use of "autodialers", at least as that term presently is defined in the Commission's Rules.¹² The distinction significant to debt collection calls is that such calls are not directed to randomly or sequentially generated telephone numbers, but instead are directed to the specifically programmed contact numbers for the debtors.¹³ In other words, for debt collection purposes, autodialers with the capacity to generate and dial random or sequential numbers are used strictly in a "predictive mode" (i.e., in a manner whereby only specified relevant numbers are programmed and dialed).

Household and several other commentors, including ABA and ACA, urged the Commission to either (1) define "autodialers" on the basis of how they are used (e.g., random/sequential mode

¹¹ Id., citing comments of American Bankers Association ("ABA") and American Collectors Association ("ACA").

¹² Section 64.1200(f)(4) of the Commission's Rules provides the following definition:

The terms "automatic telephone dialing system" and "autodialer" mean equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers (emphasis added).

¹³ Household, and numerous other commentors, urged the Commission to differentiate between the use of autodialers in a random or sequential mode, and the use of such equipment in a specifically programmed or "predictive" mode.

versus predictive mode) rather than on the basis of their capacities, or (2) provide express exemptions for autodialers operating only in the "predictive" mode (e.g., when being used to contact specifically identified debtors). Although the R&O acknowledged the material differences among the various modes of autodialer use, it did not make any regulatory distinctions to accommodate those differences. Household submits that the conflict between the requirements of TCPA and FDCPA should be accommodated by the promulgation of a limited exemption from present identification requirements, which exemption may be utilized only in connection with debt collection calls utilizing an autodialer operating in the predictive mode.

If the Commission intended the language of the R&O to provide an exemption for prerecorded momentary hold messages utilized in debt collection calls because such calls are not randomly or sequentially generated, it should take appropriate steps to clarify the language of the R&O on this point. Specifically, the Commission should rule that prerecorded momentary hold messages associated with debt collection calls generated by an autodialer operating strictly in a predictive mode are exempt from identification requirements.¹⁴

If, on the other hand, the Commission misinterpreted the comments of ABA, ACA, Household and others to represent that

¹⁴ Of course, appropriate caller identification still would be required upon a live operator taking control of the debt collection call and establishing the identity of the answering party.

"autodialers" are not used in debt collection calls, even in a predictive mode, the premise underlying its conclusion as to the lack of necessity for an exemption is inherently flawed. In this latter case, the Commission must reconsider the conflict between TCPA and FDCPA. If the Commission does so, Household again urges it to adopt a specific provision allowing debt collection calls to use momentary hold messages without identifying the caller, even if the caller utilizes an autodialer, but only if the autodialer is operated in a predictive mode.¹⁵

CONCLUSION

In light of the foregoing, Household respectfully suggests that the Commission should either clarify the R&O's intentions with regard to debt collection calls, or reconsider the conclusions of the R&O with regard to such calls. In either event, the Commission should make clear that (1) creditors may continue to rely on the established business relationship exemption to make debt collection calls, even where a debtor has terminated the relationship for other purposes; and (2) the creditor identification restrictions of FDCPA are fully

¹⁵ The Commission suggested that any conflict between TCPA and FDCPA could be resolved "through the use of live calls" (i.e., those dialed by live operators). R&O, at para. 39. This suggestion ignores the economy, accuracy and efficiency the use of "predictive dialers" brings to debt collection practices. The public interest certainly would be better served by providing a limited exemption allowing debt collection caller identification to be accomplished in a manner consistent with FDCPA. To do otherwise would be to impose substantial additional debt collection costs on industry, which costs will inevitably be passed on to consumers in the form of higher credit costs.

accommodated by an appropriate, limited exemption from the
identification requirements of the regulations implementing TCPA.

Respectfully submitted,

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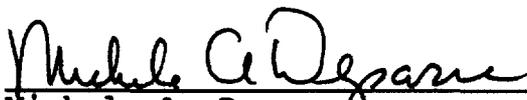
CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of November, 1992, I mailed a copy of the foregoing "Petition for Reconsideration and Clarification" via first-class United States mail, postage prepaid, to the following:

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