May 10, 2006

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: Comments Regarding the ACA International’s Petition for an Expedited Clarification and Declaratory Ruling Concerning the Telephone Consumer Protection Act (TCPA) Rules (CG Docket No. 02-278; DA 06-808)

Dear Ms. Dortch:

The American Financial Services Association (“AFSA”) submits this comment letter on the petition of ACA International (“ACA”) regarding the restriction on automated telephone dialing systems contained in the Telephone Consumer Protection Act (“TCPA”).

I. Introduction

Founded in 1916, the American Financial Services Association (AFSA) is the trade association for a wide variety of market-funded providers of financial services to consumers and small businesses. AFSA members are important sources of credit to the American consumer, providing approximately over 20 percent of all consumer credit. Many AFSA member companies make non-telemarketing calls using automated telephone dialing systems.

AFSA shares the ACA’s concerns that the 2003 TCPA rulemaking could be interpreted as limiting the ability of businesses to make non-telemarketing calls using automated telephone dialing systems that Congress did not intend to restrict.1 Indeed, AFSA believes that these concerns apply to a much larger class of calls – all calls related to servicing consumer financial accounts, not merely debt collection calls. Consequently, AFSA agrees that the FCC should clarify that the TCPA does not restrict account-servicing contacts to cellular phone numbers initiated with an autodialer.2


2 In the context of a credit account (e.g., a credit card account, car loan, or home mortgage) “account servicing” means the acts performed not only to collect and process payments during the life of the account, but also the host of related administrative services necessary to maintain the account. After a consumer obtains a loan or revolving credit account, the creditor or third-party servicer must, for example, send statements; manage the escrow/impound accounts; provide collection efforts on delinquent credit
Furthermore, AFSA would like to present another basis on which the FCC can interpret the TCPA to reach this result.

AFSA members have seen a marked increase in consumers providing cellular phone numbers as a point of contact in account applications. Indeed, many consumers can be reached only at a cellular phone number. The scale of modern financial services does not allow customer calls to be made by hand. Essentially all account-servicing calls are initiated using an autodialer. Consequently, the TCPA, if inappropriately interpreted, could prevent financial services companies from contacting these customers in connection with a broad range of account-servicing matters.

The ability to call customers is vital to servicing their accounts. For example, a financial services company may need to call a credit card customer when it suspects fraudulent use of an account, when periodic statements (or similar mail) are returned as undeliverable, to respond to the customer’s assertion of a billing error, or when the customer has not responded to late payment notifications. Again, if inappropriately interpreted, the TCPA would prevent these vital contacts.

The Federal Communications Commission (“FCC”) has general authority to implement the TCPA by regulation. 47 U.S.C. § 227(b)(2). Based on this authority, the FCC can interpret and clarify the TCPA’s terms through its TCPA regulation (47 C.F.R. § 64.1200) and related guidance. Accordingly, the FCC can prevent the TCPA from being interpreted in a manner that inappropriately restricts account-servicing calls. In fact, in 1992 the FCC did just this.

In 1992, as part of the initial TCPA rulemaking, the FCC stated that consumers grant prior express consent to a business, for the purpose of the TCPA’s autodialer restriction, when consumers provide their cellular phone numbers to that business. This interpretation, relied on by AFSA members for years, allows for account-servicing calls because it establishes the consumer’s prior express consent to such contacts.

In the 2003 TCPA rulemaking, however, the FCC made statements that could be interpreted as being at odds with its 1992 interpretation. AFSA requests that the FCC clarify that it continues to endorse its 1992 interpretation. Furthermore, AFSA requests that the FCC clarify that prior express consent also should be deemed granted to any third-party service providers acting on behalf of the business which receives the extensions; ensure that insurance and property taxes are made on the property serving collateral; handle contract modifications, pay-offs and assumptions; prepare and send at prescribed times a host of federal and state law disclosures; research and resolve asserted account errors; guard against fraud and unauthorized use of accounts, and provide a variety of other services. A related range of servicing activities also are necessary in connection with deposit accounts (e.g., checking or savings accounts).

3 Similarly, creditors may need to call customers with secured loan products to address an equally broad range of issues (e.g., to confirm mandatory insurance requirements or to clarify escrow practices). Deposit account servicing also presents similar communication needs (e.g., to solicit instructions from a customer whose certificate of deposit is expiring).
consumer’s cellular phone number from the business, such as a servicing agent or debt collector, and to anyone who later purchases (or otherwise receives assignment of) the account from the original business. Failing to clarify the TCPA in this manner will result in significant commercial harm without yielding any significant benefits for consumers. Clarifying the continued vitality of the FCC’s 1992 interpretation also would appear to address the majority of the ACA’s concerns.

II. The FCC Has Interpreted the TCPA Regulation to Avoid Unduly Burdening Account-Servicing Calls, But Created Ambiguity in 2003

The TCPA regulation prohibits the initiation of any telephone call using an automatic telephone dialing system\(^4\) to certain restricted numbers – including cellular phone numbers – without prior express consent of the called party:

No person may:

(1) Initiate any telephone call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice,

\(\ldots\)

(iii) To any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call . . . .

12 C.F.R. § 64.1200(a). By its terms, this provision prohibits any call placed with an autodialer, not just telemarketing calls.

This restriction on all autodialer calls potentially burdens calls that do not raise the privacy concerns motivating the TCPA. Recognizing this, in 1992 the FCC clarified that consumers provide prior express consent when they provide their cellular phone numbers to a business.\(^5\) Specifically, the FCC stated: “if a call is otherwise subject to the prohibitions of Section 64.1200, persons who knowingly release their phone numbers have in effect given their invitation or permission to be called at the number which they have given, absent instructions to the contrary.” *In the Matter of Rules and Regulations Implementing the TCPA of 1991*, CC Docket No. 92-90, Report & Order, ¶ 31, 7 FCC Rcd. 8752 (Oct. 16, 1992) [hereinafter “1992 Report & Order”]. This interpretation

\(^4\) Other than when referring to the TCPA regulation’s language, we use the term “autodialer” to refer to all technology qualifying as an automatic telephone dialing system under the TCPA regulation (as interpreted by the FCC in its 2003 rulemaking).

\(^5\) While cellular phone numbers were primarily at issue, the TCPA’s autodialer restriction applies equally to any service for which the called party is charged for the called, and the FCC’s 1992 interpretation would extend to any call within the scope of the TCPA’s autodialer restriction.
allows financial services companies to make account-servicing calls without undue burden, since customers generally provide the numbers to which such calls are made.

Nevertheless, part of the 2003 TCPA Report and Order could be interpreted as undercutting or limiting this 1992 interpretation:

[W]e reject proposals to create a good faith exception for inadvertent autodialed or prerecorded calls to wireless numbers and proposals to create implied consent because we find that there are adequate solutions in the marketplace to enable telemarketers to identify wireless numbers.6


In reaching this conclusion, Paragraph 172 discusses consent only in the telemarketing context. The FCC did not discuss its 1992 interpretation, and how it might bear on the issue. Consequently, Paragraph 172 did not overrule the FCC’s 1992 interpretation.7 Nevertheless, because Paragraph 172 discusses consent without mentioning the 1992 interpretation, it creates ambiguity regarding the 1992 interpretation’s continuing vitality. The FCC should resolve this ambiguity by clarifying that the 1992 interpretation remains the correct interpretation of the TCPA as it relates to account-servicing contacts.

III. The FCC Should Reaffirm Its 1992 Interpretation of the TCPA

The FCC should reaffirm its 1992 TCPA interpretation because it strikes the appropriate balance between consumers’ expectations, consumers’ privacy interests, and business practicalities. As set forth below, first, consumers expect to be contacted by businesses to which they have voluntarily provided their cellular phone numbers. Burdening these contacts frustrates consumer expectations. Second, the calls allowed by the 1992 interpretation do not create the consumer privacy concerns that the TCPA

6 There is a footnote to this paragraph that reads:

See ATA Comments at 134-36; BMO Financial Group Comments at 6; Sprint Comments at 21; ATA Reply Comments at 82. Commenters also suggest other exceptions, such as where a subscriber uses wireless as his sole telephone service, AGF Comments at 1, or where the subscriber provides his wireless number as a contact number to a business. Id. See also Bank of America Comments at 6; CBA Comments at 9; BellSouth Comments at 6-7.

7 Admittedly, there is some ambiguity in the FCC’s 1992 statement as to whether this consent is limited to calls about the consumer’s account or whether the business may contact the consumer generally. The clarification AFSA requests is that the FCC reaffirm its interpretation that the consumer consents to autodialed calls regarding his or her account, not that the consumer consents to telemarketing calls.
was meant to remedy, and reaffirming the 1992 interpretation is consistent with the policy goals of the TCPA. Third, the FCC can reaffirm its 1992 interpretation and remain consistent with the changes implemented in the 2003 TCPA rulemaking. Fourth, the use of autodialer technology for account-servicing calls is beneficial, rather than harmful, to consumers’ interests.

**A. Consumers Consent to Calls When They Provide Cellular Phone Numbers in Response to Requests for Contact Information**

The FCC’s 1992 interpretation is premised on the fact that consumers expect and consent to being called at a number when they provide that number to a business. Commenters to the TCPA regulation, as originally proposed in 1992, raised precisely this point:

Many commenters express the view that any telephone subscriber that provides his or her telephone number to a business does so with the expectation that the party to whom the number was given will return the call. Hence, any telephone subscriber who releases his or her telephone number has, in effect, given prior express consent to be called by the entity to which the number was released.

1992 Report & Order, ¶ 30. In response, the FCC agreed with these comments, concluding that consumers provide prior express consent to a business when they release their numbers to that business. 1992 Report & Order, ¶ 31.

This interpretation is important because it conforms the TCPA’s restrictions to consumer expectations. It is unquestionable that a consumer expects to be called at a cellular phone number that he or she provides to a business in response to a request for contact information (e.g., the contact information block of an account application form). Indeed, as the FCC stated in 1992, consumers not only expect such calls, they invite them. If a consumer does not want to be contacted at his or her cellular phone number, the consumer simply would not provide the cellular number. Even the National Consumer Law Center (“NCLC”) concedes, in its comment letter, that consumers expect to be contacted in these circumstances.⁸ Nor does the fact that the call might be initiated by an automated telephone dialing system, rather than dialed by hand, change the nature of this consent. Because the resulting call is exactly the same, no individual consumer is likely to be concerned how a call was initiated.

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⁸ National Consumer Law Center Comment Ltr., at 2 (April 13, 2006) (“Most consumers reasonably expect . . . calls only from those to whom they have given their number.”). The NCLC, of course, argues that this consent should not extend to third-party debt collectors: “The fact that the consumer gave a cell phone number to a creditor when applying for credit should not be stretched to be considered permission to a debt collector to make automated calls to that private number at a much later time.” Id. Part IV, which explains why consent should be deemed granted to third-party service providers in any account-servicing context (not just debt collection), rebuts the NCLC’s point, since debt collectors simply are one type of third-party service provider used by financial services companies.
The essential premise behind the FCC’s 1992 interpretation remains correct. Consumers express their consent for companies to call their cellular phone numbers when they provide such numbers. If a company were not able to make such a call, the result would be harmful to consumers as well as to the company, since important account information may not reach consumers in a timely manner.

Furthermore, the TCPA’s legislative history shows that prior express consent should be interpreted to include the consent expressed when a consumer provides a phone number. The House Committee Report to the TCPA notes that its restrictions were not intended to interfere with account-servicing calls between businesses and their customers:

The restriction on calls to emergency lines, pagers, and the like does not apply when the called party has provided the telephone number of such a line to the caller for use in normal business communications. The Committee does not intend for this restriction to be a barrier to the normal, expected or desired communications between businesses and their customers.

H.R. Rep. No. 102-317, at 17 (1991) (emphasis added). Similarly, the Senate Committee Report regarding the TCPA focuses solely on the autodialer restriction’s applicability to telemarketers. E.g., S. Rep. No. 102-178, at 8 (1991) (“Telemarketers also will be required to ensure that they do not place automated calls to residential customers, to emergency lines, or to cellular or paging numbers.”) (emphasis added). Reaffirming the 1992 interpretation effectuates Congress’ intent.9

B. Account-Servicing Calls From Financial Services Companies Do Not Present the Privacy Concerns That TCPA Was Enacted to Address

Congress enacted the TCPA to protect consumers’ privacy interests, but the account-servicing calls at issue here do not implicate those interests for two reasons. First, unlike telemarketing calls, there is a natural limit to the frequency of account-servicing calls. Second, unlike calls from third-party telemarketers, consumers can avoid these calls by not providing their cellular phone numbers to a business. Consequently, the TCPA should not be interpreted to restrict account-servicing calls.

Unlike telemarketing, there is a natural limit to the number of account-servicing calls that a financial services company will make, since a call is only necessary if there is

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9 In fact, interpreting the TCPA to proscribe calls to customer-provided cellular phone numbers results in absurdity. Businesses soliciting contact information would need to add application language effectively stating “By providing your number, you agree that we may call you about your account” – a tautological disclosure that accomplishes nothing, other than perhaps to draw consumers’ attention away from other, more important information. The result is even more absurd if applied retroactively to existing customers who furnished their cellular phone numbers prior to the confusion engendered by the 2003 Report and Order. Financial services companies may well be forced to seek “prior express consent” to call customers who they have already called over the course of the customer relationship, notwithstanding the customer’s clear acceptance of such calls.
an issue with the account. This stands in contrast to the rationale behind the TCPA’s autodialer restriction, namely that such technology allows telemarketing firms to make substantially more solicitation calls, harming consumers’ privacy interests. See 2003 Report & Order, ¶ 133, 18 FCC Rcd. at 14,092 (“Such practices were determined to threaten public safety and inappropriately shift marketing costs from sellers to consumers.”). Consequently, the TCPA’s underlying policy does not apply to account-serving calls and the FCC should interpret the TCPA accordingly.

Furthermore, consumers have the ability to avoid calls by not providing their cellular phone numbers. (Or, if already provided, consumers can provide an alternate contact number and revoke their initial consent.) The FCC’s 1992 interpretation only applies to numbers that consumers provide to a business. It would not apply to phone numbers that a business obtains through other means, such as a search of public records or through a consumer reporting agency.

The NCLC asserts, in the narrow context of third-party debt collection, that calling a cellular phone violates the Fair Debt Collection Practices Act (“FDCPA”). This assertion is incorrect and irrelevant. First, the FDCPA prohibits calls to a location that a debt collector should know is inconvenient. It does not prohibit calls that might be inconvenient, as the NCLC asserts. Nor does the FDCPA preclude calls to a phone number (cellular or otherwise) that the consumer provides as his or her contact number. Moreover, the broader scope of account-serving calls that would be burdened by an unduly restrictive interpretation of the TCPA simply are not covered by the FDCPA. Certainly there are many uncontroversial account-serving calls. For example, what consumer would not want to be alerted when potential fraudulent use has been detected or to discuss a potential billing error? If the FCC were to fail to reaffirm its 1992 interpretation, these contacts would be impeded. Finally, consumer credit laws, rather than the TCPA, are better suited to address any specific concerns about calls in the consumer credit context.

10 See also S. Rep. No. 102-178, at 5 (1991), as reprinted in 1991 U.S.C.C.A.N. 1968, 1972-73 (“The Committee believes that Federal legislation is necessary to protect the public from automated telephone calls. These calls can be an invasion of privacy, an impediment to interstate commerce, and a disruption to essential public safety services.”)

11 See 1992 Report & Order ¶ 31 (“However, if a caller’s number is ‘captured’ by a Caller ID or ANI device without notice to the residential telephone subscriber, the caller cannot be considered to have given an invitation or permission to receive autodialer or prerecorded voice message calls.”).

12 15 U.S.C. § 1692c(a) (“[A] debt collector may not communicate with a consumer . . . (1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer.”) (emphasis added).

13 Even in the context of collections, the FDCPA does not apply to creditors collecting their own debts. Rather, it only applies to those who collect the debts of another. 15 U.S.C. § 1692a(6) (“The term ‘debt collector’ means any person . . . who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.”). Notwithstanding this, as a prudential matter, many creditors comply with FDCPA principles to the extent they can be meaningfully applied to creditors collecting their own debts. In particular, many creditors will honor a consumer’s request to cease collection communications.
The FDCPA provides greater consumer privacy protection than the TCPA in the context of debt collection. Upon notice, debt collectors must cease all communications, regardless of channel, except for certain, very limited, communications that are expressly allowed (e.g., notifying the consumer that a collection suit will be filed). 15 U.S.C. § 1692c(b). Accordingly, the FDCPA already provides consumers with ample protection, and the FCC should decline the NCLC’s invitation to use the TCPA to strike a different balance between the competing rights of creditors and debtors.

C. The FCC Can Reaffirm Its 1992 Interpretation in a Manner Consistent With the 2003 TCPA Rulemaking

The FCC also may reaffirm its 1992 interpretation consistently with the changes it implemented in the 2003 TCPA rulemaking. While the FCC denied some commenters’ suggestions regarding when consent should be implied, these comments arose in the telemarketing context. Thus, the FCC’s refusal to adopt such comments is best viewed as a clarification that the 1992 interpretation does not provide consent to telemarketing calls. This does not undermine the fact that consumers expect and consent to servicing calls about their accounts.

Paragraph 172 of the 2003 TCPA Report and Order (quoted, supra, at 5), when discussing its rejection of implied consent, cites three comment letters in particular by representatives of the financial services industry.14 All three comment letters seek consent for telemarketing, not account-servicing, purposes. See Bank of America Comment Ltr., at 6 (Dec. 3, 2002) (“If a consumer provides his or her wireless number as the number at which he or she wants to be contacted, marketers will use that number. Therefore, any provision that restricts such calls beyond other general restrictions should be eliminated.”) (emphasis added); Consumer Bankers Association Comment Ltr., at 9 (Dec. 9, 2002) (“The FCC seeks comment on the extent to which telemarketing to wireless telephone consumers exists today . . . . [I]f a consumer has listed his or her wireless telephone number as the number at which that person would like to be called, it is possible that the consumer could receive a telemarketing call . . . .”) (emphasis added); Am. General Finance Comment Ltr., at 1 (Dec. 9, 2002) (“The prohibition against calls to cellular phones should be limited to solicitation calls and revised to contain clear exemptions for callers with existing business relationships with the consumers . . . .”) (emphasis added). Accordingly, Paragraph 172 does not reject the FCC’s 1992 interpretation.15

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14 2003 Order ¶ 172, n.623 (“Commenters also suggest other exceptions, such as where a subscriber uses wireless as his sole telephone service, AGF [American General Finance] Comments at 1, or where the subscriber provides his wireless number as a contact number to a business. Id. See also Bank of America Comments at 6; CBA Comments at 9; BellSouth Comments at 6-7.”).

15 If the 1992 interpretation, as discussed in note 7, supra, can be interpreted as providing that consumers consent to telemarketing calls, in addition to calls about their accounts, Paragraph 172 may change that portion of the 1992 interpretation. Even if this is the case, the FCC only overturned part of its 1992 interpretation. The rest of the interpretation (pertaining to non-telemarketing calls) remains valid.
This conclusion, however, can be reached only by carefully parsing the 2003 TCPA Report and Order, and the comment letters cited in the Order. Paragraph 172, unfortunately, does not address the FCC’s 1992 interpretation directly. The comment letters cited by Paragraph 172 also do not mention the 1992 interpretation. The result is ambiguity regarding whether the FCC continues to adhere to its 1992 interpretation. This ambiguity creates legal risk that may deter some businesses from relying on the 1992 interpretation, particularly given the substantial statutory damages that plaintiffs can seek under the TCPA. See 47 U.S.C. § 227(b)(3). Therefore, the FCC should reaffirm its 1992 interpretation both because this is the correct policy choice and because the FCC does not appear to have meant to create this ambiguity in the first place.

The FCC should note that the vitality of its 1992 interpretation became particularly important after it defined automated telephone dialing system to include devices, such as predictive dialers, that dial lists of numbers rather than generating numbers. Prior to this expansion of what constitutes an automated telephone dialing system, businesses could maintain that the TCPA’s autodialer restriction did not prohibit the use of equipment commonly used in the account-servicing context. See 47 U.S.C. § 227(b)(3). The FCC acted to expand the definition of automated telephone dialing systems because it concluded that telemarketers could use such devices to shift inappropriately the costs of marketing to consumers. 2003 Report & Order, ¶ 133, 18 FCC Rcd. at 14,092. Account-servicing calls, however, do not create this privacy concern. Therefore, the FCC should interpret the TCPA in a manner that does not unduly burden account-servicing calls. By reaffirming its 1992 interpretation, the FCC can accomplish this, even if it chooses not to roll back its 2003 expansion of the definition of automated telephone dialing system. Reaffirming the FCC’s 1992 interpretation would allow the TCPA to reach telemarketing calls made with predictive dialers without unduly burdening account-servicing contacts.

D. Allowing Autodialers in the Account-Servicing Context Benefits Consumers

The use of autodialers for account-servicing calls also results in consumer benefits. First, while account-servicing calls theoretically can be made by hand, rather than by autodialer, that generally is impractical because the costs of placing such calls increases dramatically if made by hand. Thus, as a practical matter, the inability to use such technology essentially prohibits financial services companies from contacting customers who only provide a cellular phone number as their contact number. 16

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16 Indeed, in pre-2003 proceedings, the FCC makes this same point in response to some industry comments. See, e.g., In the Matter of Rules and Regulations Implementing the TCPA of 1991, CC Docket No. 92-90, Mem. Opinion & Order, 10 FCC Rcd. 12,391, 12,400-01, ¶ 31 (Oct. 16, 1992) (“The TCPA requires that calls dialed to numbers generated randomly or in sequence (autodialed) and delivered by artificial or prerecorded voice message must identify the caller . . . . Household correctly points out that debt collection calls ‘are not directed to randomly or sequentially generated telephone numbers, but instead are directed to the specifically programmed contact numbers for debtors.’”) (footnotes omitted).
means that information for such consumers must be sent through less efficient and less conspicuous channels (e.g., mail) and may not reach consumers effectively or at all. Given that servicing calls alert consumers to important account information, restricting these calls is to consumers’ detriment.\textsuperscript{17}

Furthermore, autodialers often have important compliance functions for financial services companies. For example, the use of such systems limits mistakes in dialing the phone numbers of customers with accounts. This both prevents the accidental breach of customers’ financial privacy and ameliorates the frustration of the inadvertently called party. Such systems also may have built-in limitations such that calls are not initiated to numbers at a time that would be inappropriate in the consumer’s time zone. This is an important feature, since call centers may be in a time zone that is several hours ahead or behind the consumer’s time zone. Thus, when used by financial services companies, autodialer technology is beneficial to consumers generally and to consumers’ privacy interests specifically.

IV. The FCC Should Clarify That Consumers’ Consent Also Is Effective for Third-Party Service Providers and Account Purchasers

One issue left unaddressed by the FCC’s 1992 interpretation is how prior express consent applies to others with which financial services companies commonly have contractual relationships. Many financial services companies contract with third parties to perform some account-servicing functions. For example, a sizable proportion of mortgage loans are serviced by someone other than the beneficial owners of those loans. Many financial services companies also buy accounts from or sell accounts to other institutions. The FCC should clarify that third parties can rely on prior express consent given in either of these two contexts.

Many financial services companies outsource at least some account-servicing functions – including some customer service functions – to third-party service providers for efficiency reasons. These service providers operate on behalf of the business, performing functions that the business otherwise would perform. Therefore, service providers should be treated as if they were the business for the purpose of determining whether there is prior express consent.

Similarly, financial services companies often will sell accounts to another company for various reasons. Indeed, the free transfer of consumer receivables is

\textsuperscript{17} The TCPA regulation exempts calls made for “emergency purposes,” 47 C.F.R. § 1200(a)(1), which one might argue would exempt important account-servicing calls. However, the exception for “emergency purposes” is not clearly sufficient to exempt even account-servicing calls about potential fraud, much less the broader array of potential account-servicing calls. Calls regarding fraud may not qualify as a call for emergency purposes both because it is not clear that time is of the essence and because consumers typically are not liable for fraudulent use of their accounts. See, e.g., 12 C.F.R. § 226.12(b). At least from the perspective of avoiding direct consumer costs, a strong case can be made that a call to notify a consumer that a payment is due to avoid a late fee is more critical than a call about suspected authorized use of his or her account.
critical to the nation’s credit markets. When transfers occur, the company who has purchased the accounts should have the ability to rely on consumers’ provision of a cellular phone number to the company originating the account. The purchasing business has essentially taken the place of the original business; and, therefore, should be able to rely on consumers’ prior express consent to the same extent as the original business.

This interpretation is consistent with other federal laws protecting consumer privacy. For example, Title V of the Gramm-Leach-Bliley Act (“GLBA”) provides exceptions to its restrictions when consumer financial information is shared for account-servicing purposes, 15 U.S.C. § 6802(e)(1)(A), or when accounts are purchased by another institution, 15 U.S.C. §§ 6802(e)(1)(C), 6802(e)(7). Accordingly, it also is appropriate for the FCC to interpret the TCPA in a manner that accommodates these relationships.

Adopting this interpretation alone effectively grants the ACA much of the relief that it seeks. Its members operate as third-party service providers for creditors. Therefore, if prior express consent is interpreted such that consent given to a creditor is also effective for that creditor’s third-party service providers or assignees, then ACA’s members will be able to rely on consumers’ consent as if they were the original creditor, lessening any undue burden the TCPA autodialer restriction places on them.

V. Conclusion

In its 2003 TCPA Rulemaking, the FCC made statements that could be interpreted as at odds with its prior 1992 interpretation of the TCPA regulation holding that consumers consent for the purposes of the TCPA when they provide their cellular phone numbers to businesses. This 1992 interpretation is an important clarification that keeps the TCPA from restricting contacts, such as the account-servicing calls, that are not injurious to consumers’ privacy interests and are not the sort of calls Congress meant the TCPA to restrict. Accordingly, the FCC should clarify that its 1992 interpretation remains the correct interpretation of the TCPA.

AFSA appreciates this opportunity to present its views. Please address any questions or requests for additional information to the undersigned at (202) 466-8606.

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