

November 4, 2019

Via ECFS

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

Re: *Ex Parte* Presentation, CG Docket Nos. 02-278, 18-152

Dear Ms. Dortch:

The American Bankers Association¹ (ABA) appreciates the opportunity to provide additional information to the Federal Communications Commission (Commission), as the Commission considers how it should interpret certain provisions of the Telephone Consumer Protection Act (TCPA).

ABA applauds the actions that the Commission has taken to combat those who place illegal automated calls in an effort to defraud consumers. We have supported, and will continue to support, the Commission's efforts to stop these bad actors.

At the same time, it is critical that the Commission's TCPA interpretations facilitate the important, and often time-sensitive, calls that banks place to their customers, including fraud alerts, data breach notifications, servicing calls, and loan modification outreach. Many of these communications must be placed immediately and can only be placed using automated technology. Unfortunately, because of the Commission's past, expansive interpretation of the statutory definition of an "automatic telephone dialing system," commonly known as an "autodialer," a bank may not be able to place these critical calls using automated technology unless the bank has the customer's documented consent, which may be challenged under a number of circumstances. An interpretation of the statutory definition of an autodialer that conforms to the text of the statute — i.e., that encompasses only equipment that uses a random or sequential number generator — would permit banks to send these important messages to a substantially greater number of customers.

¹ The American Bankers Association is the voice of the nation's \$18 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard nearly \$14 trillion in deposits, and extend more than \$10 trillion in loans.

ABA members reported that they are not able to place time-critical informational messages to customers because of the Commission's interpretations of the definition of an autodialer, as follows²—

- A large bank is not able to place time-sensitive, automated informational calls to 39.6 million customer accounts, and the bank is not able to place time-sensitive, automated informational text messages to 51.5 million customer accounts.
- A second large bank is not able to place time-sensitive, automated informational calls and text messages to 15.7 million customers.
- A third large bank is not able to place time-sensitive, automated informational calls to 5.8 million credit card customer accounts, and the bank is not able to place time-sensitive, automated informational text messages to 5.7 million credit card customer accounts. In addition, the bank is not able to place time-sensitive, automated informational calls or text messages to nearly 750,000 mortgage customers.

The Commission has an opportunity to issue TCPA interpretations that facilitate the ability of banks and other businesses to use modern technologies to communicate with their customers effectively and efficiently. The Commission can advance these reforms without impairing its important work to combat illegal automated calls. We look forward to continuing to work with the Commission to achieve these results.

Sincerely,



Jonathan Thessin
Senior Counsel
Consumer & Regulatory Compliance
Regulatory Compliance and Policy

² The ABA members provided these data to ABA in September and October 2019.