

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	CG Docket No. 02-278
Petition for Declaratory Ruling or Clarification of Citizens Bank, N.A.)	
)	
Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991)	

**COMMENTS IN SUPPORT OF PETITION FOR A DECLARATORY
RULING AND/OR CLARIFICATION OF CITIZENS BANK**

I. The Consumer Bankers Association Supports Citizen Bank’s Petition for a Declaratory Ruling and/or Clarification

The Consumer Bankers Association (“CBA”)¹ offers support for the Petition for a Declaratory Ruling and/or Clarification (“Citizens Petition”) of Citizens Bank, N.A. (“Citizens”) that asks the Federal Communications Commission (“Commission” or “FCC”) to clarify the scope of “prior express consent” under the Telephone Consumer Protection Act (“TCPA”).

While we continue to urge the Commission to clarify that “called party” refers to the “intended recipient” for purposes of the TCPA prior express consent requirement as outlined in our Petition for Declaratory Ruling (“CBA Petition”), we support the Citizens

¹ The Consumer Bankers Association (CBA) is the only national financial trade group focused exclusively on retail banking and personal financial services — banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation for its members. CBA members include the nation’s largest bank holding companies as well as regional and super-community banks that collectively hold two-thirds of the total assets of depository institutions.

Petition's common-sense request that the Commission clarify that "a called party has provided prior express consent to receive non-telemarketing, auto-dialed calls on a cell phone number where the called party takes purposeful and affirmative steps to advertise her cell phone number to the public for regular use in normal business communications."² Plainly, soliciting to be called naturally invites communications.

II. The Citizens Petition is Consistent with the Spirit of the TCPA and Subsequent Commission Guidance

CBA fully supports the spirit and intent of the TCPA – protecting consumer privacy and preventing unwanted costs. Our members are committed to minimizing costs to and protecting the privacy of our customers, with many employing best practices to ensure the correct person is reached.³ However, TCPA protections should not apply if the customer does not have a realistic expectation of privacy and welcomes communications.

a. The Called Party Does Not have a Reasonable Expectation of Privacy

In criminal law, a person must have a reasonable expectation of privacy for Fourth Amendment⁴ protections against unreasonable search and seizures to attach.⁵ The reasonableness standard is achieved when a person has a subjective expectation of

² See Citizen Bank's Petition for a Declaratory Ruling and/or Clarification Association CG Docket No. 02-278 (January 16, 2015) pg. 15.

³ See Wells Fargo Notice of Ex Parte CG Docket No. 02-278 (January 26, 2015) Appendix 8, pg. 21.

⁴ U.S. Const. 4th Amend.

⁵ *Katz v. United States*, 389 U.S. 347 (1967).

privacy that is deemed reasonable in public norms. This case-by-case basis analysis takes into account the precautions a person took to maintain their expectation of privacy.

Although we are operating outside the criminal law system, this well-settled precedent is undeniably analogous to the facts of the Citizens Petition. As outlined in greater detail in the Petition, she used her cell phone number as her companies' exclusive telephone number; solicited to be called at the number at multiple places on her company website; used the number for customer service inquiries; and publicly advertised the number in magazines and on her business cards.⁶ Unquestionably, these actions do not indicate the called party maintained a subjective expectation of privacy and certainly do not meet reasonable privacy norms.

When advertising her number in business solicitations, the called party relinquished her expectation of privacy that the TCPA strives to protect. For this reason, we support the Citizens Petition's request that the FCC clarify her actions conveyed prior express consent.

b. The Called Party Exposed Herself to Incurring Cellular Costs

Similarly, the called parties' actions opened herself up to calls from various, unknown parties, indicating a lack of concern about incurring telephone costs. When a called party takes purposeful and affirmative steps to advertise her number in the business context, the cost concerns contemplated by the TCPA are absent. Thus, the Commission should clarify that these actions convey prior express consent.

⁶ See Citizen Bank's Petition for a Declaratory Ruling and/or Clarification Association CG Docket No. 02-278 (January 16, 2015) pg. 4-5.

c. The Citizens Petition is Consistent with Past FCC Interpretations

Since the passage of TCPA, the Commission has thoughtfully balanced privacy concerns and the need to promote communications. Specifically, this balance was exhibited in the Commission’s treatment of prior express consent when parties release their numbers to the public in the 1992 TCPA Order⁷ and “Junk Fax” Order.⁸ We respectfully ask the FCC to apply the same reasonable logic to the Citizens Petition.

III. Failing to Grant the Citizens Petition Perpetuates Harmful Unintended Consequences of the TCPA

As stated in numerous filings on the docket, the TCPA in its current form has incited a flurry of needless litigation that is inundating courts and creating inconsistent law.⁹ Between 2010 and 2014, the overzealous Plaintiffs Bar has been busy increasing TCPA litigation by 560%.¹⁰ This unnecessary influx further supports the need for FCC guidance as the expert agency tasked with interpreting the TCPA.

⁷ 1992 TCPA Order, 7 FCC Rcd at 8754.

⁸ Federal Communications Commission, *Rules and Regulations Implementing the Telephone Consumer Protection Act, Junk Fax Prevention Act*, CG Docket Nos. 02-278 (2006).

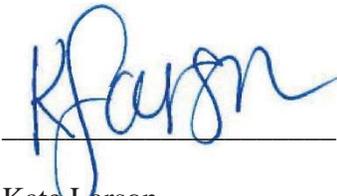
⁹ See Consumer Bankers Association Petition for a Declaratory Ruling, CG Docket No. 02-278 (September 19, 2014) pg. 10.

¹⁰ *Debt Collection Litigation & CFPB Complaint Statistics, December 2014 & Year in Review*, WebRecon LLC (Jan. 22, 2015).

IV. Conclusion

By granting the Citizens Petition, the Commission will provide a common-sense solution that is consistent with the spirit of the TCPA and promote efficient use of strained judicial resources. For this reason and the reasons stated above, we support the Citizens Petition.

Respectfully submitted,



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