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December 28, 2020

Via ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation, *Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991,* CG Docket No. 02-278

Dear Ms. Dortch:

On December 23, 2020, the undersigned, as representative for the American Association of Healthcare Administrative Management (AAHAM), spoke with Tyler Bridegan, Advisor to Commissioner Nathan Simington, by telephone to discuss the Commission's Notice of Proposed Rulemaking[1] to implement section 8 of the Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act).[2] During the meeting, we discussed the points raised in the attached, detailed *ex parte* letter filed by AAHAM and other parties on December 23, 2020 in this proceeding.

As described more fully in the attached *ex parte* letter, I urged the Commission not to impose restrictions on the existing exemption for informational (non-telemarketing) calls placed to residential telephone numbers (Informational Calls Exemption).[3]

If the Commission nonetheless decides to limit the number of calls allowed despite the record evidence in support of maintaining the Informational Calls Exemption without new restrictions, it should ensure that any such limit applies on a **"per account" basis** rather than a "per consumer" or "per telephone number" basis. This approach would ensure that calls placed in

[1] Notice of Proposed Rulemaking, *Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991,* CG Docket No. 02-278, 85 Fed. Reg. 64,091 (Oct. 9, 2020), https://www.govinfo.gov/content/pkg/FR-2020-10-09/pdf/2020-22331.pdf.
[2] Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act), Pub. L. No. 116-105, 133 Stat. 3274, § 8 (2019).
[3] *See Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 7 FCC Rcd. 8752, 8770-71 ¶ 34 (1992).

connection with a customer's account would not preclude the caller from placing a separate set of calls in connection with a second account, within the limitation time period. This approach would also be consistent with that adopted by the Consumer Financial Protection Bureau's (CFPB) recent Fair Debt Collection Practices Act final rule. In that rule, the CFPB clarified that the numerical limits on calls apply to each "particular debt" in collection, rather than per customer.[4]

It is also important that any limitation apply only when the caller has succeeded in placing the call with the customer. A call attempt that is unsuccessful — i.e., that does not result in a completed call in which the prerecorded message is delivered — should not count against the limitation.

In addition, any new limits adopted by the Commission should not apply in two specific circumstances: (1) to informational calls for which another federal agency has adopted call frequency limits; and (2) to informational calls made in response to a specific purchase, transaction, or account event. Some examples of covered calls would include package delivery notifications (specific purchase and transaction), safety recall notifications (purchase, transaction, and account event), calls from a pharmacy or healthcare provider to a patient (specific purchase, transaction, or account event), and data breaches or security incidents (specific account event).

Sincerely,

/s/ Mark W. Brennan

Mark W. Brennan

Partner
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[4] Debt Collection Practices (Regulation F), Docket No. CFPB-2019-0022, § 1006.14(b)(2) (Oct. 30, 2020) (to be codified at 12 C.F.R. pt. 1006), https://files.consumerfinance.gov/f/documents/cfpb_debt-collection_final-rule_2020-10.pdf.

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Re: Notice of *Ex Parte* Presentations, *Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991,* CG Docket No. 02-278

Dear Ms. Dortch:

On December 22, 2020, representatives of the American Bankers Association, ACA International, American Association of Healthcare Administrative Management, American Financial Services Association, Consumer Bankers Association, Credit Union National Association, National Association of Federally-Insured Credit Unions, National Council of Higher Education Resources, and Student Loan Servicing Alliance (collectively, the Associations) met by telephone with Commissioner Nathan Simington and members of Commissioner Simington's staff, and separately with members of the Commission's Consumer and Governmental Affairs Bureau.[1] The purpose of the meetings was to discuss the Notice of Proposed Rulemaking[2] issued by the Commission to implement section 8 of the Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act).[3]

During the meetings, we urged the Commission not to impose restrictions on the existing exemption for informational calls placed to residential telephone numbers (Informational Calls Exemption).[4] As described more fully in the Associations' filings in this

[1] The meeting's participants are listed in the Appendix.
[2] Notice of Proposed Rulemaking, *Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991,* CG Docket No. 02-278, 85 Fed. Reg. 64,091 (Oct. 9, 2020), https://www.govinfo.gov/content/pkg/FR-2020-10-09/pdf/2020-22331.pdf.
[3] Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act), Pub. L. No. 116-105, 133 Stat. 3274, § 8 (2019).
[4] *See Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 7 FCC Rcd. 8752, 8770-71 ¶ 34 (1992).

proceeding,[5] Congress passed the TRACED Act to combat illegal and unsolicited automated calls, not informational calls containing important account-related information. Moreover, the record in this proceeding does not support imposing on exempted calls a numerical limitation. Instead, the record clearly demonstrates that consumers value receiving calls and text messages for non-telemarketing purposes from medical providers, utility companies, schools, financial institutions, and other institutions with which consumers do business.

Despite the record evidence in support of maintaining the Informational Calls Exemption without new restrictions, if the Commission nonetheless decides to limit the number of calls allowed, it should ensure that any such limit applies on a "per account" basis rather than a "per consumer" or "per telephone number" basis. This approach would ensure that calls placed in connection with a customer's account would not preclude the institution from placing a separate set of calls in connection with a second account, within the limitation time period. This approach also would be consistent with that adopted by the Consumer Financial Protection Bureau's (CFPB) recent Fair Debt Collection Practices Act final rule. In that rule, the CFPB clarified that the numerical limits on calls apply to each "particular debt" in collection, rather than per customer.[6]

It is also important that any limitation apply only when the caller has succeeded in placing the call with the customer. A call attempt that is unsuccessful — i.e., that does not result in a completed call in which the prerecorded message is delivered — should not count against the limitation.

In addition, any new limits adopted by the Commission should not apply in two specific circumstances: (1) to informational calls for which another federal agency has adopted call frequency limits; and (2) to informational calls made in response to a specific purchase, transaction, or account event. Some examples of covered calls would include package delivery notifications (specific purchase and transaction), safety recall notifications (purchase, transaction, and account event), calls from a pharmacy or healthcare provider to a patient (specific purchase, transaction, or account event), and data breaches or security incidents (specific account event).

With respect to calls covered by (1) above, if another federal agency has reviewed specific categories of calls and adopted limits for such calls, the Commission should defer to the other agency's assessment of the appropriate call volumes. The Commission's instant proceeding contains only a limited record without any current, detailed analysis of the different causes prompting each category of informational calls to residential landlines to be placed or any cost-benefit analysis of potential limits on the different types of calls placed.

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[5] *See, e.g.,* Letter from Jonathan Thessin, Am. Bankers Ass'n, to Marlene H. Dortch, Sec., Fed. Commc'ns Comm'n (Dec. 2, 2020), https://ecfsapi.fcc.gov/file/1203640026855/ABA_Joint_Trades_Ex_Parte_Letter_2020_12_02_final.pdf (*ex parte* letter regarding meetings held with Commission staff and representatives of the American Bankers Association, ACA International, American Association of Healthcare Administrative Management, American Financial Services Association, Consumer Bankers Association, Credit Union National Association, Mortgage Bankers Association, National Association of Federally-Insured Credit Unions, National Council of Higher Education Resources, National Retail Federation, and Student Loan Servicing Alliance).

[6] Debt Collection Practices (Regulation F), Docket No. CFPB-2019-0022, § 1006.14(b)(2) (Oct. 30, 2020) (to be codified at 12 C.F.R. pt. 1006), https://files.consumerfinance.gov/f/documents/cfpb_debt-collection_final-rule_2020-10.pdf.

With respect to calls covered by (2), calls made in response to a specific purchase, transaction, or account event may have different timing and call volume needs than other calls. For example, for package delivery notifications (specific purchase and transaction), call volume would be determined by the number of packages, deliveries, specific delivery features (e.g., signature requirements), or other factors, rather than a time benchmark (e.g., monthly). Similarly, prescription notifications (specific purchase, transaction, or account event) would be driven by the renewal periods for the various prescriptions instead of a generic monthly benchmark. Safety recall notifications (purchase, transaction, and account event) would be driven by the occurrence of a recall event and follow-up actions.

For data breach or security incident notifications (account event), financial institutions seek to place these calls as a series of calls within a relatively short period of time. The customer will be particularly harmed if he or she does not receive a suspicious transaction alert regarding a credit card transaction to the customer's residential number because the institution had already placed, for example, servicing calls to that customer up to the prescribed limitation, or the institution had placed calls to the customer for an earlier fraud event. Elderly consumers—who are more likely to use a landline (residential number) than a cell phone, as compared with younger consumers[7]—would bear the brunt of an unnecessarily restrictive call limitation.

The Associations appreciate the Commission's consideration of the views expressed in this letter.

Sincerely,

<u>/s/ Mark W. Brennan</u>

Mark W. Brennan

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[7] *See* Ctrs. for Disease Control & Prevention, Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2019 (2020), 6 https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless202009-508.pdf (reporting that only 33.2% of consumers age 65 and over were "wireless-only," as compared with 60.3% of adults overall).

APPENDIX

<u>Meeting Attendees</u>

<u>Office of Commissioner Nathan Simington</u>
Commissioner Simington
Erin Boone, Wireless Advisor
Tyler Bridegan, Media Advisor

<u>Associations</u>
Jonathan Thessin, American Bankers Association
Mark Brennan and Arpan Sura, Hogan Lovells (Counsel for the American Association of Healthcare Administrative Management)
Damon Smith, Credit Union National Association
Michael Pryor, Brownstein Hyatt Farber Schreck (Counsel for the Credit Union National Association)
Leah Dempsey, ACA International
Stephen Congdon, Consumer Bankers Association
Elizabeth LaBerge, National Association of Federally-Insured Credit Unions
Celia Winslow, American Financial Services Association
Shelly Repp, National Council of Higher Education Resources
Scott Buchanan, Student Loan Servicing Alliance

<u>Consumer and Governmental Affairs Bureau</u>
Mark Stone
Aaron Garza
Kristi Thornton
Richard Smith

<u>Associations</u>
Jonathan Thessin, American Bankers Association
Leah Dempsey, ACA International
Mark Brennan and Arpan Sura, Hogan Lovells (Counsel for the American Association of Healthcare Administrative Management)
Michael Pryor, Brownstein Hyatt Farber Schreck (Counsel for the Credit Union National Association)
Stephen Congdon, Consumer Bankers Association
Elizabeth LaBerge, National Association of Federally-Insured Credit Unions
Shelly Repp, National Council of Higher Education Resources
Scott Buchanan, Student Loan Servicing Alliance