



December 8, 2014

Commission's Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, DC 20554

***Re: Petition for Exemption Filed By the American Bankers Association  
(CG Docket No. 02-278)***

To whom it may concern:

The American Financial Services Association (“AFSA”)<sup>1</sup> supports the Petition for Exemption (“Petition”)<sup>2</sup> filed by the American Bankers Association (“ABA”). The Petition asks that the Federal Communications Commission (“Commission”) exempt “certain time-sensitive informational calls, placed without charge to the called parties, from the Telephone Consumer Protection Act’s [“TCPA”<sup>3</sup>] restrictions on automated calls to mobile devices.”<sup>4</sup> Specifically, the ABA asks the Commission to exempt automated calls and text message alerts to wireless telephone numbers concerning: (1) transactions and events that suggest a risk of fraud or identity theft; (2) possible breaches of the security of customers’ personal information; (3) steps consumers can take to prevent or remedy harm caused by data security breaches (collectively referred to as remediation messages); and (4) money transfer notifications and notifications of actions needed to arrange for receipt of pending money transfers.

AFSA agrees with the ABA that financial institutions should be permitted to send non-telemarketing messages to customers by the most expedient and effective means available at no charge to those customers, subject to conditions that protect consumers’ privacy. The most expedient and effective way to reach many of these customers is to call or text them on their cell phones, especially if they travel or work out of town and may not receive mail for a period of time. If it is not the only way to reach the customer, it is likely the way that the customer prefers to be contacted.

As the Petition notes, “consumers increasingly prefer that their financial institutions use all available channels to advise them of potential fraud or other time-sensitive events.”<sup>5</sup> Often, and with increasing frequency, the only “available channel” is a wireless number. According to Pew Research Center, “The states where people most rely on their cell phones isn’t, as you might

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<sup>1</sup> AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its more than 350 members include consumer and commercial finance companies, auto finance/leasing companies, mortgage lenders, mortgage servicers, credit card issuers, industrial banks and industry suppliers.

<sup>2</sup> *Petition for Exemption of the American Bankers Association*, CG Docket No. 02-278, filed on October 14, 2014.

<sup>3</sup> The Telephone Consumer Protection Act (TCPA) is codified as 47 U.S.C. § 64.1200.

<sup>4</sup> *Petition* at 3.

<sup>5</sup> *Petition* at 6.

think, a busy metropolis (like New York) or a city crowded with texting college students (like Boston). It's scenic, sparsely populated Idaho, where as of last year more than half (52.3%) of adults lived in households that had cut the landline-phone cord completely.”<sup>6</sup> Pew Research Center goes on to state, “The wireless-only lifestyle is especially predominant among the poor and the young.”<sup>7</sup> It is unfair that consumers in rural areas, young consumers, and economically vulnerable consumers may not receive informational messages because of the TCPA’s antiquated restrictions.

Informational messages sent to wireless numbers reduce privacy and security risks proactively so that fraud, data security breaches, and identity theft are less likely to occur in the first place. Sending these messages quickly and efficiently is necessary in an era of data breaches. According to Politico, “This holiday shopping season, kicking off with post-Thanksgiving deals, millions of Americans will almost certainly have their credit or debit card information stolen by overseas hackers. Just like last year.”<sup>8</sup> The article quotes Atlantic Council expert Jay Healey, a former White House and financial sector official, “We called [2013] the year of the data breach. Then we had 2014.” Healey goes on to say, “Now 2014 is ... the year of the data breach. We’re not seeing any diminishing of the numbers of stories, so certainly you can imagine that 2015 will also be year of the data breach.”<sup>9</sup> The article states that according to one estimate, nearly 1 billion records were compromised by criminals in 2014.<sup>10</sup>

Identifying and preventing fraudulent payment card purchases, while at the same time reducing delay in approval of legitimate transactions, depends on reaching customers where they are in as short a time as possible. Permitting informational messages to be sent by text or automated voice to wireless numbers, without charge to the consumer and without prior express consent, will reduce the risk of fraud and identity theft associated with payment card transactions. Additionally, consumers potentially affected by data breaches need rapid notification so that they can initiate and complete remedial action as soon as possible.

By granting the Petition, the Commission will reduce the risk that data security incidents will result in identity theft or undue inconvenience to consumers.

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<sup>6</sup> Desilver, Drew, “For Most Wireless-only Households, Look South and West.” Pew Research Center. Dec. 23, 2013. <http://www.pewresearch.org/fact-tank/2013/12/23/for-most-wireless-only-households-look-south-and-west/>

<sup>7</sup> *Ibid.*

<sup>8</sup> Kopan, Tal. “Black Friday Cybercrime is Unstoppable.” PoliticoPro. Nov. 26, 2014.

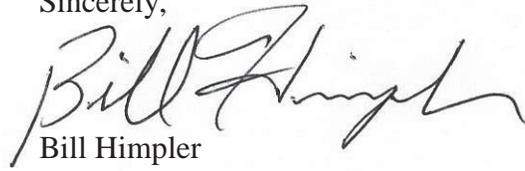
<https://www.politicopro.com/story/financialservices/?id=41257>

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

We look forward to working with the Commission on this Petition. Please contact me by phone, 202-466-8616, or e-mail, [bhimpler@afsamail.org](mailto:bhimpler@afsamail.org), with any questions.

Sincerely,

A handwritten signature in black ink that reads "Bill Himpler". The signature is written in a cursive style with a large, prominent "B" and "H".

Bill Himpler  
Executive Vice President  
American Financial Services Association