

May 5, 2014

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: **Written Ex Parte Presentation – ACA International (“ACA”), Petition for Rulemaking, CG Docket Nos. CG 02-278, RM-11712**

Dear Ms. Dortch:

ACA International (“ACA”) has asked the Commission to address several significant issues related to the application of the TCPA to help ensure that legitimate non-telemarketing debt collection calls (and their resulting positive impact on the public and private sectors) are not unfairly impeded.¹ ACA has particularly emphasized the important role that debt collectors play in recovering much needed revenue for federal, state, and local governments.² As the City of Philadelphia recently explained in a request seeking support from the debt collection industry:

“...these **funds are essential to support important community services**, like public safety, a clean environment and quality public schools. **Failure to collect all funds owed to the City jeopardizes much needed services and increases the financial burden on compliant taxpayers and residents.**”³ (Emphasis added.)

¹ See ACA International, *Petition for Rulemaking of ACA International*, CG Docket Nos. 02-278, RM-11712 (filed Jan. 31, 2014) (“Petition”), and related Comments (filed Mar. 24, 2014) and Reply Comments (filed Apr. 8, 2014) of ACA. See Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), *codified at* 47 U.S.C. § 227 (“TCPA”); see also 47 C.F.R. § 64.1200 *et seq.*

² ACA Comments at 4-6. See, e.g., Comments filed in Support of Petition in CG Docket No. 02-278, by County of San Diego, Office of Revenue and Recovery (Mar. 20, 2014).

³ City of Philadelphia, Request for Information, Accounts Receivable Management & Collections, The Office of the Chief Revenue Collections Officer, Issued August 7, 2013 (“Philadelphia RFI”) (Exhibit 1) at 2; see also, Section I.

Especially in these fiscally-challenging times, the same needs that Philadelphia articulated apply to all levels of government – federal, state, county, city, municipality, and others. ACA hereby submits this written *ex parte* presentation to provide the Commission with additional details and examples regarding the critical role that debt collectors play for federal, state, and local governments.

ACA has explained that its members are an extension of the community – they represent the retailer and doctor down the street, the local university, and even government agencies.⁴ For instance, the President’s FY2015 Budget recently highlighted the importance of debt collectors at the federal level and proposed that Treasury debt collections be improved by extending the use of debt collections resources and “clarify[ing] that the use of automatic dialing system and prerecorded voice messages is allowed when contacting wireless phones in the collection of debt owed to or granted by the United States.”⁵ The White House emphasized that a balance must be struck between protections, such as those under the TCPA, and the need to support debt collection operations: “[w]hile protections against abuse and harassment are appropriate, changing technology should not absolve these citizens from paying back the debt they owe.”⁶ In another example of the key impact that debt collectors have at the federal level, in its FY2012 Report to Congress, the Department of the Treasury described “private collection agencies,” or “PCAs,” as one of the tools it uses to collect delinquent Federal non-tax debt, detailing over \$3 billion in collections made on behalf of the Departments of Health and Human Services, Treasury, and Education in FY2012 alone, as part of an increasing trend since FY2008.⁷

Beyond the federal level, state and local governments have long made use of debt collectors and in many cases, increasingly seek out their services and expertise to recover urgently needed revenue. This far-reaching impact is exemplified by the wide spectrum of state and local governments, from coast to coast and from small municipalities to the largest of states, that seek out debt collectors’ expertise and guidance. Debt collectors also play an important role in long-term,

⁴ Petition at 4, n.14. Debt collection activities are important to the federal government, and a statutory framework governs U.S. debt collection procedures. *See* Debt Collection Improvement Act of 1996 (DCIA), Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996). The FCC rules implementing the DCIA are codified at 47 C.F.R. Part 1, Subpart O.

⁵ Office of Management and Budget, *Fiscal Year 2015, Analytical Perspectives, Budget of the United States*, at 123, available at <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2015/assets/spec.pdf> (last visited May 1, 2014).

⁶ *Id.*

⁷ Department of the Treasury, *Fiscal Year 2012 Report to the Congress, U.S. Government Receivables and Debt Collection Activities of Federal Agencies*, March 2013, at 16, available at <http://www.fms.treas.gov/news/reports/debt12.pdf> (last visited May 1, 2014).

sophisticated government revenue recovery programs. In the remainder of this presentation, ACA provides a sampling of these important, nationwide, public sector activities.

I. Government Agencies, and Therefore All Consumers, Benefit from the Expertise of Debt Collectors to Recover Urgently Needed Revenue.

In these times of increasing budget pressure at all levels, it is not surprising that a wide range of government entities – from coast to coast and from the very small to the very large – depend on the services provided by debt collectors. There are many examples of state and local governments seeking the expertise of debt collectors to implement or improve long-term revenue recovery programs and utilizing debt collectors to collect monies owed. The following are just a few examples:

- Lima, Ohio: In late 2013, Lima, Ohio – with some 38,339 residents⁸ – issued a request for proposal and awarded a new contract for collection agency services on behalf of the Lima Municipal Clerk of Court to address outstanding debts of approximately \$6 million.⁹

- Overland Park, Kansas: In early 2013, the City of Overland Park, Kansas – population 178,919¹⁰ – issued a request for qualifications (“RFQ”) seeking the assistance of debt collectors.¹¹ In its RFQ, the city required not only that respondents must comply with the rules of the Federal Trade Commission and applicable state and federal law, but also that the respondents must be a member of the ACA “and must comply with the ethics it has adopted.”¹²

- Philadelphia, Pennsylvania: The City of Philadelphia Office of the Chief Revenue Collections Officer sought and received “information detailing best practices used by experts in the debt collection industry” and “new ideas as to how the City of Philadelphia can refine its strategies, policies and practices in debt collection and delinquency prevention” from a number of prominent

⁸ US Census Bureau, QuickFacts, available at <http://quickfacts.census.gov/qfd/index.html> (last visited May 1, 2014) (“Census Bureau QuickFacts”).

⁹ The City of Lima, Ohio, Request for Proposals, Professional Collection Services: Collection of the Lima Municipal Court’s Outstanding Accounts, Issued Oct. 2, 2013 (Exhibit 2); Lima QA Document (Exhibit 3); Lima Municipal Court – Collections Services – Determination (Oct. 31, 2013) (Exhibit 4).

¹⁰ Census Bureau QuickFacts.

¹¹ The City of Overland Park, Kansas, Request for Qualification, Debt Collection Services, Responses Due Mar. 27, 2013 (Exhibit 5) at 4.

¹² *Id.* at 3; *see also*, ACA’s Code of Conduct at <http://www.acainternational.org/files.aspx?p=/images/12909/acacodeofconduct20140318.pdf>.

debt collectors, including ACA members.¹³ Highlighting the value of debt collectors' experience and capabilities in the public sector, one of Philadelphia's key observations when analyzing the responses it received was that "[v]irtually everyone recommends a Champion-Challenger model for the use of Outside Collection Agencies, based on the structure used by the US Department of Education."¹⁴

- Phoenixville, Pennsylvania: The small borough of Phoenixville, Pennsylvania, with less than 17,000 residents,¹⁵ is currently reviewing the use of a debt collector to address an estimated \$1 million in delinquent water, sewer, and trash service bills.¹⁶

- Portland, Oregon: After only 55% of taxpayers paid a \$35 annual arts tax and penalties, which had been earmarked by voters the prior year to fund elementary school arts and music education, the City of Portland recently stated that it is considering the use of a debt collector to recover these funds.¹⁷

- Tulare, California: Looking to collect on a wider variety of delinquent bills, including returned checks, violations of City code, property damage, DUI, animal control, miscellaneous receivables and unpaid utility bills, Tulare, California (population 60,933)¹⁸ awarded a debt collection services contract in late 2013.¹⁹

¹³ Philadelphia RFI, Ex. 1 at 2; *see also* Accounts Receivable Management & Collections RFI Response Summary ("Philadelphia Response Summary") (Exhibit 6).

¹⁴ Philadelphia Response Summary, Ex. 6 at 1. The "Champion-Challenger model" is a debt collector's best practice used to implement and compare results between a primary debt collection strategy (the "champion") and an alternative approach (the "challenger").

¹⁵ Census Bureau QuickFacts.

¹⁶ Darren Waggoner, *Pennsylvania Borough Considers Hiring Collection Agency*, Collections&Credit Risk, Apr. 2, 2014, available at <http://www.collectionscreditrisk.com/news/pennsylvania-borough-considers-hiring-collection-agency-3017482-1.html> (subscription required) (last visited May 1, 2014).

¹⁷ Darren Waggoner, *City Considers Hiring Collectors to Chase Overdue Arts Tax*, Collections&Credit Risk, Mar. 31, 2014, available at <http://www.collectionscreditrisk.com/news/city-considers-hiring-collectors-to-chase-overdue-arts-tax-3017451-1.html?cclanding> (subscription required) (last visited May 1, 2014).

¹⁸ Census Bureau QuickFacts.

¹⁹ City of Tulare, Request for Proposal, RFP 14-531, Delinquent Revenue Collection Services, Issued Jul. 24, 2013 (Exhibit 7); City of Tulare, Contract Agreement 14-531, Delinquent Revenue Collection Services (Exhibit 8).

- State of South Carolina: The South Carolina Department of Employment and Workforce (“SCDEW”) issued an exploratory request for information (“RFI”) in late 2013 to gather “information from interested parties regarding options for a vendor to effectuate prompt collection of employer liabilities owed to SCDEW. These liabilities include delinquent payments of contributions, interest, penalties, departmental administrative contingency assessments, and other reasonable costs incurred in collection.”²⁰ The RFI also noted that South Carolina law permits SCDEW to contract with debt collectors.²¹ In response to questions, the state went on to explain that the dollar value of the 18,320 current accounts in scope for its inquiry totaled some \$66.6 million.²²

- State of Tennessee: The Tennessee legislature approved a measure to allow local courts to add an additional fee if they utilize outside services to collect delinquent criminal court fines and fees.²³ One of the measure’s co-sponsors described the bill’s value to localities: “court clerks will have the authority they need to enforce court rulings and close loopholes in our legal system. The bill is greatly needed in our counties where thousands of dollars of fines have been neglected.”²⁴

II. Debt Collectors Also Play an Important Role in Sophisticated, Long-Term State Government Revenue Recovery Programs.

It is also important to keep in mind that some states have in place sophisticated, long-term, revenue recovery programs that depend on debt collectors. Kansas provides a good example of this. Because its current collection services contract was expiring and no renewal options remained, in November 2013, the Kansas Department of Revenue (“KDOR”) issued a request for proposal

²⁰ State of South Carolina Request for Information (RFI – Debt Collections Services; SC Department of Employment and Workforce), Solicitation No. 5400006833, Issued Oct. 17, 2013 (Exhibit 9) at 4.

²¹ *Id.*

²² State of South Carolina Request for Information (RFI – Debt Collections Services; SC Department of Employment and Workforce), Solicitation No. 5400006833, Amendment #1, Issued Oct. 30, 2013 (Exhibit 10) at 3-4.

²³ See Tenn. HB 1401/SB 1673, enacted Apr. 3, 2014 (summary available at <http://wapp.capitol.tn.gov/apps/billinfo/BillSummaryArchive.aspx?BillNumber=HB1401&ga=108>); see also, Darren Waggoner, *Tennessee Courts Cleared to Add Collection Agency Fees to Fines, Collections&Credit Risk*, Apr. 7, 2014, available at <http://www.collectionscreditrisk.com/news/tennessee-courts-cleared-to-add-collection-agency-fees-to-fines-3017524-1.html?cclanding> (subscription required) (last visited May 1, 2014).

²⁴ *Id.*

seeking “debt collection and civil litigation services for delinquent taxes and fees from individuals and businesses located inside and outside the State of Kansas,” listing more than twenty different taxes and fees subject to such collection.²⁵ KDOR explained that its current inventory of debts serviced by three different incumbent, external, debt collectors totaled about \$289 million as of the close of FY2013.²⁶ In describing its expansive program, Kansas further noted that “[a] key component of this scope is to reach beyond Kansas jurisdictional boundaries to recover Kansas debt.”²⁷

The California Administrative Office of the Courts (“AOC”) provides another example. The AOC issued a request for proposal (“RFP”) in late 2013 to continue its existing, vast debt collection services program – one that included over 11 million cases in FY2011-12 with almost \$8 billion in outstanding debt – noting that a similar solicitation in 2004 resulted in awards to four organizations, and another in 2008 included seven awards.²⁸ In the RFP, AOC “[sought] proposals from highly qualified collection agencies to assist various judicial branch entities, and other governmental entities, with the collection of court-ordered and other debt due and payable from members of the public.”²⁹

AOC further noted that “[California Penal Code Section 1463.010] recognizes that the enforcement of court orders and the collection of debt owed to the superior courts is an important element of California’s judicial system. This RFP is a product of the requirements of Penal Code Section 1463.010, which charges the Judicial Council with adopting guidelines for a comprehensive program for collections, and provides for the establishment of standard agreements for collection services.”³⁰ The RFP also called for responders to provide on-site personnel, if requested by

²⁵ Kansas Department of Administration, Request for Proposal, Bid Event No. EVT0002665, Posted Sept. 24, 2013 (Exhibit 11) at 19.

²⁶ *Id.*; Kansas Department of Administration, Request for Proposal No. EVT0001665 [*sic*], Amendment No. 2, Oct. 11, 2013 (Exhibit 12) (“KS Amendment 2”) at 2.

²⁷ KS Amendment 2, Ex. 12 at 2.

²⁸ Judicial Council of California, Administrative Office of the Courts, Statewide Collection Services for Court-Ordered and other Debt, RFP No. ECU-2013-01, Issued Sept. 17, 2013 (Exhibit 13) (“CA RFP”) at 1-2, 21; Judicial Council of California, Administrative Office of the Courts, Statewide Collection Services for Court-Ordered and other Debt, RFP No. ECU-2013-01, Questions and Answers, Oct. 18, 2013 (Exhibit 14) at 1.

²⁹ CA RFP, Ex. 13 at 1-2.

³⁰ *Id.* (emphasis added).

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participating state entities, and required them to have a minimum of three years of experience working with “government or public sector entities.”³¹

These large-scale programs demonstrate the confidence and respect that the public sector has in private debt collection efforts. Indeed, all of these examples reflect that debt collectors play a vital role in recovering much needed revenue for federal, state, and local governments, and the importance of these efforts to fund critical governmental functions such as public safety and education.

ACA urges the Commission to weigh this ongoing value to the public sector as it considers ACA’s Petition. The much needed updates and clarifications to the Commission’s TCPA rules as requested by ACA - (1) confirming that not all predictive dialers are categorically automatic telephone dialing systems; (2) clarifying that “capacity” under the TCPA means present ability; (3) declaring that prior express consent attaches to the person who incurs a debt, not only the specific telephone number the debtor provides at the time of consent; and (4) creating a safe harbor for autodialed “wrong number” non-telemarketing calls to wireless numbers – will inure to the benefit of all consumers through the types of federal, state and local government debt collection efforts provided as examples herein.

Respectfully submitted,



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³¹ CA RFP, Ex. 13 at 4.