

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

In the Matter of

Rules and Regulations Implementing the)	
Telephone Consumer Protection Act of 1991)	CG Docket No. 02-278
)	
ACA International Petition for an)	
Expedited Clarification and Declaratory Ruling)	

COMMENTS OF THE DIRECT MARKETING ASSOCIATION

The Direct Marketing Association, Inc. ("DMA"), hereby submits these comments in connection with ACA International's ("ACA") Petition for an Expedited Clarification and Declaratory Ruling. ACA requests that the Federal Communications Commission ("FCC" or "Commission") make clear that the regulations governing autodialer calls to wireless numbers do not apply to debt collection calls. DMA agrees that the Commission should reaffirm the continued application of its prior statements regarding the status of debt collection calls and clarify that calls made solely for the purposes of collecting payment are not the type of call the Telephone Consumer Protection Act of 1991 ("TCPA") or the FCC's implementing regulations are intended to address. In particular, the Commission must reaffirm that neither the TCPA nor FCC regulations limit the use of automatic dialing equipment to call a wireless number that the called party/subscriber has provided or otherwise consented to be used as a point of contact.

The use of wireless service has exploded in recent years. According to the most recent Commission annual report on mobile service competition, by the end of 2004, mobile subscribership increased to 184.7 million, translating to a nationwide penetration

rate of approximately 62 percent of the population. The Commission's own report also noted that the total subscriber base has increased 30 percent in just the past 3 years.¹ Moreover, American consumers are increasingly relying on a wireless service as their primary or sole point of contact, foregoing traditional landline service in favor of the versatility and portability of wireless services and equipment. For instance, the Commission's annual report cited a survey prepared for the Centers for Disease Control noting that 5.5 percent of adults lived in households with only wireless phones in the second half of 2004, and about 14 percent of people aged 18-24 year-olds live in wireless-only households. The Commission also noted a report concluding that 1/3 of all households get over half their calls on a mobile phone, and 9 percent get almost all their calls wirelessly.²

As ACA explains, securing proper payment for goods and services is vital to the financial well-being of individual merchants, as well as the economy as a whole. Calls to pursue collection of valid debts are not part of a program to solicit sales, but rather a legitimate effort to ensure compensation for services or goods the purchaser has already obtained and enjoyed. Collection efforts are heavily regulated, at both the federal and state level. The TCPA, however, is not among those regimes and simply was not intended to disrupt or alter the procedures that businesses – of all types and sizes – use to collect payments.

¹ Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, *Tenth Report*, FCC 05-173 (2005). ¶ 161

² *Id.* at ¶ 196-97.

The Commission has often recognized that debt collection calls are distinct from other types of calls, and has repeatedly noted that collection calls fall outside the scope of the myriad requirements and limitations in the TCPA and the Commission's rules.³

The Commission should eliminate any confusion about the applicability of its rules and reaffirm the distinct nature of debt collection calls versus other commercial calls, and especially promotional calls. In particular, DMA urges the Commission to reaffirm that when consumers release a wireless number, they have given permission to call that number, whether the number is dialed manually or using an autodialer. Indeed, the standards apply equally to all calls, whether or not made for purposes of debt collection. In adopting the original TCPA rules, the Commission explained that "persons who knowingly release their phone numbers have in effect given their invitation or permission to be called at the number which they have given, absent instructions to the contrary. Hence, telemarketers will not violate [FCC] rules by calling a number which was provided as one at which the called party wishes to be reached."⁴ That conclusion was sound 14 years ago and remains so today. Indeed, increased reliance on wireless service, particularly when used in lieu of a wireline phone, makes the case stronger. A subscriber's choice of phone service should not drive a decision about how, or whether, a seller can collect payment for other goods or services the subscriber buys. Businesses must not be constrained in their effort to collect valid debts simply because a purchaser elects to rely on a wireless phone instead of traditional landline service. To eliminate

³ See, e.g., Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, *Second Order on Reconsideration*, FCC 05-28 (2005); Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, *Report and Order*, FCC 03-153, fn. 358 (2003); Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, *Memorandum Opinion and Order*, 10 FCC Rcd. 12391, ¶¶ 17, 19 (1995); Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, *Report and Order*, 7 FCC Rcd. 8752, ¶ 39 ("1992 Order").

⁴ 1992 Order at ¶ 31.

confusion, therefore, the Commission should again acknowledge that debt collection calls are generally beyond the scope of the TCPA and, at a minimum, reaffirm that neither the TCPA nor the FCC's implementing rules limit the use of automatic dialing equipment to call a wireless number, for debt collection or otherwise, that the called party has supplied or otherwise consented to be used as a point of contact.

Respectfully submitted,

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