

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

In the Matter of

Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection Act,	)	FCC 10-18
Notice of Proposed Rulemaking	)	

**Comment of DBA International on the Federal Communications Commission’s  
Notice of Proposed Rulemaking to the Proposed Revisions to the Commission’s  
Rules and Regulations Implementing the Telephone Consumer Protection Act of  
1991**

DBA International (“DBA”), formed in 1997, is an international trade association of debt buyers. DBA currently has 497 professional debt buyer members, vendor, and affiliate members. DBA was formed to provide networking and educational opportunities for its members, as well as a forum to advance the interests of debt buyers with state and federal legislatures. It has a strict code of conduct which includes compliance with the Fair Debt Collections Practices Act (“FDCPA”) and other applicable federal and state laws. Many of DBA’s members collect their own purchased debts or outsource their collections to collection agencies or attorneys. Debt buyers provide an economic benefit to consumers by offering substantially discounted settlements, reducing the default interest rate, and offering payment plans, while simultaneously reducing the cost of credit to the general public.

On March 22, 2010, the Federal Communications Commission's ("FCC" or the "Commission") *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Notice of Proposed Rulemaking* ("NPRM"), CG Docket No. 02-278, FCC 10-18, was published in the Federal Register.<sup>1</sup> The NPRM seeks comment on a proposal to harmonize the Commission's rules under the Telephone Consumer Protection Act of 1991 ("TCPA") with the Federal Trade Commission's ("FTC") recent amendments to the Telemarketing Sales Rule.<sup>2</sup>

The practical effect of the Commission's proposal on the debt buying and debt collection industry will be the cessation of calls to consumers via home lines or cell phones unless they give prior written consent. If the industry is unable to communicate with those consumers to effectuate repayment of amounts due, the unintended effect will be a flood of litigation against consumers.

While a detailed analysis of the history of the TCPA is warranted and known to the Commission, perhaps what may be unknown is the burgeoning amount of suits against consumers that creditors and debt owners are compelled to file to recover repayment due largely to the lack of ability to communicate due to antiquated laws which create barriers to communication with consumers.

In the winter of 1991, Congress enacted the Telephone Consumer Protection Act (TCPA) 47 U.S.C. § 227 prior to the real advent of cell phone use.<sup>3</sup> Section 227(b)(1)(A) of the TCPA prohibits the use of autodialers from calling cell phones. However, Section 227(b)(2)(B) authorizes the FCC to make exceptions to the general rule. Under the 1992

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<sup>1</sup> 75 Fed. Reg. 13471 (March 22, 2010).

<sup>2</sup> 73 Fed. Reg. 51164 (August 29, 2008).

<sup>3</sup> Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat 2394 (1991) verified at 47 U.S.C. § 227 (TCPA).

FCC rules implementing the TCPA, the FCC exempted debt collectors from the prohibition of using artificial or recorded messages to residential lines as such calls fell within the exemption for business relationships.<sup>4</sup>

Again, in 1995 the FCC released a Memorandum Opinion and Order clarifying that “prerecorded debt collection calls are exempted from Section 227(b)(1)(B) of the TCPA which prohibits recorded or artificial voice messages to residences”.<sup>5</sup>

As of 2006, the Center for Disease Control released that during the last 6 months of 2006, 15.8% of American homes did not have a landline and at least 12.8% had only wireless phones.<sup>6</sup>

In a recent study by the Center for Disease Control in 2009, it was revealed that:

- One of every four American homes (24.5%) only had wireless phones;
- One of every seven American homes (14.9%) had a landline;
- More than two in five adults living alone with unrelated roommates (62.9%) only had a wireless phone;
- More than two to five adults renting their home (43.1%) only had a wireless phone;
- Adults living in poverty (36.3%) lived in households only with wireless phones<sup>7</sup>.

Also in 2009, the General Accounting Office (“GAO”) conducted a research project into the debt collection industry which concluded:

*“because the FDCPA was enacted prior to the advent of technologies such as mobile telephones, email, and voice mail, its provisions on communicating with consumers are outdated. This has resulted in*

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<sup>4</sup> 1992 TCPA Order, 7 FCC. Rcd at 8773, para 39.

<sup>5</sup> 1995 TCPA Reconsideration Order, 10 FCC Rcd at 12400, para 17.

<sup>6</sup> CDC-Wireless Substitution: Early release of estimates based on data from the National Health Interview Survey, July-December 2006, by Stephen J. Blumberg & Julia V. Luke.

<sup>7</sup> Blumberg, SJ, Luke, J V. Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2009 National Center of Health Statistics, May 2010.

*considerable ambiguity and confusion as using these technologies in compliance with the law and collection companies have been reluctant to use some modern technologies.*<sup>8</sup>

The FTC in the 2009 Report *Collecting Consumer Debts “The Challenges of Change” a Workshop Report* states:

“The FTC believes that, as was the case with the original FDCPA debt collectors generally should be allowed to use all communication technologies, including new emerging technologies to contact consumers.” (emphasis supplied)

The FDCPA has not been modernized or substantively amended in thirty-three (33) years. This Comment began by stating that the more difficult it is to communicate with consumers, the more litigation will be filed. This point is perhaps best illustrated by a Report by the Appleseed Project (New York) entitled “Due Process and Consumer Debt: Eliminating Barriers to Justice in Consumer Credit Cases” (“Appleseed Report”).

The Appleseed Report revealed that seventy (70%) percent of low and middle income households reported using credit cards to live on for basic needs, and each year consumer debt litigation has risen 40 to 60 percent much due to the economic crises.<sup>9</sup> The Appleseed Report also concluded that one of the barriers in court was an “information deficit” and the fact that consumer debt defendants do not understand court proceedings. The Appleseed Report found that one of the most successful reforms was in increase in communication with consumers by sending a simplified notification of the lawsuit and the study found this increase in communication decreased the amount of default judgments against consumers and on average nearly 100 more defendants a month

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<sup>8</sup> GAO Report to Congress Requesters. *Credit Cards-Fair Debt Collection Practices Act Could Better Reflect the Evolving Debt Collection Market Place and Use of Technology*, p. 51.

<sup>9</sup> Appleseed Due Process and Consumer Debt: Eliminating Barriers to Justice in Consumer Credit Cases; page 1.

came to court in the first nine months of 2009 than 2008 (after the new notice was implemented).<sup>10</sup>

DBA shares a belief with the Appleseed Report insofar as less communication increases roadblocks to resolving consumer debt issues via amicable settlements or other arrangements and thusly will lead to the unintended consequences of increased litigation.

As indicated previously, the debt collection and debt buying industry is regulated by the Federal Trade Commission and the Federal Fair Debt Collection Practices Act. A debt collector may only contact a consumer at specified times of day<sup>11</sup>, may not speak to third parties regarding the debt<sup>12</sup>, and may not otherwise harass or deceive a consumer debtor.<sup>13</sup>

The debt buying industry began over forty-five (45) years ago, but has become more widely practiced in the last ten (10) years as more consumer credit originators, especially federal and state chartered banking institutions, sell increasing amounts of charged off receivables. Upon the purchase of a portfolio of charged-off receivables, a debt buyer as assignee takes subject to all the rights, title, and interest of the assignor to the indebtedness as well as to any applicable defenses of consumers with respect to their debts. Debt sales of accounts, other than those originated by banks, also have become as commonplace and are as accepted a practice as the sale of mortgages. Examples of the types of charged-off receivables sold to debt buyers include accounts from credit card originators, telecom providers, retail merchants, and utilities.

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<sup>10</sup> Appleseed Report at p. 15.

<sup>11</sup> 15 USC 1692c(1)

<sup>12</sup> 15 USC 1692c(b)

<sup>13</sup> 15 USC 1692d & 1692e

While there are hundreds (if not thousands) of entities purchasing debt, there are only five publicly traded debt buying companies.<sup>14</sup> Three of these publicly traded debt buyers<sup>15</sup> collectively purchased over \$77 billion dollars, face value, of charged-off debt from December 31, 1996 through December 31, 2006, for which they paid a total purchase price in excess of \$1.8 billion dollars.<sup>16</sup> Publicly traded debt buyers as well as several large privately-owned companies purchase many of the larger portfolios, including large credit card portfolios, directly from the originators. However, there are many smaller debt buyers that are active in the debt buying marketplace as well purchasing a wide variety of other debt portfolios. It has been estimated that debt buyers, including those which are publicly traded, are active in the annual purchase of over \$100 billion dollars in face value of delinquent credit card debt alone and employ over 300,000 employees nationwide.<sup>17</sup>

Debt buyers provide an advantage to consumers in the settlement of debts as they offer steep discounts, reduce interest rates, and will accept payments plans on debts over long periods of time allowing consumers the ability to work their way out of a difficult situation over time without the need for litigation. This is also an alternative for consumers who would otherwise feel compelled to file for bankruptcy.

The TCPA is intended to protect consumers. Autodialers provide an accurate and cost efficient method to reach consumers. Should debt collectors and debt buyers not be able to maintain the “business relationship” exception they have been granted to contact

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<sup>14</sup> Asset Acceptance Capital Corp., Portfolio Recovery Associates, Inc., Encore Capital Group Inc., Asta Funding Inc. and FirstCity Financial Corp.

<sup>15</sup> Asset Acceptance Capital Corp. (“AACC”), Portfolio Recovery Associates, Inc. (“PRAA”) and Encore Capital Group, Inc. (“ECPG”)

<sup>16</sup> Data for calculations derived from the 2006 Annual Reports of AACC, PRAA, and ECPG.

<sup>17</sup> Kaulkin & Ginsberg, Global Debt Buying Report, March 2006, p. xxviii.

consumers without manually dialing a telephone, the resulting increase in costs will be passed along to consumers by way of less discounts and frequent problems with misdialed numbers to third parties.<sup>18</sup>

Debt collectors use predictive dialers and autodialers to computerize and accurately place outbound calls and either a message can be left or a collector can immediately speak to the consumer. The predictive dialer can capture the precise number called and log the time and number for compliance with the FDCPA so that the time of day and third party restrictions are adhered to as well as interfacing with recording equipment for quality assurance and compliance.

Moreover, a consumer has explicit rights to cease all contact by the debt collector under the Federal Fair Debt Collection Practices Act 15 U.S.C. 1692c(c).<sup>19</sup>

Consumers can act to cease communication. Until they act, the debt collector is afforded the “business relationships exemption” under the TCPA and may call the consumer’s residential telephone line.<sup>20</sup> Changing the process to an “opt in” versus an “opt out” conflicts with the Federal Fair Debt Collection Practices Act and will only lead to greater barriers to communicating with consumers.

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<sup>18</sup> Third party communication is a violation of the FDCPA. 15 U.S.C. § 1692c.

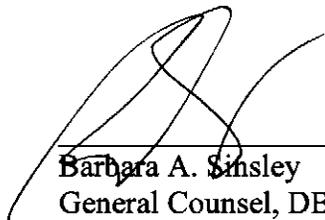
<sup>19</sup> 15 U.S.C. 1692c(c) states “If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer the debt collector shall not communicate further with the consumer with respect to such debt, except 910 to advise the consumer that the debt collector’s further efforts are being terminated; (2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or (3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.”

<sup>20</sup> This Comment will not be addressing when a debt collector is allowed to call cell phones.

## CONCLUSION

DBA International objects to the Proposed Rule, CG Docket No. 02-278, FCC 10-18. The FCC and the FTC should consider the unintended consequences to consumers as set forth herein as further barriers to communication which will only cause confusion and lawsuits against consumers. Debt buyers and debt collectors are regulated by the FDCPA and the proposed rule will not further the intent of the FDCPA or change a consumer's right to have communication ceased.

Respectfully submitted,



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