



May 21, 2010

***By Electronic Delivery***

Re: CG Docket No. 02-278; FCC No. 10-18; Comments on Proposed Changes for Rules Related to Autodialing Under the TCPA.

To Whom It May Concern:

On behalf of World Financial Capital Bank (“WFCB”), I am pleased to have the opportunity to provide comments to the Federal Communications Commission (“FCC”) in regards to the proposed changes to its autodial rules, as published in 75 Fed. Reg. 13471 on March 22, 2010.

**SUMMARY OF COMMENTS**

1. With regard to changing telemarketing rules, WFCB concurs with the FCC’s goal and steps to harmonize its rules with corresponding rules of the Federal Trade Commission (“FTC”). This creates certainty in the marketplace and further protects consumers.
2. With regard to changing non-telemarketing rules, WFCB believes that the FCC should preserve the existing regulatory framework. Specifically, the FCC has more tightly regulated telemarketing calls (the purpose of which is to sell) than non-telemarketing calls (the purpose of which is to inform). Therefore, the FCC should not make changes to rules governing non-telemarketing rules.
3. In particular, WFCB believes that the FCC should not make any changes to rules governing non-telemarketing autodial calls placed to cell phones. Such changes would be harmful to consumers because they undermine the consumer-credit card issuer relationship and the consumer’s preferred mode and level of service.

**THE PROPOSED CHANGES**

For purposes of this letter, the term “Non-Telemarketing Changes” shall mean any proposed changes that are not related to telemarketing communications. In addition, the term “Non-Telemarketing Autodial-Cell Phone Changes” shall refer,

collectively, to those proposed changes to 47 C.F.R. 64.1200 that provide in relevant part:

(i) the need for prior express written consent (versus merely prior express consent as currently required) to place a non-telemarketing autodial call to a cell phone, and (ii) that a person or entity shall be deemed to have obtained prior express written consent upon obtaining from the recipient of the call an express agreement, in writing, that:

- The person obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize these particular calls;
- The person obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service;
- Evidences the willingness of the consumer to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice; and
- Includes the telephone number to which such calls may be placed in addition to the recipient's signature, which can be obtained in writing or electronically. (75 Fed. Reg. 13471 at 13481)

## **DISCUSSION**

### A. The Proposed Changes to Telemarketing Rules

WFCB agrees with the FCC's proposed changes to its telemarketing rules and further agrees with the purpose of such changes. Accordingly, WFCB has no further comments on this issue.

### B. The Proposed Changes to Non-Telemarketing Rules are inconsistent with the FCC's past positions and with its current purposes

#### 1. The distinction between telemarketing and non-telemarketing calls

Currently, the FCC imposes greater restraints on telemarketing calls than it does on non-telemarketing calls. This policy reflects a recognition that the two types of communication are not different in degree, they are different in kind. They have fundamentally distinct purposes. The purpose of the telemarketing call is to motivate the recipient/consumer to purchase the telemarketer's goods or services. The purpose of the non-telemarketing call is to inform the recipient/consumer.

2. The FCC's rules on non-telemarketing calls do not need to change

Obviously, the FCC does not seek uniformity with the FTC's telemarketing rules just for the sake of uniformity. The FCC wants to harmonize its telemarketing rules with the FTC's to further protect consumers.

Fortunately, consumers do not require any further protection from non-telemarketing communications. In its March 22, 2010 publication, the FCC wrote in depth regarding the public's concern about telemarketing. Conversely, the FCC did not mention any consumer concerns about non-telemarketing calls, and certainly none about non-telemarketing calls to cell phones. The FCC's comments do not include the term "service" within the context of calls made to provide customer service. Similarly, the FCC does not use the term "relationship" (as in the context of communications made as part of the business-consumer relationship) when explaining why certain rule changes are needed. Clearly, and justifiably, the FCC does not believe consumers need protection from non-telemarketing autodial phone calls (whether placed to cell phones or hard lines, and whether consented to or not).

C. Harm to Consumers: The Consumer's Preferred Mode of Service will be obstructed, resulting in less efficient service and unnecessary intrusion into the Consumer/Issuer Relationship

1. Consumers have chosen cell phones as their preferred mode of communication and customer service.

According to a December 2009 National Health Interview Survey (NHIS) by the Department of Health and Human Services, more than one in five American households (22.7%) subscribe only to wireless telephone service. As of December 2009, approximately 21.1% of all adults (more than 48 million) live in households with wireless service only. Moreover, the percentage of wireless only households continues its steady increase. According to the 2009 data, the percentage of households that are wireless-only increased by approximately 5 percentage points in just 12 months, from 17.5% in the first 6 months of 2008 to 22.7% in the first 6 months of 2009.

Not surprisingly, the number of wireless only households is greatest among younger Americans, meaning those age groups that will continue to grow. Nearly half of adults aged 25-29 years (45.8%) live in households with only wireless telephones. And, approximately one-third of adults aged 30-34 (33.5%) live in households with only wireless telephones. (Blumberg SJ, Luke JV. Wireless substitution: Early release of estimates from the National Health Interview Survey, July-December 2009. National Center for Health Statistics, May 2009).

Looking forward, cell phone based communications will only increase, with the evolution and popularity of automated voice messaging (AVM) and text messaging. Consumers desire cell phone based service, therefore any actions restricting their access to customer service is contrary to consumer demands and harmful to them.

## 2. Cardholders Benefit from the Customer Service Functions Provided by Autodialers

Consider the following non-exhaustive but valuable customer service functions that credit card issuers like WFCB provide to cardholders via autodial calls to cell phones.

- (i) General information: credit card has been mailed and requires activation, need for supplemental information, new card benefits and features.
- (ii) Customer service: respond to cardholder-initiated service calls.
- (iii) Billing issues: message that payment is due, information on alternative ways to make payments; encourage discussion of payment plan options.
- (iv) Emergency notices: fraud reports, lost or stolen card, irregular spending patterns.

## 3. WFCB's Compliance with the Autodial Phone Changes will lead to diminished customer service and/or more costly customer service

WFCB would not have any good options for dealing with Non-Telemarketing Autodial-Cell Phone Changes. First, it would have to construct a process to contact its existing cardholders to obtain opt-ins (or, as applicable, record the non opt-ins).

Next, as to new accounts, WFCB would have to choose between two (2) alternatives, both of which result in higher costs that are either absorbed by WFCB or at least partially passed on to the cardholders.

- (i) Bear the cost of changing its telephone, web, IVR, and other communications and data collection and storage systems to comply with the new requirements. Like the "backtracking" described above, the costs would be prohibitive and would not just impact WFCB, but also every one of its client-retailers, as they are involved in the new accounts application process.

- (ii) Attempt to perform the functions by other means, even though the very reason WFCB and other credit card issuers use autodial services is because it is so much more affordable and efficient compared to alternatives. So, to pursue this option, WFCB would have to employ an unmeasured number of workers to make live phone calls. Such option does not make good business sense in today's marketplace.

**CONCLUSION**

The FCC has announced plans to reach the goal of providing consistency between itself and the FTC with regard to business to consumer communications. By definition, that goal can only be achieved in the realm of telemarketing, because the FTC has no non-telemarketing rules analogous to those of the FCC. Therefore, there is no need to make Non-Telemarketing Changes when there is no end to justify that means.

Secondly, the FCC has not claimed that non-telemarketing calls (NTADCs or otherwise) must be reigned-in to protect consumers. WFCB agrees that, in the world of cell phones that access the internet, mobile commerce, and Twitter, there is no need to protect consumers from calls to their cell phones, whether by autodialers or live operators.

Finally, and on a related note, the reality is that consumers want to be serviced via their cell phones. They want text message updates on their accounts. They want notices about late payments and late fees. They want to know about alternative payment options. And, they do not want to pay more for such service simply because their credit card company is passing on costs incurred to comply with regulations that do not further protect consumers.

For all these reasons, we submit that the proposed Non-Telemarketing Changes should not be adopted. Or, in the alternative and at a minimum, the FCC not impose further restrictions on the ability for businesses such as WFCB to place autodialer calls to cell phones when a consumer has already provided prior express consent.

Sincerely,

/s/

Marvin Corne  
President