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**Before the  
Federal Communications Commission  
Washington DC 20544**

<b>In the matter of</b>	<b>CG Docket No. 02-278</b>
<b>Notice of Public Rulemaking to harmonize FCC and FTC telemarketing regulations</b>	<b>Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991</b>
	NPRM FCC 10-18

**Gerald Roylance's Reply Comments re Harmonizing FCC regulations**

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## I. Introduction

The FCC's Notice of Public Rulemaking<sup>1</sup> (NPRM) seeks to harmonize its regulations with those of the Federal Trade Commission. In particular, the NPRM addresses whether an established business relationship (EBR) creates prior express consent for prerecorded calls ("robocalls"), prior express consent must be evidenced by a signed writing, the limits of the FCC authority, and other comments on proposed new regulations.

I submitted comments<sup>2</sup>. I believe the TCPA requires express, informed, consent for prerecorded calls. It is reasonable for the FTC and the FCC to require written and signed evidence of that consent. Although I generally support the FCC proposed rules, I believe it should remove the HIPAA exemption, remove the TENP exemption, clearly give a path to revoke any express consent (even for non-telemarketing calls), and disavow that signed written consent creates a safe harbor or affirmative defense.

The initial comment period has passed, and the FCC's docket was flooded with opposition comments by professional debt collectors – people who want to hound debtors and others with autodialed calls to cellular telephones and prerecorded messages. Many of those comments are cookie-cutter submissions that show how the industry operates – brute force inundation whether the targets are hapless debtors or public servants. It is not a pretty sight, and the FCC should recognize that this muscle flexing is what the industry directs at not only debtors, but also their friends, relatives, and employers. The industry launches these attacks while the victims are at work, at play, and at home. Debt collectors offer no rest. Debt collectors should be able to collect debts, but there should be limits on the frequency and the technology they employ. Although they claim they are regulated by the FDCPA, debt collectors use telephone communication to avoid triggering the FDCPA's protections. They are cunning and relentless.

Over one thousand members of the debt collection industry have submitted comments, and it is their job to pester millions of people who have, in these hard economic times, fallen behind on debts because they've lost their jobs or suffered other hardships. The Bureau of Labor Statistics<sup>3</sup> puts the current unemployment rate at 9.7%; the unemployment level for 2009 was 14.2 million. These debt collectors have already unleashed automated machines upon the population, and they want to expand their use of robots. That's not right, and it is not an insignificant problem.

The collections industry bemoans that there has been a huge shift to cellular telephones, and that is hurting their ability to use automated machines to hound debtors. Consumers do not acquire cellular phones so that a debt collecting robots may call them at all hours of the day wherever they may be. Before there were cellular phones, debt collectors could not reach people when they were out of their house. In the past, leaving

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<sup>1</sup> Notice of Proposed Rulemaking, FCC 10-18, January 20, 2010, CG Docket 02-278, [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-10-18A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-18A1.pdf)

<sup>2</sup> Gerald Roylance, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015628647>

<sup>3</sup> <http://www.bls.gov/cps/>

one's home would give some sanctuary from calls. Debt collectors are laying claim to a new frontier of oppressive contact.

Almost 20 years ago, Congress found that people detest being called by automated machines: "residential telephone subscribers consider automated or prerecorded telephone calls, regardless of the content or the initiator of the message, to be a nuisance and an invasion of privacy."<sup>4</sup> It is hard to imagine that any debtor would welcome such automated calls, and none of the industry comments have made any credible argument that these intrusions are infrequent or welcomed<sup>5</sup>. Consumer commenters have complained about the number of calls – some getting 10 calls per day<sup>6</sup>. Even if automated calls are permitted, they should not be permitted to be so repetitious. It's not debt collection; it's stalking and harassment. Attorney Gasparro believes that two of his debt-ridden clients were hounded to suicide<sup>7</sup>.

Nothing in the record (or in common sense) suggests prerecorded debt collection calls are welcomed. The calls are clearly an invasion of consumer privacy and should not be permitted. What sane individual would ever consent to be hounded by a machine? National Collections Bureau, a pro-collections industry commenter, clearly recognizes that common sense: if debtors are asked for consent in writing, "They won't consent in writing!"<sup>8</sup> Debt collectors know full well that debtors consider their automated intrusions as invasions of privacy.

Debt collectors want debtors who are voiceless and ignorant of protections such as the FDCPA. Under the FDCPA, debt collectors are free to ignore oral do-not-contact requests from debtors.

Debt collectors also want the freedom to call even non-debtors and hound them<sup>9</sup>. Debt collectors also use prerecorded calls to non-debtors for skip tracing. Robocall a debtor's relative or friend, hope he calls back, and hope he'll give up the debtor's whereabouts. Non-debtors never signed up for prerecorded calls.

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<sup>4</sup> Public Law 102-243 § 2(10).

<sup>5</sup> One commenter attached a collection of debtor thank you letters, but those letters were about conversations with live people rather than machines. The commenter would also be selecting letters that were favorable to its position. The record has few independent debtor comments.

<sup>6</sup> Lea Anne Windham, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015506350>, would be called 10 to 12 times per day. Diana Mey, even though she was not the debtor, received twelve prerecorded calls on her cellular phone. <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015621538>.

<sup>7</sup> Gasparro, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015634902>

<sup>8</sup> National Collections Bureau, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015607701>.

<sup>9</sup> Diana Mey, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015621538>, consumer inundated with misdirected debt collection calls. Michael Worsham, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015633704>, recipient of misdirected debt collection robocalls.

The FCC has never fully appreciated this issue, and the debt collectors cleverly bury it in innocuous phrases. Robocalls are so cheap that shotgun methods can be used. Debt collectors contacted my uncle because they were contacting everybody with a similar name to a debtor. When debt collectors talk to the FCC, they are sneaky about what they want. They don't just want an exception to make robocalls to the debtor; they want an exception to make any robocall that helps them collect a debt. The exception they seek is on that permits them to robocall every telephone subscriber to ask if the subscriber knows where John Q. Debtor lives.

Jason Sandifer<sup>10</sup> offers an almost incredible comment about the debt collection calls he receives at work. He works in a call center, and that call center is getting inundated with anonymous (“they do not state what company they are with”) debt collection calls about debts that are several years old. His comment shows the indiscriminate character of debt collection calls. Mr. Sandifer also believes that several of the calls have invalid Caller Id.

The FCC should not permit such calls because they are invasions of privacy. Quite simply, prerecorded debt collection calls should be prohibited without written, signed, prior express consent that is **informed**. The informed part should spell out not only that the calls will be prerecorded, but also the limits on the frequency of the calls. One can conceivably consent to getting payment reminders once every two weeks, but no sensible person would consent to getting multiple prerecorded calls per day.

I have not seen any express limitation on the frequency of robocalls. Even if they are allowed, how often is too often?

**It is no longer reasonable for the FCC to permit all commercial prerecorded calls that do not include an unsolicited advertisement.** The FCC should ban all prerecorded calls without written prior express consent.

Some debt collectors will no doubt insist that they do not employ such automated hounding. Fine, but all debt collectors should be held to limits. People have telephones because they want to communicate with their friends – not because they want to receive debt collection or sales calls. Even companies that one would suspect are decent have employed gamesmanship. Comments on the earlier ABA Petition wanted borrowers to provide innocuous-sounding “alternate contact” numbers on credit applications, but those numbers would be used for collections calls if the person fell behind. The industry pushes the limits; it wants every advantage it can find. That knowledgeable aggression needs to be balanced against the consumer's privacy – a consumer who is less knowledgeable and vulnerable.

Businesses have a legitimate interest in collecting debts. Getting paid often requires persistence. That persistence, however, should not be through prerecorded calls.

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<sup>10</sup> Jason Sandifer, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015554792>.

I am owed over \$200,000 in past due debts. I am not unsympathetic to the problems of debt collection, but I am unsympathetic to its abuses. In a sense, I'd love to have some robots hound those debtors, but I doubt those debtors would give me express consent.

## **II. FCC Authority**

The FCC should be embarrassed about its poor performance with regard to regulating and enforcing the Telephone Consumer Protection Act. Congress gave it clear instructions and a mandate to protect consumers from automated messages and telemarketing intrusions. That goal is clear in the title of the Act: protect the telephone consumer. It is not the Telephone Business Protection Act, but the FCC has consistently read it that way.

### ***A. FCC has a disconnect with Congress and the Consumer***

#### **1. FCC ignored Congress and favored business**

In 1992, the FCC gave business the broadest possible exemption for prerecorded calls that it could. If we look at 47 U.S.C. § 227(b)(2)(B), it is apparent that the FCC exempted EVERYTHING it possibly could. All manner of non-commercial and commercial calls were exempted. That paragraph was not an open invitation to the FCC to do such a wholesale exemption. Congress put that section in because Congress recognized that its original intent (a blanket prohibition on prerecorded calls) may overstep in some unexpected areas. That escape mechanism is articulated in Public Law 102-243 § 2(13), “While the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call, the Federal Communications Commission should have the flexibility to design different rules for those types of automated or prerecorded calls that it finds are not considered a nuisance or invasion of privacy, or for noncommercial calls, consistent with the free speech protections embodied in the First Amendment of the Constitution.”

What the FCC literally did was exempt everything and tell Congress that its evidence was all wrong. In the view of the FCC, all of the enumerated calls “are not considered a nuisance or invasion of privacy”. The FCC was saying Congress is on drugs.

It is preposterous that the FCC could come to such a conclusion. It was the FCC that got it wrong. And that's why we are here today.

Although Congress had seen problems with prerecorded calls and determined the appropriate action was to ban them altogether, it gave the FCC some authority to permit those calls that did not hurt consumer privacy rights. The FCC, instead of following Congressional wishes, decided that prerecorded telemarketing was a big problem that

dwarfed everything else, so everything else must not be a problem<sup>11</sup>. So the FCC permitted everything else: non commercial prerecorded calls were OK. Commercial calls that weren't selling anything were OK. Debt collection calls were OK. The FCC made that determination without giving Congressional findings that consumers objected to all prerecorded calls no matter what their content or who sent them. The FCC said to hell with Congress, and permitted every form of prerecorded call. The FCC abused its discretion.

The FCC also granted the businesses it regulates some extra bonuses. The FCC regulates broadcast TV, but it made sure that TV stations could send out prerecorded calls to announce upcoming shows or contests. Where is the support for such a notion? Why would telephone subscribers welcome such calls? The FCC regulates wireless telephone service. Congress prohibited prerecorded calls to cellular telephones, but the FCC told wireless service providers it could ignore that statute if it didn't charge its customers for the call. The FCC regulates telephone companies, but it made sure that those telephone companies could carry lots of prerecorded commercial calls despite the intent of Congress.

The FCC did not understand what Congress wants or what consumers want. The FCC is too busy kowtowing to the businesses that it is supposed to regulate.

## **2. FCC did not understand the do-not-call issue**

The FCC also does not understand numbers. It was supposed to come up with a do-not-call plan. Instead of implementing the national do-not-call database as outlined by Congress in the TCPA, the FCC went for a company-specific do-not-call database. What that meant, however, is that every company in the US got a free shot at every telephone in the US. Instead of making one do-not-call request, John Q. Public had to make thousands of do-not-call requests under the FCC plan. And what do-not-call system do we have in place today? The do-not-call database that Congress outlined.

Thank goodness for the Federal Trade Commission and the Telemarketing Consumer Fraud and Abuse Prevention Act<sup>12</sup>. The FTC, unlike the FCC, listens to Congress and understands what should be done. When the FTC looked at this problem, it decided that the right thing to do was what Congress wanted all along – implement a national do-not-call list.

What happened when there was some question about whether the FTC had the authority to implement a national do-not-call list? Congress moved with lightning speed to make sure that the FTC could create such a list. Congress, unlike the FCC, has no trouble understanding the consumer perspective or the will of the people. Who is managing the national do-not-call list today? Is it the FCC? No, it is the FTC.

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<sup>11</sup> 1992 Report and Order, FCC 92-443, ¶¶ 32-41. The FCC even overrode a comment that TENP calls were an invasion of privacy.

<sup>12</sup> 15 U.S.C. §§ 1601-1608.

The FCC should not look at the Do-Not-Call Implementation Act<sup>13</sup> as a mild note to harmonize the FTC and the FCC regulations. The FCC should look at the DNCIA as a strong Congressional rebuke of its inaction and improper action on the TCPA. The FCC wasn't doing its job. The FTC was willing to step in, so Congress told it to go ahead. It was easier than trying to get the FCC to clean up its act.

That the FCC does not understand numbers means it also does not appreciate what could happen to a consumer. If a consumer loses his job, then he may well fall behind on multiple accounts. Each of those accounts may start hounding him with prerecorded debt collection calls. If he's behind on 7 accounts, and each account hits him once per week, he's getting a call every day. Even if debt collectors are in some sense reasonable, the end result can be unreasonable.

### **3. FCC does not understand enforcement**

Even in enforcement, the FTC does a far better job. When the FTC goes after a rogue telemarketer, the fines or settlements are often in the millions of dollars. And the action is relatively swift. The FCC's enforcements are usually a joke. The last time I spoke with FCC staff, the 1 Home Lending Corporation forfeiture order of \$18,000 was uncollected<sup>14</sup>. Such a small penalty is peanuts to a large telemarketer and is easily covered by labor savings due to illegal automated telemarketing. In just three months, mortgage broker Optima Funding<sup>15</sup> booked \$240,000,000 in mortgages; a citation or small fine is not going to phase such an operation. The same day the FCC issued a Notice of Apparent Liability against Warrior Custom Golf, I received a prerecorded call; I then submitted a complaint to the FCC. My understanding is the FCC forgave the subsequent WCG complaints (such as mine) in order to get WCG to settle on the NAL forfeiture<sup>16</sup>. The FCC's prosecution model is pathetic; violations after notice should carry huge penalties. On September 14, 2009, I received a prerecorded telemarketing call from the fine folks at Septic Safety – more than three years after their FCC forfeiture order<sup>17</sup> and almost eight years after the state of Oregon went after them<sup>18</sup>.

I have submitted numerous complaints to the FCC about prerecorded telemarketing. Many of those complaints are erroneously rejected because the FCC does

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<sup>13</sup> Public Law 108-10, March 11, 2003, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108\\_cong\\_public\\_laws&docid=f:publ010.108.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_public_laws&docid=f:publ010.108.pdf)

<sup>14</sup> In the Matter of 1 Home Lending Corporation: Forfeiture Order, [http://fjallfoss.fcc.gov/edocs\\_public/attachmatch/DA-09-539A1.pdf](http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-09-539A1.pdf), March 9, 2009.

<sup>15</sup> Optima Funding citation, March 1, 2007, [http://fjallfoss.fcc.gov/edocs\\_public/attachmatch/DA-07-936A1.pdf](http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-07-936A1.pdf).

<sup>16</sup> Adopting Order, [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-06-1237A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-06-1237A1.pdf), June 8, 2006.

<sup>17</sup> In the Matter of Septic Safety, Inc.: Order of Forfeiture, June [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-06-1304A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-06-1304A1.pdf), June 22, 2006.

<sup>18</sup> AG Files Actions Against No Call Violators; Reminds Consumers of December 15 Deadline to Register, December 10, 2001, <http://www.doj.state.or.us/releases/2001/rel121001.shtml>

not understand the TCPA or its own regulations. The man in charge of taking those complaints had formerly been defending businesses in TCPA lawsuits. The FCC put the proverbial fox in charge of its henhouse.

Not only has the FCC failed to understand Congressional wishes, but also Congress, through its GAO, has felt compelled to investigate the FCC's poor performance. In 2006, the GAO found that six forfeitures totaling over \$6.9M had not been collected<sup>19</sup>. The majority of consumer complaints were excluded from investigations and enforcement. "The commission has no clearly articulated long-term or annual goals for junk fax monitoring and enforcement, and it is not analyzing the junk fax data." By 2008, things had improved but were still not right<sup>20</sup>. Eighty-three percent of the complaints were closed with no enforcement action, and the GAO was unable to determine why there was no enforcement action because the FCC did not have the data.

To be clear, the FCC is inept. I have written the FCC about their TCPA complaint data intake. Instead of using programming logic to identify violations from the online complaint form, an FCC analyst looks at the form and decides if there is a violation. It is in the analyst's interest to decide there is no violation and immediately close the investigation. In fact, the FCC "assesses the impact of its enforcement program by periodically reviewing ... the amount of time it takes to close an investigation."<sup>21</sup> Analysts (and their managers) get rewarded for finding no violation.

The FCC is also getting another wish. I've had so many of my complaints rejected that it is nearly pointless for me to submit them. At one point, judging from the incident numbers, I was submitting 0.1 percent of the online TCPA complaints. Congratulations, FCC: consumer complaints are not growing as fast as they should – and it's your own fault.

I was talking with an FCC staff member in the Enforcement Bureau. He calmly explained that his Bureau was handcuffed because it could not act on consumer complaints until they were forwarded from Consumer & Government Affairs Bureau – and CGB just wasn't forwarding them. It was sitting on them. He told me to look at the FCC Org Chart to get a clearer picture of what is going on. I'm not sure I got his drift. Maybe the guys at the top of the chart don't care. Maybe CGB is happy to close a lot of cases, and maybe EB is happy that CGB doesn't forward more cases. Maybe the guy at the top doesn't know what's going on or doesn't want to look. No matter the reason, something is rotten in Denmark.

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<sup>19</sup> GAO-06-425, *Telecommunications: Weaknesses in Procedures and Performance Management Hinder Junk Fax Enforcement*, April 2006, <http://www.gao.gov/new.items/d06425.pdf>.

<sup>20</sup> GAO-08-125, *Telecommunications: FCC Has Made Some Progress in the Management of Its Enforcement Program but Faces Limitations and Additional Actions Are Needed*, Feb. 2008.

<sup>21</sup> Id.

#### **4. FCC has ignored the consumer**

Not only do the above issues have an impact on FCC's enforcement, they also show that the FCC has not been measuring consumer dissatisfaction with its regulations. Instead of paying attention to consumer complaints, the FCC is routing them to the circular file or otherwise discouraging them.

Even this NPRM is a bit of sham. How many consumers would know to comment on this docket? Perhaps the FCC should hire a marketing survey firm to find out what consumers want rather than listening to business lobbyists.

#### ***B. FCC Authority under the TCPA***

Congress gave the FCC broad authority to issue regulations under the TCPA. The FCC was charged with balancing "Individuals' privacy rights, public safety interests, and commercial freedoms of speech and trade" in a way that "protects the privacy of individuals and permits legitimate telemarketing practices."<sup>22</sup> That is about live telemarketing.

The FCC was also charged with stopping automated and prerecorded telephone calls that Congress recognized were viewed as a nuisance and invasion of privacy.<sup>23</sup>

#### **1. Privacy**

FCC should have respected consumer privacy unless it could show that privacy was not an issue. Instead, the FCC went the wrong way. It assumed privacy was not an issue unless it had evidence the other way. The FCC ignored Congress.

That view should stop. The FCC should not permit prerecorded calls unless it has evidence that those calls are not an invasion of privacy.

Several commenters have brought up the invasion of privacy issue. Deb Lumpkins wants all autodialed calls to stop<sup>24</sup>. Consumers find political calls to be an invasion of privacy<sup>25</sup>. Even pro-industry Bank of America finds political calls objectionable<sup>26</sup>. FreeEats wants to go the other way because its business includes political calls, but it admits that two state supreme courts have ruled against its political calls<sup>27</sup>. Political calls are not welcome. Nothing on the docket shows that consumers welcome such calls. Neither are prerecorded calls from other TENP organizations.

The FCC needs to recognize consumer privacy and reverse the non-commercial and commercial exemptions at 64 C.F.R. § 64.1200(a)(2). The FCC should exempt

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<sup>22</sup> Public Law 102-243 § 2(9).

<sup>23</sup> Public Law 102-243 § 2(10).

<sup>24</sup> Deb Lumpkins, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015604952>.

<sup>25</sup> Al Noble, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015601081>.

<sup>26</sup> Bank of America, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015638222>.

<sup>27</sup> FreeEats.com, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015625607>.

reasonable uses of prerecorded messages that relate to emergencies and nothing else. Let consumers, through the use of express consent, determine the robocalls they want. The FCC need not make that choice for them. Reasonable uses of prerecorded calls might put school closings under an emergency moniker, but the FCC should not exempt broad classes of calls. Prerecorded calls should not be used for political messages (machines do not have free speech rights), announcing upcoming TV programs or contests (see 2003 Report and Order ¶ 145 nonsense), automated marketing surveys (who wants to be push-pollled by a machine?), and TENP announcements (Congress found that subscribers do not like prerecorded calls no matter who the initiator is).

There is no support in the record for automated solicitation. The FCC should follow the FTC and require written notice to evidence prior express permission for such calls. That the FCC is willing to make such a requirement indicates that the FCC knows subscribers do not welcome such calls.

Some commenters cannot identify a solicitation or try to weasel in some automated solicitation. Some private schools, for example, want to make automated calls to inform previous students that they could take more classes. That would clearly be a solicitation.

The most outrageous comments come from the Newspaper Association of America<sup>28</sup>, which bemoans the declining newspaper industry. It wants to keep the current implied consent that it already has, but it also wants to go far beyond implied consent. If you're a newspaper, then you should be able to reach your existing customers cheaply through your own newspaper (which is, after all, an advertising medium). The NAA says it wants to use prerecorded calls for subscription renewals, but its comments contradict that modest goal. The NAA offers statistics that it now costs \$69 to find a NEW subscriber rather than statistics about maintaining a current subscriber. Although the NAA claims it "engage[s] in responsible telemarketing" to avoid "alienating local subscribers and advertisers", the NAA wants an exemption from the do-not-call list. The NAA wants to call people who have expressly stated they do not want telemarketing calls – something that should cause plenty of local alienation. The logic is faulty. In short, the NAA is asking the FCC to regulate everybody else but not it. That is hardly an honorable position for the Fourth Estate.

## 2. Cellular Calls

Many commenters point out that the American consumer is cutting the cord and going cellular. That migration is completely understandable. Cellular phones are more convenient and in some cases more economic because the plan provides free Caller ID and may have free long distance. The local wire line can easily be superfluous. Cellular phones should also offer freedom from pesky political prerecorded calls and debt collection calls. With such attractive features, it makes sense to dump the 1880's landline

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<sup>28</sup> The Newspaper Association of America,  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015622438>.

technology. Consumers have found some added privacy, but the pro-business commenters want to invade that privacy.

Most commenters do not understand that the FCC's authority with respect to calling cellular telephones is limited. Congress forbids autodialed or prerecorded calls to cellular telephones. 47 U.S.C. § 227(b)(1)(A)(iii). The FCC cannot exempt automated calls to cellular telephones because Congress did not delegate that authority. Few commenters understand that the FCC cannot overrule Congress. For example, many commenters wanted the FCC to treat calls to landlines and calls to cellular telephones the same way. That, however, requires that Congress amend the TCPA.

Many companies that should be TCPA savvy get the autodialed call to cellular telephone issue wrong. Wells Fargo, for example, got it wrong<sup>29</sup>.

Significantly, one pro-business commenter got the autodialed call to cellular telephone issue right: Online Lenders Alliance recognized that FCC may not have the power to exempt calls to cellular telephones<sup>30</sup>.

### III. Issues

Consumers detest automated advertisements. What's really happening is consumers hate them so much, that the FCC demands written, signed, proof that a consumer wants it. But it goes further than that. People do not like prerecorded calls, and the FCC should never have made blanket exceptions.

#### A. TENP

It's election season, and some candidates have been blasting me and others with prerecorded calls.

One of those calls went to Thomas Hawk<sup>31</sup>. Victoria Kolakowski is a California Public Utilities Commission administrative law judge. She's running for superior court judge in Alameda County. Her robocalls reached Hawk while he was at his son's baseball game. Kolakowski believes she can thwart California's Public Utilities Code by calling out state (that is the Code that she enforces!). Furthermore, Kolakowski believes she has permission to call Hawk because Hawk put his cellular phone number down on his voter registration card<sup>32</sup>.

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<sup>29</sup> Wells Fargo, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015638287>.

<sup>30</sup> Online Lenders Alliance, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015626655>.

<sup>31</sup> <http://thomashawk.com/2010/06/victoria-kolakowski-the-unethical-choice-for-alameda-county-superior-court-judge-tries-to-argue-that-california-campaigns-can-hire-out-of-state-telemarketers-to-do-illegal-robodialing.html>

<sup>32</sup> Hawk states that Kolakowski "said that it was my fault that I got robodialed and that if I didn't want to receive calls like this then I shouldn't have put my phone number on my voter registration form."

When I filled out my voter registration card, I had no idea it would channel prerecorded calls my way.

TENP is beyond FTC's reach, but it is not beyond FCC's reach. Consider schools. Is a school closing an emergency? It may not be a life or death drama, but it is certainly not ordinary, and it clearly concerns the health of young school children.

North Dakota and FreeEats. <http://www.ag.state.nd.us/NewsReleases/2006/10-10-06.pdf>, US Supreme declined to review.

### ***B. Deceptive calls***

There haven't been many comments about deceptive tactics, but the FCC should look outside of the record. There are some wonderful stories about collection tactics on the web: <http://800notes.com/Phone.aspx/1-866-302-4224/2>, <http://www.callcatalog.com/phones/view/866-302-4224>, <http://whocallsme.com/Phone-Number.aspx/8663024224>, 866-302-4224. These involve live calls, but also deception.

### ***C. FTC-FCC Harmony is not just about telemarketing***

Many commenters claim that the FCC proposed rules do not harmonize with the FTC. The argument is the FTC rules just restrict telemarketing, but the FCC rules restrict all calls. The argument is silly and uses a limited notion of harmony. The FTC may only regulate telemarketing, but the FCC has broader authority. Harmony would be achieved by placing uniform restrictions on all calls.

Having different rules for different types of calls would create confusion. It would also create opportunity to exploit any differences. We've seen plenty of exploitation about whether a robocall contains an unsolicited advertisement.

The basic problem is high profits and low cost prerecorded calls create a huge temptation, and tempted souls will push the limits. Dentists and chiropractors have pushed the emergency exception. Telemarketers have pushed the letter of does not contain an unsolicited advertisement. Permitting commercial prerecorded calls was a huge loophole/opportunity. Even phony TENP organizations appeared to peddle their related for-profit companies' goods and services.

The world is simple if we go back to what Congress originally wanted. Congress said that evidence it compiled indicated that consumers do not like prerecorded calls no matter what their content and no matter who made them. Congress wanted the default position to be NO PRERECORDED CALLS without prior express consent.

Just make that the rule. No prerecorded calls. No exceptions. We treat all calls the same.

Make the rule so strong that the evidence of prior express consent must be written.

## **D. HIPAA**

There are a few comments supporting the HIPAA measures<sup>33</sup> and a few comment disagreeing<sup>34</sup>. The main problem appears to be HIPAA can be abused in a way that turns into telemarketing. Although a prescription refill notice may be beneficial to a recipient, there is little doubt that such a notice also expects to sell drugs. It is, therefore, a dual-purpose message that includes an advertisement.

The NPRM example of immunization reminders is also a solicitation. One could easily imagine a local organization setting up a neighborhood immunization program and then robocalling the neighborhood. It could claim that SARS, swine flu, or some other malady is a public health issue. It might try following the letter of HIPAA by operating as business associates of local clinics.

The HIPAA exception has a substantial risk of abuse; many telemarketers will claim to be business associates. Don't let the camel put his nose in the tent.

Given that HIPAA requires written consent for before using personal information for marketing purposes, there is little reason to make an exception for HIPAA. If HIPAA required written consent exists, then the healthcare organization should modify its consent form to extend to the FCC prior express consent requirement. There should also be statements about the type of calls and their frequency.

The FTC and FCC worried that HIPAA notices would be worthwhile to senior citizens, but the exemption is not tailored to senior citizens. Furthermore, senior citizens are much more susceptible to abuse and confusion. My mother has a termite contract with Terminix. The contract gives her peace of mind, and it involves an annual inspection of the house. Terminix then started calling her about "pest" inspections. The "pest" inspection was not about termites, but rather garden pests. She'd get a call every three months to schedule a pest inspection, and she would get separately billed. It didn't become clear what was going on until Terminix tried to schedule termite and pest inspections a few days apart. She's cancelled the pest inspections, but Terminix still calls every few months to schedule another pest inspection.

I think the HIPAA exception should go the other way – evidence of prior express consent should be much stronger and perhaps countersigned by someone with a durable power of attorney. I could imagine health clinics running huge vaccination campaigns to draw in more business.

Most disturbing are ACA International's comments that argue HIPAA consent is also a pathway for uncontrolled debt collection calls for HIPAA related debts<sup>35</sup>.

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<sup>33</sup> Generally pharmacies, but also ACA International.

<sup>34</sup> Michigan Public Service Commission,  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015623431>

<sup>35</sup> ACA International, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015623714>, page 24.

Approving the HIPAA exception is backdoor approval for prerecorded debt collection calls by aggressive entities. There is a hidden tiger.

Furthermore, HIPAA should not be an excuse for a personal injury law firm to start robocalling about a prescription drug recall (or any other product safety emergency). I'm sure a law firm could find a way to be a business associate of almost any clinic.

There should not be a separate HIPAA exception in the FCC rules. For matters that could be telemarketing, the consent requirement should be consistent with other FCC telemarketing situations: a requirement of prior express consent for prerecorded calls.

Live calls that address consumer-initiated transaction status messages should be allowed. Nothing in the TCPA prohibits doctors, dentists, or even cable-TV installers from making live calls to cellular phones to confirm appointments.

For consumer-initiated transactions where the consumer has provided a telephone number (even a cellular telephone number), I do not see a need for written prior express consent for live transaction status messages that are tied to a short term transaction. The express consent is provided by context, but the expressed consent is short term. If I order something and give a telephone number, a subsequent call about that transaction is not unreasonable or unexpected.

A prerecorded call about that transaction is unexpected, unwanted, and often unnecessary. The HIPAA exception wants to permit prerecorded calls that remind me of dental or doctor appointments and prescription transactions. I do not see why such prerecorded calls should be permitted without my express consent.

Although such calls do not seem unreasonable, I do not like them.

My dentist gives me a live call reminder. His practice has a dedicated receptionist (who also does the billing) and two or three dental assistants. When I go in for a cleaning, it takes about half an hour to forty-five minutes. He probably handles fifteen to twenty patients per day. Even at one minute per call, that's only twenty minutes. He doesn't need to make robocalls. I also like getting the live reminder because there was one time when I changed the appointment time during the call. Maybe the receptionist doesn't like making the live calls, but I put my dental appointments into Outlook, so I don't need the reminder. If the receptionist doesn't reach the patient or an answering machine, I doubt he continues to call. My dentist, like many professionals, does have a missed appointment charge. If he wants to impose a missed appointment charge, then I think it is appropriate that he make a live reminder call.

My orthopedist also makes live call reminders. His practice only has a nurse/receptionist, and he sees even fewer patients per day. He does surgery in the morning, and sees patients in the afternoon.

The gastroenterologist is a small practice, and he doesn't do appointment reminders. He's very sharp. Although he has absolutely no bedside manner, everybody

wants him. His practice is full up, so those of us who have him are going to show up on time.

The hematologist is a member of a large medical organization, and that organization uses automated reminders. I don't like them, and I would turn them off. The hematologist has a suite of offices where a few doctors share two receptionists. They could make the calls, but what happens is the appointments are entered into an automated system that calls for all the doctors in the organization. I am not impressed with the organization, and I've gotten into a billing dispute with that organization. They billed me for surgery that I never had. It would not have directly cost me any more money because my insurance company was picking up the tab, but it would put a lot more money in the organization's coffers. When I spoke to the president, he said that yes, they make billing mistakes, but the billing mistakes are only about three percent. He also explained that if the billing mistake had been in my favor, his software would have detected it. He should be a smart man, but I thought his explanations were outrageous. He thinks it's OK to over bill by a few thousand dollars if he only does it 3% time. That's millions of dollars.

I get automated prescription shipment notifications from Express Scripts. It's done with a pleasant voice, but I hate these calls, and they carry very little information. I don't need to be told that some prescriptions were shipped. If they don't arrive, then I'll call. If I could turn the notifications off, I would. I cannot just hang up on the calls, because that means Express Scripts will call again. It would be better for me if I could specify what calls Express Scripts would make. I'd certainly turn off shipping notices because they do nothing for me.

### ***E. Bank notifications***

Banks may want an unusual transaction on my credit card to trigger an automated message to my telephone number. These are all calls that strongly relate to a recent, consumer-initiated, transaction and serve the consumer. However, it is coming from an industry that can easily get signed express consent for these notices.

The simple rule should be automated message require the consumer's written express consent. The consent should be informed – meaning it should spell out what kind of messages. A consumer should be able to say yes to account balance messages but no to prerecorded dunning messages. Let the actual consumer (rather than the FCC's notion of a generic consumer) determine what may be sent. That's really what consent is all about.

Many bank and insurance commenters want a cost saving exemption for legally required notices. An error by the bank, such as a security breach that requires a Gramm-Leach-Bliley Act (GLBA) notification, is the fault of the bank and a bank-initiated transaction. One would expect the bank to have defended against such breaches, and there is no compelling reason that the bank should automatically have the benefit of the lowest cost method of notifying consumers. There is no guarantee that a prerecorded call would actually be received by the consumer. The bank should mail such notices.

To be clear, a GLBA notification can be a huge hit. If I recall correctly, a recent breach required 7 million notifications and would entail 2 to 3 million dollars in postage. That is an incentive for banks and credit card companies to beef up their security. If, however, they could call the notifications in, it would be a couple hundred thousand. I believe Congress was well aware of the financial burden and incentive that it implies. Instead of addressing the core issue, the industry is seeking a way of avoiding the purpose of GLBA

Although immediate notification through a telephone call sounds like a good practice, the real question is whether such notification can produce an effective response. If a consumer receives such a call, what should he do? Is he going to immediately cancel all of his credit card accounts? That seems unlikely. If there is a breach in a credit card account, then the credit card company should be more vigilant about subsequent charges. Yes, there can be a lot of fallout from compromised cards, but a GLBA notification should be a rare event, and it should not be used as a justification for exempting other transactions would are less rare.

Some other bank notification calls border on the ridiculous. Credit cards offer various reward programs. Some people may have a couple of credit cards. A trip to South America was put on a Chase card. While in Buenos Aires, Chase declined a \$2,000 purchase as an unusual transaction. The transaction went through on a Wells Fargo credit card. The result, however, was a flurry of calls from Chase trying to get the transaction approved. Chase wanted the commission, but game was already over. It was also laughable because Chase didn't want to pay for a call to Buenos Aires to check on the transaction. I have no problem with Chase declining the transaction, but I not sure I want to interact with Chase. Wells Fargo has declined fraudulent charges.

### ***F. Established Business Relationship***

An EBR should not imply prior express consent for prerecorded calls. If I purchase a widget over the telephone, that does not mean I want to receive or expect to receive prerecorded solicitations for the next 18-months. I don't even want to receive prerecorded calls.

I believe providing a telephone number during a consumer-initiated transaction signals prior express consent for some live transaction status messages such as appointment reminders and shipping questions. If I give out a cellular telephone number during a transaction, then I'm not surprised if a person calls me at that number about the transaction.

I do not believe that I am consciously giving that person the right to contact me at that number for other purposes, and I certainly do not want prerecorded solicitations at that number for the next 18 months.

Giving out a telephone number without some other indication should not grant any consent beyond the immediate transaction.

We live in an aggressive marketing world. It's wonderful when I can find a product on the web, order it, and have it arrive a few days later. There's a bad part of that experience now. During the order process, there are fields with dreaded asterisks – fill this field out, or you cannot proceed with your order. It demands telephone numbers and email addresses. I think it's alright if they call about a problem with the order or if the UPS truck cannot find my house, but I don't want to signal it's OK for them to call about anything other than the order.

I ordered a fabulous coat from Bloomingdale's. They required that I register before I could order online, so I gave out a phone number on the NDCL, and I gave them my low-end email address. I ordered the coat, and then I unregistered. It wasn't enough – I was an email victim.

It was worse with Holland-America. You get this nice little notice that if you don't fill out some online preboarding information, then you'll be waiting in line dockside to fill it out there. I fill out the online info, but of course I'm giving away telephone (which they already have) and an email address (which will be viciously data mined). But the real killer is that to exert my privacy selection, I must call a toll free number (I'm blocked from doing that online). I call that number, and end up listening to seven minutes of Holland-America ads. Even the HA supervisor didn't understand the absurdness of being forced to listen to advertisements before one can make a privacy request. And not all of the seven minutes was at the beginning of the call; every time I was put on hold, HA pitched their cruises.

Residential telephones and cellular telephones are private. Just because there is one transaction should never imply consent for subsequent unrelated transactions. The FTC regulations were very forward-thinking to make sure that consent could not be bottled up in an adhesive contract. My telephone and credit card terms and conditions have many adhesive conditions. I even cancelled my long distance telephone service over an adhesive condition – but most vendors impose similar conditions. The little guy consumer doesn't have clout.

### ***G. Devastation to the Collections Industry***

Many pro-collection industry commenters predicted industry devastation, but they gave little hard information about the impact. There was also little information about how agencies use automated calling and how it affects efficiency. One issue is about using predictive dialers, and another is about robocalls. Most commenters fail to distinguish them. Consequently, we don't know how important either is to the industry.

For sales calls, predictive dialers can make sales agents more efficient. I don't have any citations, but my recollection is roughly 50 percent. That is, however, in a sales situation, and I would imagine most sales calls are short because the called person is not interested. I researched timeshare telemarketing a few years ago, and a salesperson typically spent four hours of cold calling to line up one sales presentation. Predictive dialing was an important efficiency gain, but even then there was little interaction.

Nothing on the record suggests that predictive dialing is as important to the debt collection industry. The people reached already have a business relationship, and the calls probably are rather lengthy (instead of the no-thank-you hang-ups in telemarketing). If a debt collector is only reaching one debtor for every four hours of calling, then the industry already has problems.

Predictive dialers may be useful, but they don't appear to be necessary.

Predictive dialers may be more accurate, but that accuracy can be achieved by using a computer as a speed dialer. The debt collector brings up the next case, presses a button, and his contact manager dials the number for him. Microsoft Outlook will do that for me today: I click on the contact and then click the telephone icon. Outlook will dial the number more quickly and accurately than I can.

Using that technology, a debt collector can reach the residential telephones or cellular telephones without violating the TCPA's prohibition about automatic telephone dialing systems.

Much is said about cellular telephones, and cell phones have changed the business. Before cell phones, it wouldn't do a debt collector much good to call during the middle of the day because people would be at work. Call a cell phone during the day, and you can reach the party you want.

But cellular telephones also mean the debt collector's chance of reaching the debtor is very high. When the debt collector calls, the phone is going to ring, and the debtor is going to be there. In that situation, why does a debt collector need any exemption for automated calling? When any of us call a friend's cellular number, we pretty much expect to reach them. It's not like the 1960's where we had to keep calling and calling until somebody was home. In the 1980's, we had answering machine and could at least leave phone tag messages. Today, the phones don't stay home, and it's easy to reach people.

Debt collectors don't need any special dispensation for predictive dialer calls. Speed dialing should be good enough, and debtors with cellular telephones are already a huge advantage over debtors who only have landlines.

What debt collectors really want is the right to make robocalls to debtors and everybody else. That way, they can have a machine pester debtors for very little cost. No benefits, no health insurance, no sick leave, no vacation, no overtime. The debt collector's world is focused on the squeaky wheel; the debtor will probably pay the squeakiest wheel first, and robocalling is a cheap way to make squeaks. But robot debt collection calls run up squarely against Congress' desire to protect privacy. And debt collectors on a skip trace mission are way over the line – those calls are hitting average citizens.

## ***H. Forgeries***

Very little was said about forgeries or the ESIGN act. My earlier comments wanted the FCC to avoid regulations that said doing something would deem consent because that sounds like it creates a safe harbor. The FCC should simply say that written consent is required to evidence consent.

My earlier comments also addressed potential forgeries, and that it was fairly easy to fake web logs.

Interestingly, the Michigan Public Service Commission<sup>36</sup> disagrees with written prior express consent requirement and with HIPAA. It points out that 178 of 570 cramming complaints involved forged signatures. MPSC considers recorded verbal consent to be more reliable. (But some companies have forged verbal consent with sound editing.) MPSC suggests explicit penalties for forged signatures. MPSC points out the burdens for written consent are no longer there. MPSC is worried about forgeries. MPSC believes an EBR should not deem or invite prerecorded calls. MPSC also states that HIPAA marketing calls should be forbidden.

Make written consent a requirement, but give the courts the discretion to discern forgeries.

## ***I. Express Consent should be revocable***

The comments and the FCC have been silent about how prior express consent can be revoked. The FCC should address this issue in its rules just like it has addressed how consent implied from an EBR can be revoked.

Consumers are going to make mistakes. They may provide written consent at one point, but later realize they didn't understand what that consent meant. Maybe the consumer thought there would be a few prerecorded calls, but then he gets inundated. It is unreasonable to make the consent irrevocable.

It should be clear that prior express consent can be revoked for any type of prerecorded calls. The NPRM's discussion of opting-out of prerecorded calls is tied to telemarketing and do-not-call request. It would be more appropriate to show explicit paths to opt out of telemarketing and explicit paths to opt of prerecorded calls in general. Or make a DNC apply to all calls generally and not just telemarketing calls.

One could imagine a debt collector prerecorded call. Debt collectors game the system by ignoring oral no-contact requests because the FDCPA only requires them to obey a written no-contact request. Consequently, debt collectors love telephone communications because it diminishes the chance that there will be any written communication to trigger FDCPA no-contact. Not only are telephone communications cheap and easy, they also avoid onerous consumer protections. In the past, a dunning

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<sup>36</sup> Michigan Public Service Commission,  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015623431>.

letter might get a response that triggers no-contact. A dunning telephone call does not run that risk.

In a better world, if a debt collector uses a prerecorded call (which is, in a sense, a written communication), then the FCC should require that the prerecorded call have an opt-out mechanism that revokes the right for prerecorded calls. That could be a key press option. Now what happens? That key press is a written communication (it would be recorded in the message player's computer) that probably triggers the FDCPA no-contract provisions. It turns the tables on prerecorded calls, but it keeps the spirit of the FDCPA. If the debt collector doesn't want to risk an FDCPA no-contact, then it should use only live calls. That's also the result Congress wants – Congress knows that people hate prerecorded calls.

Even some pro-collections commenters believe consent to call should be revocable during a call<sup>37</sup>.

### ***J. Abandonment Rate***

Very few commented about the abandonment rate issue. The problem with the current percentage rate determination is that there is no objective outside measure. In my original comments, I pointed out that the machine is deciding if a call is answered by a person or an answering machine, how many rings were issued, and that there is essentially no appeal from the machine's judgment about what happened with a call. It is beneficial for the machine to make errors in the callers favor. There are no independent methods of measuring performance.

If a machine decides that an answering machine answered, then it should still issue an abandonment message. I still get dead air calls, and it may be because AMD doesn't work. Sometimes my answering machine picks up just before I answer.

How can some one who receives an abandoned call be certain that the conditions are met? There should be an objective external measure. If I receive three abandoned calls from the same company within some amount of time, then that should be a violation.

Some pro-business comments were willing to have abandonment rules apply to non-telemarketing calls. That is also a reasonable measure. A dead air call is disturbing to anyone. If anyone uses automated equipment, automated rules should apply. The user spent money for the equipment, so he should learn how to use it. That should also be true for nonprofits – or at least nonprofits that employ professional telemarketers.

Make abandonment rates apply per campaign. Make the abandonment rate be an absolute; don't allow abandonment rates to be averaged over long time periods – that, as I pointed out in my comments, means individuals will get many abandoned calls from the same campaign. If the abandonment rate is ever exceeded, then the predictive dialer

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<sup>37</sup> Robin Krasny, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015601139>.

should stop using prediction until the abandonment rate is one again below 3 percent. The requirement should be an instantaneous rate rather than a credit-default-swap right to abandon 3 percent of all calls.

#### **IV. Brief History of the Financial Markets**

Given the number of debt collector comments, it is important to address the issues that debt collectors raise, but those issues should be put in a larger context. The country financial laws have taken some interesting twists and turns. Some bright people have developed some good ideas. Unfortunately, some greedy people have exploited laws, and many of us have been victims of the ensuing disaster. We've seen meltdowns in financial, housing, and insurance markets.

To prevent exorbitant interest rates, many states passed usury laws that limit the maximum interest rate on certain loans. For example, California limits consumer loan rates to 10 percent per annum on consumer loans<sup>38</sup>. Different states have different limits.

Various financial forces strain those rates. High inflation rates imply interest rates should be higher; otherwise the credit market dries up. In financial boom times, money goes into the stock market (where the return is higher) instead of consumer loans. Consequently, there are states that allow high interest rates. South Dakota currently permits 18 percent. North Dakota says 5.5 percent above an average Treasury Bill rate, but it has an escape clause that permits state chartered banks to match rates of other banking associations. (ND 47-14-09.)

Credit cards were an interesting financial innovation. Initially, credit cards were given only to credit worthy consumers. Banks were conservative institutions, and they did not want to make bad loans. Credit cards companies got transactions costs from the vendor (a fixed fee (say \$0.25) plus a small percentage (say 3.5 percent) and interest from the consumers who carried a balance. The credit card companies also played the float against the vendors.

Financial people are smart when it comes to money, and they examined their loans, their profits, consumer preferences, and consumer defaults. It soon became clear that the path to making more money was more customers. Now here's a stroke of genius. Previously, banks wanted very low default rates – preferably zero. Credit card companies realized they would make more money if they tolerated modest default rates. If 5% of the credit card loans defaulted, those defaults could be covered by raising the interest rate by another 5 percent. Credit card companies could court risky consumers and make more money. In 1981, Citibank chartered a South Dakota subsidiary to take advantage of South Dakota's then maximum interest rate of 25 percent<sup>39</sup>. The Constitution's Full Faith and Credit clause allows a South Dakota credit card company to charge 25 percent interest to out of state consumers – even if the consumer lived in a state such as California with a 10 percent interest rate cap.

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<sup>38</sup> <http://www.loanback.com/lending-101/basics/usury-laws-by-state>

<sup>39</sup> <http://en.wikipedia.org/wiki/Citibank>

High interest rate credit cards were the early version of the subprime mortgage fiasco.

That put the banks in an interesting position. They could take a 5 percent default rate and still make money<sup>40</sup>. The banks could, in essence, just write off the bad debts, but bankers understand money and hate to lose it. If the bad debt could be converted to any money at all, that would be additional profit. Consequently, credit card companies were willing to settle bad debts for a fraction of their value. Something is better than nothing.

The credit card companies could do their own collections, they could hire a collection agency (perhaps on a commission basis), or they could just sell a bad debt to a collection agency. And that's what they did.

The important thing to remember is that these debts are not fundamentally important to the financial markets. If the banks just wrote down the losses, the banks would not collapse<sup>41</sup>.

Now we need to look at the debt collector. A long time ago, the debt collector would send dunning letters. He might also make some telephone calls, but those calls would have to be after work or on weekends. People had home phones, but they weren't at home during the day – they were at work. And there was no guarantee that the debtor would be home if the debt collector called at night or on the weekend – the debtor might be out to dinner or enjoying a weekend picnic. Maybe some debt collectors could get work numbers, but not everybody worked in offices or had telephone access.

Automated calls directed to home telephones were a boon to debt collectors. Machines could make the dunning calls when both the debt collector and the consumer were off work. The 1992 Report and Order addressed debt collection calls, so they were important back then<sup>42</sup>.

The cell phone changed the game and made it easier for the debt collector. Now a debt collector could be an 8 to 5 job and reach the debtor by phone at any time and any place. Almost everybody now has a cellular phone, and they take it everywhere.

Cellular phones have no doubt made it easier for debt collectors to pester debtors, and that ease has probably led to more collections. The collections industry no doubt wants to keep its 8 to 5 hours.

But remember, that the debts being collected are the result of very smart financial people deliberately offering credit to poor credit risks and expecting a high default rate. Legally, it's not usury, but it is unseemly.

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<sup>40</sup> There was a period in the late 1980s where higher than expected default rates gave the banks trouble.

<sup>41</sup> In ACA's earlier Petition (see DA 06-808, April 6, 2006), the ACA suggested that the economy would collapse: "ACA members use autodialers as a crucial component in safeguarding the health of the economy", page 7.

<sup>42</sup> FCC 92-443 cf ¶ 36.

## **V. Organized Debt Collector Comments**

The NPRM has received a huge number of comments from the debt collection industry. Most of these comments are form letter responses resulting from some organized call to action campaigns.

The FCC was bombarded by cookie-cutter debt collectors. What tactic do you thing they employ with debtors? The industry has no qualms about being oppressive or heavy handed.

### **A. ACA International**

#### **1. ACA Comments**

ACA International submitted a 76 page comment<sup>43</sup>. The comments are a twisted rehash of earlier petitions and unsound reasoning. ACA throws a lot of spaghetti against the wall.

There is no doubt that debt collectors fall under the jurisdiction of the FDCPA, but that does not mean that debt collectors are consequently immune from other laws while they are collecting debts. The ACA does not cite any case law supporting its interpretation. If we take it literally, the ACA believes debt collectors could use cellular telephones while they were driving in California as long as the cellular call was attempting to collect a debt. More to the point, the ACA's interpretation would permit debt collectors to steal minutes from any cellular subscriber as long as he was attempting to collect on a debt. The argument is laughable, but it is an indication of the absurd argument that the ACA will push. It is also an indication of how debt collectors will treat debtors. Although the ACA claims the FDCPA excludes the TCPA and all other statutes, it submits to a list of other federal laws and regulations given on pages 32-33 of its comments. How disingenuous is that? It also mentions a 1000-page summary of state statutes.

The real reason to push the supremacy of the FDCPA over all other statutes is that debtors are usually ignorant of the protections of the FDCPA. A debt collector can claim strict compliance to the FDCPA because the debtor must jump through some particular hoops. The FDCPA, however, does not protect non-debtors. The record has references to debt collectors calling non-debtor on their cellular phones to locate debtors. In an earlier petition, a doctor complained that debt collectors were calling his office and disturbing his practice. The record also contains instances of abuse. One advantage of the TCPA is that it can curtail that abuse. The reason the ACA is so vociferous about the TCPA docket is that the TCPA does serve to curtail aggressive and abusive collection practices.

ACA International will exploit any loophole. At page 24, ACA supports the HIPAA exception because it sees the exception as a route to prerecorded debt collection

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<sup>43</sup> ACA International <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015623714>.

calls for HIPAA related debts. Approving the HIPAA exception is backdoor approval for prerecorded debt collection calls by aggressive entities. Even small and seemingly reasonable exceptions will be and have been exploited. For many years, telemarketers argued they could use prerecorded calls to inform consumers about their company as long they did not actually announce the commercial availability of property, goods, or services. There's too much money on the table, and too many people will push the limits.

The ACA once again wants to rehash the definition of "automatic telephone dialing equipment". Reconsidering the issue is inappropriate here.

The ACA draws a distinction that the FTC rules only apply to telemarketing calls, but the proposed FCC rules would apply to all calls. The ACA considers the FCC application to all calls being "inconsistent" with the FTC rules. The ACA is merely arguing the definition of "inconsistent". One could easily have consistency over all calls or just all telemarketing calls. The FCC's intent, however, was clear. The ACA does not argue that the FCC's intent is unreasonable.

The ACA complains that the FCC is reversing direction, but that was the point of this NPRM. The FCC has recognized (as have the FTC and the Courts), that an EBR was creating implied consent rather than the TCPA's required express consent.

Starting on page 37, the ACA again takes up the definition of ATDS, but it does so in a confused manner. The FCC thought predictive dialer debt collection calls to cellular telephones were permitted because a predictive dialer was not an ATDS, but the FCC has reversed its position. As above, reconsideration of the ATDS issue is inappropriate here.

There is no doubt that debt collection calls are not telemarketing calls under the TCPA. Nothing in the TCPA prohibits a debt collector from hand dialing a cellular telephone to speak with a debtor.

The ACA is adept at looking at early Report and Order publications, so it would notice that the FCC does not consider speed dialing to be an ATDS. If a debt collector presses a button to dial a single number, then that would be speed dialing. There would not be any chance of the call being abandoned because the operator (the debt collector) is already on the line. The system is not trying to deliver a prerecorded message. It does not have the flavor of a machine that, without human intervention, automatically dials a sequence of numbers that it previously stored. The machine would only dial one number at a time, and that number would be dialed on human command.

Arguments about Congress only restricting automated calls to the "home" are incompetent. Congress intended to restrict automated calls to cellular telephones; that intent is clearly expressed at 47 U.S.C. § 227(b)(1)(A)(iii). Distinctions about debt collection calls did not make it into the plain language of the statute.

The page 62 quotation of Senator Hollings does not say that prerecorded calls should be exempted; the quotation is that the FCC should consider whether they should be exempted. Part of that consideration is whether the calls invade privacy. The ACA is

not arguing that the calls do not invade privacy. The record shows that automated calls have been used call debtors 10 to 12 times per day. The privacy issue has been resolved. Furthermore, the FCC has no authority to exempt prerecorded calls to cellular telephones.

Although the ACA argues that collection activities and small businesses will be financially harmed, it does not quantify that harm. More importantly, the ACA does not balance any financial harm against the privacy rights of debtors. A debtor may not be an outstanding example of a responsible citizen, but a debt does not extinguish a person's right to privacy.

Commercial speech arguments against the TCPA are long dead. Furthermore, hand dialing the debt collection call provides an adequate alternative; there is not a "total ban" on commercial speech. The FCC is merely saying that debt collectors have no right to use machines to hound debtors without informed consent. Moreover, any commercial free speech argument comes head-to-head with consumer privacy.

The ACA has also failed to comprehend the intent of the proposed regulations. The FCC intends that an EBR will no longer imply express consent for prerecorded calls.

## 2. ACA form letter

I have no problem with debt collectors submitting comments. That is their right. The form letter comments generally track the issues raised in ACA International's comments, so I won't address those issues here.

Chris Ray, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015609234>, "I write to strongly urge..." variation.

Shawna Scrivner, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015615362>, even includes the request to ACA members to submit comments. Shannon, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015605659>, is another fat fingered submission. Luther Albert, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015605763>, fat fingered note from the ACA, but it points out that consent cannot be a condition of service! Christina Rodriguez, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015607887>, and Dawn Magers, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015607186>, Derek Scheskie, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015603568>, Karen Murphy, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015602449>, have fat finger responded to the ACA request to members for the "I write to strongly urge..." filings. "It is important that the FCC hear from as many members as possible so that they understand the full impact this damaging rule would have on both businesses and consumers." Some, such as Dan Hinson, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015607163>, snipped at the wrong place and made Adam J. Peterman the Director of Federal Government Affairs at the FCC.

Although there were many form letter responses (and many goofs), some submissions added some private views. I appreciate even a modest addition to the form letters.

Kim McNeil <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015636930>, included more of a personal note.

Heather Whipple, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015607447>, states, “The bottom line is if people owe the debt then they should pay the debt regardless of if collectors are calling on a cell phone or land line.” Ms. Whipple misses the issue of the FCC’s authority; the FCC cannot exempt automated calls to cellular telephones. Yes, the debtor should pay, but many have fallen on hard times. They should not have to surrender their privacy.

Robert Tavelli, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015607638>, added his own comment to ACA form letter. His comments seek permission for a first call. His position is quite reasonable, but it is outside of the FCC’s authority. The FCC cannot authorize any prerecorded call to a cellular telephone.

As an aside, Joe Taylor, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015603338>, did a nice spoof on the debt collector form letters: “I write to strongly praise your proposed rule...” I almost missed it.

### ***B. Another form letter***

There’s another common form letter submission. See, for example, Kent McCammon, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015609181>, on form letter (“I would like to urge the FCC...”).

These submissions make similar claims and have similar problems. They take on the definition of automatic telephone dialing system and its application to predictive dialers, note the dramatic shift to cellular telephones, note that cellular telephone billing has changed, and claim that the FDCPA offers adequate protection to debtors. Those views are flawed. The FCC cannot exempt prerecorded calls to cellular phones, and the submissions do not balance the debtor’s privacy rights.

### ***C. Sunrise Credit Services form letter***

The Employees of Sunrise Credit Services did their own block filings. <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015647789>, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015623484>, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015621731>, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015621672>. However, their filing states that they use a dialer to make live calls. Consequently, they would not be affected any regulation about robocalling. The only issues for them would be using an automatic dialer to contact cellular telephones and the abandonment rates.

#### ***D. Wisconsin letters***

There were also some similar block filing from debt collectors in Wisconsin. In general, these comments are short and do not have detailed argument.

Connie Hackmann, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015605755>, repeats “sometimes our clients are not able to get ?express permission.?”

Sarah, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015605879>, has same “?express permission.?”

Marilyn King, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015605942>, similar comments from Manitowoc, WI.

Heather Carstens, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015605928>, similar comments from Manitowoc, WI.

Joel Menk, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015605674>, similar comments from Manitowoc, WI.

Cassie, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015605635>, similar comments from Manitowoc, WI.

Ashley, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015605631>, similar comments as Manitowoc, WI, but this time Two Rivers, WI.

Trista Schultz, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015605481>, Two Rivers, WI.

Tanya Carrievau, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015605468>, Two Rivers, WI.

Sarah Schuette, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015605519>, Manitowoc, WI.

Sarah Musial, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015605474>, Manitowoc, WI.

Andrew Schetter, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015605526>, Mishicot, WI, also appears to be in the Manitowoc group.

Crystal Casavant, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015605489>, is a Manitowoc comment, but has the interesting comment that she would be forced to purchase a landline to be notified of outstanding balances. Nothing would prevent Ms. Casavant from giving a creditor prior express consent.

## ***E. Owner Comments***

Several owners of debt collection agencies submitted their own comments, and these comments carry an important perspective. These commenters must deal with the difficult issues of running their companies. Sadly, these comments do not carry quantitative characterizations of their business. It is not clear if they understand that the new rules do not prohibit hand dialed calls to cellular telephones. They also do not argue why their interests in using automated calls to collect debts should trump a telephone subscriber's privacy right.

Thomas Stockton, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015602526>, owns and operates a collection agency with 500 employees. He says that FDCPA is already ample protection. I'm happy that Mr. Stockton did not ask his employees to submit 500 separate comments.

Joel Deaton, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015601313>, former banker and now owner of collection agency. He believes the new rules would make collection almost impossible.

Mary Lou Bower, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015601373>, owns a collection agency, and believes the new rules would put her out of business.

## **VI. Debtor and Consumer Comments**

Below is a random collection of remarks about different comments on the docket.

### ***A. Consumer***

Mrs. G. Lamb, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015649738>. Gives a list of 8 telephone numbers. One of the numbers, 800-760-9746, appears to be the debt collector Revenue Cycle Management.

Deb Lumpkins, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015604952>, has a short and sweet pro-privacy statement: "please stop all the auto dialed calls, especially to cell phones." (This is the Congressional / FTC view (if we assume autodialed means robo.)).

Robert Zimmer, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015604432>, "Please do not buy the propaganda from debt collectors...."

Consumer, 516 N. Summit St., Bowling Green, OH 43402, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015544004>, is the target of collection calls targeting previous owner of telephone number. (Written consent is not a defense if the number changes.) "Communication devices are not optional in this day and age...."

Jay Libove, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015534961>, robocalls to his residential line "continue to be an annoyance, the continued permission of which constitutes on [sic] ongoing incorrect balance in favor of business' interests at the

expense of the reasonable expectation of the ability to be left alone by the consumer.” He not only supports the proposed changes, but wants “the existing exceptions for non-commercial calls and call by tax-exempt nonprofit organizations be eliminated, narrowing the exception only to calls of emergency, directly related notice (airline flight delay, problem processing a donation which has already been made, explicitly requesting reminders, etc).”

Kenneth W. Momsen, Jr., <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015530770>, random comment on docket (before FCC 10-18 released), but suggests that Capital One obtained a cellular phone number from a different source. (If the calls were hand dialed, then they would be legal.)

Lea Anne Windham, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015506350>, random comment on docket (before FCC 10-18 released), harassed by a debt collector for a billing mistake. Debt collector changes Caller Id to trick her into answering the telephone.

Mark Harris, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015544090>, want to prohibit both recorded messages and live calls to homes and cellular phones. “Nor should any automated system call your house, then place you on hold to wait for a telemarketer.” (Automated telemarketing call is plainly forbidden.) Harris apparently wants being on the do-not-call list should prohibit all commercial calls. (That’s a simple interpretation of do-not-call; the current interpretation is do-not-telemarket.)

John Moran, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015543554>, wants to extend prohibitions to include automated political calls.

A Voter, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015535059>, robocalls are out of control and the DNC is a joke.

## **B. Phony Consumers**

Some docket comments are written to sound as if they are from a consumer, but the comments do not appear to track what a consumer would want. I looked at some of those comments in more detail, and I found some shocking detail. Some collection agency comments sound like they are both honest and reasonable. Other agencies resort to childish tricks even when making comments on this docket.

Adam R. Kazmark, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015609028>, submitted an apparent consumer comment friendly to collection calls. He said when asked for his home number, he gives out his cellular phone. I checked his address of 461 Ellicott St, 2nd Floor, Buffalo, NY 14203, and it is the collection agency Phillips & Burns LLC. I checked various phone complaints at <http://800notes.com/Phone.aspx/1-800-840-9166>. It refers to the website <http://www.budhibbs.com/>. In particular, see [http://www.budhibbs.com/collectorpages/phillips\\_burns.htm](http://www.budhibbs.com/collectorpages/phillips_burns.htm). Another website, [http://www.creditreportproblems.com/Phillips\\_Burns\\_LLC.htm](http://www.creditreportproblems.com/Phillips_Burns_LLC.htm), lists a lawsuit against the company, *Laufman v. Phillips & Burns, Inc.*, 2008 WL 190604 (M.D.Fla, Jan 22,

2008), “Debt collector violated the FDCPA by making false threats to the consumer’s child. The debt collector told the consumer’s eight-year old daughter that a sheriff would come to their home.” The report is apparently a denial of Phillips & Burns’ summary judgment motion in the case [http://dockets.justia.com/docket/court-flmdce/case\\_no-8:2007cv02171/case\\_id-207663/](http://dockets.justia.com/docket/court-flmdce/case_no-8:2007cv02171/case_id-207663/).

I doubt Adam Kazmark is a poster child for responsible telephone collections. But there is more.

Ryan Kazmark, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015608517>, 7250 Countryview Lane, Clarence Center, NY 14032, also submitted an apparent consumer comment friendly to collection calls. Ryan told of skyrocketing collection costs being passed on to consumers. A little checking shows that Ryan Kazmark works at Phillips & Burns LLC: <http://pandbllc.com/uploads/PhillBurns-SBA-050908.pdf>.

Ed, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015543883>, claims to write as a concerned consumer. Ed gave his address as 158 Pittman St, Providence, RI 02906, but the actual street is spelled “Pitman”, and the USPS marks the 158 Pitman address as non-deliverable. Google maps shows the address is a shopping mall with a Rite Aid and Blockbuster. “Ed” is writing from a phony address, and Ed is probably phony as well.

Dominic Cashiola, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015621517>, apparent consumer comment opposing new rules. (Not pro consumer comment.)

## **VII. Comments**

### **A. Banks**

Federal Reserve Board,  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015649571>. Gramm-Leach-Bliley Act.

World Financial Network National Bank,  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015638291>, agrees with written consent for telemarketing, but does not want any change to non-telemarketing calls. Credit card mailing notifications, billing issues (late payments, collections), emergency notices such as spending patterns. Has 70 million card holders. Consumers prefer cellular phones.

World Financial Capital Bank,  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015638290>, same as WFNNB.

Wells Fargo, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015638287>, consistency is not achieved because FTC rules cover telemarketing, wants less regulation. Gives many uses. States that 25 to 30 percent of its customers only gave cellular telephone contacts. Refers to “outdated regulatory obstacles.” WF has collected consent already, and would have to redo it. Confuses FCC authority to overrule Congress about cellular phones and cost shifting. Over 90% of WF customers have OK calls to cellular phones. Congress left open the option of oral consent. WF relied on earlier FCC rulings,

and compliance with proposed change would take more than twelve months. Picks up the autodialer issue again; dialing numbers in a database should not be autodialing

Citigroup, Inc., <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015638225>. TSR is only marketing, but amendments apply to customer service and collections calls. Gramm-Leach-Bliley Act.

Bank of America, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015638222>. Wants (1) yes to solicitation, but not the rest; (2) eliminate distinction between wireline and wireless devices, (3) no written consent for not telemarketing calls, and (4) don't change abandonment metric. Negative consumer impact. BofA points out political campaign calls are annoying! Provides list of why they contact consumers. Low balance alerts. (Many banks took a strange fiduciary tact: don't notify but let the consumer overdraw the account so the bank could charge an overdraft fee. An article in the local paper had one consumer making several small debit card transactions and getting hit with \$105 in overdraft fees. Now banks are doing something more reasonable: refusing the overdraft.) BofA states they have a 33% contact rate with an autodialer, but only a 15% contact rate with manually dialed calls. Why should there be any difference in the answering rate? B of A points out the rules would invalidate its existing consumer consent, but reacquiring that consent does not appear to outrageously difficult. As a bank, it should be sending out monthly statements. Bank of America does give some impressive calling statistics: 1.3M calls per month about suspicious activity, 60M texts per month, 400M confirmation calls per month, and 49M alerts. Also wants to preempt state laws.

Mortgage Bankers Association, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015638277>. Wants to make collection calls to cellular phones. It also wants to call about loan modification and refinancing, but it apparently doesn't realize that such calls would be telemarketing. It says that many of its calls are just messages that ask for a call back. Consequently, we are talking about making prerecorded calls to cellular telephones – precisely the type of call that Congress wants to restrict.

JP Morgan Chase, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015627933>

International Bank of Commerce, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015625340>.

Visa, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015630003>

Financial Services Roundtable, American Bankers Association, Consumer Bankers Association, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015624970>. Increased restrictions on calls to wireless numbers. Raises definition of automatic telephone dialing system.

Independent Bankers Association of Texas, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015620974>. Generic, but issue about

back and forth SMS messages. Interesting issue that if I text a bank, then is it OK for the bank to text back?

## **B. Insurance**

(Also see bank comments.)

State Farm, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015641063>, difficult for company to determine if a land-line or a cellular phone. “Autodialed and prerecorded calls or even text alerts provide practical service to State Farm insurance and bank customers.” Points to statutory requirements (e.g., Gramm-Leach-Bliley) that consumers must be notified when unauthorized access to account information has occurred. Suggests that autodialed and prerecorded calls are the fastest and most efficient means of notification. I have a huge problem with this. If the security intrusion happens, written notice is more appropriate. SF wants to minimize its costs after a failure. SF describes a prerecorded call campaign where SF informed its clients how to defend their homes against freezing pipes during a cold snap. Although this sounds reasonable, it is open to abuse. A public service announcement on television appears to be a better method. Describing how to protect pipes is too involved for a simple call; it probably has a pointer to a website or other source that will also carry advertising content. On the whole, such a calling campaign sounds more like an image ad to build the SF brand rather than a serious attempt to avoid damage. Places that have cold snaps probably already have well insulated houses. The example is a sham.

American Council Life Insurance, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015638262>, . Pension, long-term care insurance, disability income insurance, and reinsurance. Use autodialer and prerecorded messages to “make important service and information telephone calls”.

National Association of Mutual Insurance Companies, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015638227>. FCC exceeding scope. Wants to remind customers about policy lapse, safety warnings, and claims processing. (Is a reminder notice about a policy lapse a sales call?) Wants to use autodialers, prerecorded calls, and text messages. Also Gramm-Leach-Bliley Act customer notifications about unauthorized access to information.

Progressive Casualty Insurance Company, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015607978>, account status reminders to consumer’s wireless phones. Mistakenly says “unintended consequence” of different regulations for wireline and wireless phones. (Congress, however, intended the difference.)

## **C. Pharmacies**

National Association of Chain Drug Stores, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015638280>, members use prerecorded calls for drug recall alerts (clearly an emergency), prescription issues, insurance billing

issues (how does a machine take care of a billing issue?), and refill reminders (which is really an advertisement to sell drugs). HIPAA exemption should apply to landline and cellular telephone.

Medco, online pharmacy, legitimate concerns,  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015626950>

Walgreen Companies,  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015624702>, prescription refills.

### ***D. Schools***

Some commenters wanted exemptions for schools and educational activities.

Career College Association,  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015638274>,

National School Boards Association,  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015638214>, said schools should not be required to do signed, written, permission.

National School Boards Association,  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015638214>, wants the FCC rules to not apply to nonprofits and schools. The request appears to go outside of using robocalls to announce schools closings. NSBA wants “notifications about schedules”, “parent engagement activities”, and “school events” issued to wireless devices. NSBA misunderstands the scope of the FCC’s authority under the TCPA. The phrase “parent engagement activities” is vague, and is open to some wild interpretations. Some of my friends are disgusted by high pressure solicitations by their PTA: the PTA wants \$1500 to support additional activities.

United States Department of Education,  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015621361>.

Jeremy Marks, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015602588>, submitted comments on Ohio Department of Education letterhead. He worried about contacting cellular telephones, but he didn’t give much context for his worries. What school districts would be using predictive dialers? A school closing might qualify for an emergency robocall, but schools should not use robocalls to announce school plays or an upcoming football game.

My sister, a PTA volunteer, compiled and published student directories while her children were in junior high and high school. The directories were distributed to parents, and the directories were to be used only for school and personal reasons. It was a lot of effort, and part of that effort was getting signed consent to include a telephone number in the directory. If a parent didn’t approve the number, the number was not published.

Schools must obtain information from parents, and they must have substantial interactions with parents. It would not be a burden for schools to obtain written consent. Furthermore, except for notices about school closing, there is little reason for schools to use prerecorded calls or even predictive dialers. If there is an incident at school, one would expect a school official to hand dial the call to the parent, and nothing in the TCPA prohibits hand dialed calls to cellular telephones.

### ***E. Surveys***

The phony surveys is a common abuse. As I said in my comments, it dates back to P & M Consulting using the survey to find leads rather than do market research. Legitimate surveys will do statistical sampling rather than blanket calls. The FCC should forbid all prerecorded commercial calls. There's too much abuse.

Market Research Association,  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015638229>. Autodialing important. Also uses "computer-assisted telephone interviewing", CATI. Wants Commission to exempt "Bona Fide Survey and Opinion" research calls. MRA complains about the apathy of the people they survey – many do not want to participate: research response "rates have been falling for the last couple of decades, driving up the cost of and time involved in achieving the required number and strata of participants to reach representative samples for most research studies". Written consent would be an increased burden, but MRA's own comments indicate users do not like to take surveys. They show they already get some written consent. The user satisfaction surveys are more troubling. If I buy a product and give my cell phone as a contact for the order, MRA wants implied permission to call my cell phone and try to get me to go through a CATI marketing survey. I clearly would not expect such a call when I released my cellular telephone. What about angry responses. I could see recipients wanting to yell at such a caller; may MRA continue such calls in the face of growing dissatisfaction? MRA's argument is it wants to lower costs; it is not arguing that subscribers want such calls – it is pointing to the opposite.

Arbiton Inc, survey calls,  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015628048>

### ***F. Wrong Issue***

Soundbite Communications,  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015624228>, really about texting petition..

Securus, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015620857>, opening cites harmony with FTC, but really about Global Tel Link's inmate calling system petition.

### ***G. Other Comments***

I went through all the comments on the docket, and here are some of my notes.

Jimmy A Sutton, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015649448>.

Michael, 6/8/2010, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015647819>, gets wrong debt collection call. Michael describes calls where they realize they may not reach the debtor: “automated voice telling me someone’s social security number, it then states to hold on if I’m that person”.

Laurie Taylor-Hamm, Access Capital Services, Inc., <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015641179>, not sharks but assist people to get out of debt.

Danica Ferk, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015641247>, need to contact consumer to put money back into the economy by recovering bad debts.

Service Corporation International Management, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015641293>, 1000 funeral homes and cemeteries. Wants to collect outstanding bills. Believes they have a right to contact their customers at numbers the customers provided without written consent, and it “is simply not feasible for a company or its agents to make all of the necessary calls to thousands of customers through manually dialed calls. Automatic dialers provide the ability to implement compliance-related controls to operations and also create efficiencies that are necessary in today’s marketplace.

Susan Ryan, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015638626>, complains about misdirected phone calls.

PayPal, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015638284>, is wholly confusing. PayPal has access to consumer through email. Why should PayPal care about prerecorded calls for alerts?

Bill Me Later Inc., <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015638272>, a PayPal organization.

American Financial Services Association, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015638265>, limit rulemaking to telemarketers. TSR is limited to telemarketers, so FCC’s amendment should only reach telemarketers. Wants backend exemption for cellular phone calls that “for which the called party is not charged”. The FCC cannot make such an exemption because the TCPA prohibited calls to cellular phones without prior express consent. Wants to contact consumers about loan modification. “The ability to use autodialers or prerecorded messages to call customers at wireless numbers is vital to making loan modifications for customers.” This appears to be selling a loan modification service. AZ law requires four telephone calls to explore foreclosure options. Somehow, AFSA reads in that those calls can be satisfied by automated calls. Foreclosure should be a rare event, and AZ probably expected the calls to be live calls. In any event, the amount of money that will be lost in a foreclosure is huge, and it warrants a live call to the debtor. AFSA seeks perfunctory compliance of the AZ statute. Nothing in the TCPA prevents hand dialed calls to cellular

phones. Significantly, AFSA is willing to accept the same predictive dialer limitations as telemarketers. Well organized response.

National Retail Federation,  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015638232>. (1) Schedule appointments or provide information about goods and services: delivery dates, in store appointments, installation or repair appointments, product recalls, and “to provide information about special order or services”. (Last could be telemarketing.) (2) Respond to consumer request. (Consumer calls, makes an order, and then what is the retailer to do? Given a number, why shouldn’t they get a call back at that number?) (3) Deliver legal notifications by telephone. (This issue is disturbing, and it seems to be a minimize costs on legal obligations issue like Gramm-Leach-Bliley Act.) (4) Collect consumer debt. (5) Fraud alerts.

DMAA: The Care Continuum Alliance,  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015638228>. Support HIPAA exception.

America’s Health Insurance Plan,  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015638219>. HIPAA support. (But prescription refill information is really a sales call.)

The CBE Group, Inc.,  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015638002>. Private debt collection agency. Automated technology is more accurate than hand dialing. “Use of automated dialer technology is the only reasonable means for creditors and their third party collection firms to feasibly and economically communicate with millions of customers and consumers on a national scale.” Says proposed regs “will reduce operational efficiency by a minimum of at least 30%”. Economically infeasible to retroactively obtain written express consent from millions of consumers. Misreads proposed regulations and believes that debt collection industry could still call residential lines under the commercial call exception. Wants to exempt creditors and third party debt collectors.

Financial industry. Adeptra  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015635436>

Attorney Gasparro’s clients get hounded by debt collectors. Two have committed suicide. <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015634902>

Mark Schwartz takes issue with ESIGN.  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015626632>

kgb USA, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015626792>

USAA, hard to classify,  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015626874>

Brad Cheatam, insurance,  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015627863>

Joe Shields, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015628609>. World is the opposite of what the industry says.

Gerald Roylance, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015628647>

Mobile Marketing Association,  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015630337>

Student Loan Servicing Association,  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015626111>

United States Telecom Association,  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015625866>, notes that FCC rules go beyond FTC and cover more than telemarketing.

Silverlink Communications, provider to healthcare,  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015625831>

SCANA, TCPA to curtail telemarketers,  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015626087>

FreeEats.com, artificial intelligence call, query households, identify supporters, and then encourage those supporters to vote,  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015625607>. FreeEats notes two state supreme court opinions against it, and it is seeking preemption by the TCPA.

Encore Capital Group,  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015625362>, claims it has no interest in calling non debtors. It, among others, points out the reliability of using autodialers.

Portfolio Recovery Associates,  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015625329>, check this out.

National Association of State Utility Consumer Advocates,  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015624791>. Wholesale agreement with the proposed rule change.

DirecTV, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015624854>, opt out in non telemarketing calls.

Alarm Industry Communications Committee,  
<http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015624876>. Legit use to call to confirm an installation appointment. Automated calls to service an alarm when customer did not answer can be dealt with in the services agreement. Wants those to be emergency calls, but that stretches the point. Curiously, it wants to label robocalls doing “account status

inquiries” as “nonsolicitation calls”. It does not further describe what an account status inquiry is. It wants the FCC to exempt calls to wireless numbers.

Adepra, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015624883>, buries the lead that it does both fraud alerts and debt collection calls (which it terms payment reminders or “resolve their delinquency”). It starts out saying that it does “SaaS” calls that support the financial services industry.

American Teleservices Association, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015624523>, focus on number of households going completely wireless. This does have an impact on prior express consent required by Congress.

National Council of Higher Education Loan Programs/Education Finance Council, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015623463>.

MDS Communications, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015623856>. Cellphone centric.

Sprint Nextel, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015622638>. Sprint does not like certain aspects of making calls to customers (such as non-adhesive contracts). In particular, Sprint defends the exemption it has to make calls for it does not charge its customers. Sprint also addresses the creditor issue. Opposes new consent requirement and wants wireless carrier rule reaffirmed.

SmartReply, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015621117>, agrees with written consent for prerecorded calls, but does not want written consent for autodialed calls.

Robert Biggerstaff, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015621484>.

National Consumer Law Center, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015620924>, discusses 2008 TSR amendment. All intrusive. Great comments.

Alliance for Telecommunications Industry Solutions, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015619944>. Robocalls are a source of network congestion.

Message Broadcast, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015617329>, sends MILLIONS of prerecorded calls every day. Claims they are informational messages.

Consumer Litigation Group, Joseph A. Mullaney, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015618952>. Comments about consumers being bombarded with calls. Excellent comments.

Discover Bank, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015619245>, statistics about customers.

Macy's, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015612995>. A good list of reasons for making calls. Why would written consent be burdensome?

DBA International, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015611104>. Debt Buyers Association. Suggests that if creditors may not call with prior express consent, then there will be a flood of litigation against debtors. Cites FTC workshop on debt collection stating all communications technologies should be available. Right of debtor to cease all contact. I doubt increased consumer litigation is a big issue. Debt collectors probably want to avoid litigation because it can backfire on them. They can still call using speed dialing. The world really doesn't change that much.

Education Sales and Marketing, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015610535>, sales arm of Sylvan. Said that hand dialing each number would take 3 or 4 times the man hours. That seems outrageously high for predictive dialer figures, but low for robocalls. But the scenario seems a bit crazy. Discusses getting cellular numbers at job fairs, but it could also get informed written consent at those same job fairs. The people at a job fair are looking for employment; ESM is looking to sell education to people looking for jobs. These comments are all about telemarketing. Indicates that its existing database would have to be discarded, but why discard when it can be salvaged with some effort? Does not discuss the costs of saving or the value of its existing database. It could continue using the database if it purchased a cellular telephone list. Wants a college to hire ESM to call past students to see if they are interested in further education, but that is still telemarketing. Does cite *Leckler v Cashcall*. Provides statistics. Indicates that its current monthly call volume of 6.12M would be cut to 2.45M, and it would lay off 276 of its 585 employees. It agrees with signed express consent for prerecorded messages, so it apparently uses predictive dialers rather than prerecorded messages. Does not want written consent requirement for autodialed calls.

Joe Samuel, First Data, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015609939>, TRS Recovery Services, Inc. Collection agency.

Dan Smith, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015610060>, says it is bad legislation, will cost jobs, and lead to higher interest rates.

West Corporation, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015609189>, ex parte notice.

SC&C Inc., <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015609797>, reasoned comment.

Loretta Gallegos, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015608942>, has exactly the tale that Congress (and the proposed rules) are trying to prevent. She's unemployed and paying for collection calls to her cellular telephone. She claims she was

misled about the purpose of the telephone number. Sadly, it appears that Ms. Gallegos is ignorant of the FDCPA – something that debt collectors exploit. Debt collector can use consumer ignorance as a weapon. Recall previous collection petitions where benign phrases such as alternate contact numbers were used. I have a lot of admiration for Ms. Gallegos. You don't see many comments by people such as Loretta because most debtors do not know about these proceedings and wouldn't know what to say if they did. The rank and file debtor doesn't have an ACA equivalent looking out regulatory issues and sending out emails.

Marc Brewer, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015608093>, one of the several non-form letter comments. States that the FTC will begin receiving complaints from consumers that they never received a call from the creditor or debt collector to resolve a past due balance before the past due is reported to a credit reporting agency. How much trouble is it for a debt collector to place one call? The USPS still delivers mail.

Darla Abernathy, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015607944>, issues about medical billing. She apparently collects information over the telephone so the insurance company may be billed directly rather than first sent to the consumer. I have trouble with this. The first thing my doctor asks for is my insurance information. This business does not sound as if it needs a predictive dialer.

National Collections Bureau, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015607701>, has a priceless statement. If the debtors are asked for consent in writing, "They won't consent in writing!" NCB believes a debtor can ask not to be called. (Mistaken, and certainly not a position the industry has taken (which seeks the RIGHT to call for its commercial purpose). It will call until there is a written FDCPA.)

Becky A. McHughes, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015607510>, will close up shop with these regulations.

Cheryl Kline, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015607542>, wants to call cellular phones to collect debts. She fails to understand the difference between a call to a landline or a cellular phone. Talks about the right of the creditors to recover monies rightfully due them. Does not balance debtor's right to privacy.

Brandi, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015607178>, makes a concise statement about the debt collector's right, "If they didn't want to be contacted about a debt they should have paid it before it came to collections, regardless of the way they are contacted." Compelling common sense and it says something about debt collector's view of the debtor, but does not balance debtor's right to privacy.

Afton Bruckschen, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015606503>, "sometimes our clients are not able to get 'express' permission." If you don't have express permission, then you may not call.

Patsy Check, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015605720>, is a collection agent but believes the proposed regulations would stop medical appointment calls.

Michael Priest, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015605750>, simple comments.

Tina Luedtke, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015605850>, works for a collection agency, doesn't want telemarketing calls, but she wants to know if she has a bill.

Candace Kammer, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015605939>, any number given either written or verbally should allow anyone to call.

Marc Trezza, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015605472>, taking money out of businesses is cost paid by all consumers.

Bethany Ellis, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015605406>, independent comment from debt collector.

JFaulkner, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015604877>, pro-privacy comment, but it is very confused.

Robert L. Hyde, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015604883>, lawyer in *Leckler v Cashcall*. Complains about form letters. He suffered for FCC's idiocy.

Douglas Campion, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015604939>, has 409 Camino Del Rio South, Suite 303, San Diego. Support prior express consent. Points to harassment and calls to run up a phone bill to hundreds of dollars. I suspect he is another Leckler attorney.

Jeff Karns, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015605250>, wants at least one contact that can be called – even if it is a cell phone.

Willaim Roberts (tahiticora?), <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015604172>, states the regulations will destroy the third party collections industry. Furthermore, the regulations only protect “liars and debtors people that deserve to be prison”. Sadly, this is an unreasonable position for a debt collector to take. It shows that he doesn't care about the debtor's rights at all. Society gave up on debtor's prisons a long time ago.

Russ Jakubowski, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015603887>, pro debt collector comment.

Consolidated Credit Counseling Services, Inc., <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015603995>, is on the debt collectors' side.

John Adams, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015603491>, “Our cell phones are the last private point of contact.” “What happened to privacy and respect?” Opposed to all calls.

Roger Rubio, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015603694>, states changes are ridiculous. States FDCPA was much needed at the time.

Kathy Ryalls, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015603836>, reasonable comments. She does not state why she needs an autodialer or robocalls to assist debtors.

Joe Taylor, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015603338>, “I write to strongly praise....” (Nice take off on the form letters.)

Victoria McAndrews, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015603148>, customer service calls to healthcare and higher education.

Steve Fisher, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015603180>, cellular phones are low cost, and still has the right to hang up. Ignores the issue that a cellular telephone is always with someone and can still intrude on privacy.

Attorney Signorelli, motion for extension of time, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015602904>, Venable.

Jim Plummer, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015602974>, correctly recognizes that it was only implied consent. Change the contracts. Rule will benefit the wrong people.

Jerry Sorrell, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015602941>, “from a practical standpoint, these new requirements would eliminate the communication between debt collectors and consumers who use cell phones....”

Brad Boehmer, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015602079>, FCC wants unemployment rate to increase; tens of thousands of jobs will be lost; people don’t pay bills by a simple letter.

M. Gensmer, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015602425>, rule is damaging to the collection industry; loss of hundreds of thousands of jobs; “send innocent families out on the streets because somehow you’ve decided debtors should have the right to decide if they want to be contacted for not paying bills.”

Michael J. Wojcik, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015602454>, taking the option away from the collections agency.

Elye Sackmary, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015602532>, doesn’t want to find another job because debtors cannot be called on their cell phones.

Molly Banas, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015602594>, 21-year old, doesn't want solicitations but does want business information. 3014 Normandy Drive, McKinney, TX.

Michael Kelsik, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015602635>, government eliminating jobs. Debt collection is good job without degree.

Chet Klene, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015602443>, some accounts will needlessly go to collection without a reminder call; others hurt by rising prices.

Amanda Grice, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015602448>, recognizes a problem with number portability.

Mark Cronin, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015602070>, says cost shifting argument is outdated.

Kimberly Bearden, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015602066>, mail takes too long.

Jason Nesbit, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015602019>, organizations won't lend money any more; protecting people who lack personal responsibility; money will only be lent to the most credit worthy.

Porter Heath Morgan, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015601845>, collections attorney. Millions of consumers work with collection agencies. Collection does a better job than the debt consolidation industry.

Denice Gorski, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015601876>, debt collectors have job that involves communicating with the consumer.

Coalition of Trade Associations, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015601838>, motion to extend time.

Angie Hutchins, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015601792>, "We make it so easy for people "not" to pay their bills." Landlines are disappearing. Don't allow debtors to avoid calls. "You can collect a debt with respect."

Angie Hutchins, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015601781>, making it hard to contact consumers is not a good thing.

Roger D. Mizer, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015601708>. "It's almost as if the laws are made to protect people that don't pay their bills."

Michael Ryalls, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015601743>, employs over 80 people. Small modification to form letter.

Alan Lemmon, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015601693>, dialers are economical and beneficial.

Tom England, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015601289>, opposed. Rule would render contact between consumers and creditors invalid.

Michele Hardy, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015601321>, “new rules could have a devastating impact on medicine as well as collection efforts.” “In addition, with the introduction of HSA, Flexible spending, and higher deductibles, our collection activities have increased. This would place limits on our ability to collect for services rendered after insurance.”

Kevin Wilson, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015601455>, don't turn back the clock.

Henry Mangels, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015601500>, capacity of the radio bands.

Frankie, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015601534>, “just listened to the TCPA seminar and I agree this would be harmful to the collection industry.”

Damian DeGennaro, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015601328>, many people “are very grateful that we have taken the time to find an alternative number so we can get them the information needed....”

Chester Toothman, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015601383>, technology is needed to “communicate with the RIGHT person at the RIGHT time”.

Robin Krasny, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015601139>, the debts are purchased, so the debtor does not know who to pay until they get a call from the new owner. Krasny suggests changing the law so “that if YOU ARE ASKED NOT TO CALL A CELL PHONE then you must never call it again under severe penalty.

Andrew Cole, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015601178>, restrictions are detrimental to the consumer.

Jack Brown, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015601095>, “proposed prohibition to use of autodialers to call cellphones in the debt collection area is bad for business”.

Al Noble, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015601081>, wants even calls from politicians prohibited.

Coalition of Trade Associations, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015600626>, ex parte. Also announced will seek an extension of time.

Angela Morris, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015589508>, rules would harm her business.

Protocol Global Solutions, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015591365>, written permission for just telemarketing calls.

Financial Services Roundtable, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015588280>, claims the rules would not harmonize with the FTC, departs from long standing FCC rules, wants the FCC to reconsider its interpretation of “automatic telephone dialing system”, and chides the FCC for not having resolved the inconsistent state regulation of interstate telemarketing.

Marketlink, Inc., <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015588281>, wants written consent only for prerecorded telemarketing.

Gerald Roylance, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015587540>, objection to Sallie Mae’s Notice of ex parte.

West Corporation, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015587231>, “West stated that the flexible “express consent” standard has worked successfully for 18 years.”

Sallie Mae, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015555511>, ex parte notification. Vacuous.

Kenneth Flook, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015547529>, cellular phones are common. “If a consumer has the option to say no calls, how does someone collect a legitimate debt?” Mr. Flook misunderstands. Debt collectors can still make live calls to debtors. They would not, however, be able to employ robots.

West Corporation, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015535462>, written consent for prerecorded telemarketing calls.

Sunshine agenda. [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-03-2255A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-03-2255A1.pdf).

## **VIII. Conclusion**

The FCC should require written, signed, consent for prerecorded calls. Nothing in the record suggests that consumers welcome these calls. There are many instances where prerecorded calls have been abused (such as using “marketing surveys” to troll for leads) or consent for prerecorded calls has been obtained in uncertain circumstances (a consumer probably does not understand that putting a telephone number on a credit card application opens him up to prerecorded calls; consumers certainly do not expect to be inundated with automated collection calls). Congress found that consumers do not like prerecorded calls regardless of the content and regardless of the initiator. Clearly, the default position should be no prerecorded calls.

Although banks argue that consumers welcome automated fraud alerts and account balance messages, banks are easily in a position where they can obtain written consent for such automated alerts. Banks already mail statements to consumers, and consumers mail payments to banks. In addition, many banks already offer secure website access and permit consumers to update profiles. The FCC should let consumers individually control automated calls.

The FCC should not make any exceptions to the written prior express consent. Many industries have been adept at exploiting FCC loopholes. Although the HIPAA exception appears to be well meaning, ACA International points out that the HIPAA exception permits automated calls for collecting healthcare related debts. Some proposed exceptions, such as refill reminders, intend to sell drugs. Calls to remind consumers of upcoming appointments do not need to be automated. Doctor and dental offices have modest traffic, so there is little need for impersonal prerecorded messages.

Even charity and political robocalls should require written prior express consent. There are plenty of news reports that evidence consumer hatred of political robocalls, and we don't hear about consumers looking forward to such calls. Yes, candidates and their supporters have Free Speech rights. Such live intrusions into our lives are a small cost of our freedoms. Machines do not have such rights. In order to issue an exception, the FCC must find that such calls do not adversely affect the consumer's privacy. Given that states have outlawed such calls, the conclusion should be the calls affect adversely affect privacy.

The FCC should also clearly explain how a consumer can terminate prior express consent.

/s/ Gerald Roylance