

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Petition for Expedited Declaratory Ruling, Clarification, or Waiver of the American Bankers Association, American Financial Services Association, Consumer Bankers Association, Credit Union National Association, Independent Community Bankers of America, Mortgage Bankers Association, and National Association of Federally-Insured Credit Unions)	CG Docket No. 02-278
)	
Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991)	

**ELECTRONIC TRANSACTIONS ASSOCIATION’S COMMENTS IN SUPPORT
OF PETITION FOR EXPEDITED DECLARATORY RULING,
CLARIFICATION, OR WAIVER OF THE AMERICAN BANKERS
ASSOCIATION, AMERICAN FINANCIAL SERVICES ASSOCIATION,
CONSUMER BANKERS ASSOCIATION, CREDIT UNION NATIONAL
ASSOCIATION, INDEPENDENT COMMUNITY BANKERS OF AMERICA,
MORTGAGE BANKERS ASSOCIATION, AND NATIONAL ASSOCIATION OF
FEDERALLY-INSURED CREDIT UNIONS**

The Electronic Transactions Association (“ETA”), through undersigned counsel, hereby respectfully submits these comments in support of the Petition for Expedited Declaratory Ruling, Clarification or Waiver (“the Petition”) filed on March 30, 2020, by the American Bankers Association (“ABA”), American Financial Services Association, Consumer Bankers Association, Credit Union National Association, Independent Community Bankers of America, Mortgage Bankers Association, and National

Association of Federally-Insured Credit Unions (collectively “the Petitioners”).¹ The Petition requests that calls or texts placed by banks, credit unions, and other customer-facing financial service providers using an automatic telephone dialing system or prerecorded or artificial voice on matters relating to the COVID-19 pandemic be deemed calls made for “emergency purposes” under the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”), and thus may be made without the prior express consent of the called party.

ETA supports the Petition, and urges the Commission to issue a temporary declaratory ruling during the pendency of the comment cycle it has established or otherwise grant the Petition on an expedited basis. In the absence of an interim measure, financial industry stakeholders, including ETA’s members, are constrained in their abilities to inform customers about COVID-19 related relief measures and warn them about fraud and other abuses of the payments processing system that have increased in frequency throughout the country during this tumultuous time. A continued delay in taking favorable action on the Petition for special relief would only serve to exacerbate the extant and ongoing economic fallout of the COVID-19 pandemic.

ETA is the leading trade association for the payments industry, representing over 500 companies worldwide that offer electronic transaction processing products and services that, in turn, serve millions of consumers whose purchases drive the economy. ETA has consistently supported the Commission’s efforts to suppress deceptive, and fraudulent robocalls because they harm both consumers and the legitimate business interests of ETA’s members. Indeed, many of ETA’s members play an integral role in the

¹ *Petition for Expedited Declaratory Ruling, Clarification, or Waiver of the American Bankers Association et al.*, CG Docket No. 02-278 (filed Mar. 30, 2020).

consumer transaction lifecycle and are uniquely positioned to detect and alert consumers of fraudulent and deceptive practices. ETA urges the Commission to recognize that not all prerecorded calls or autodialed text broadcasts are unwanted or illegal. This distinction between calls and texts which serve a legitimate purpose and those which do not is critical even during normal times. Now, more than ever, consumers need access to real-time and accurate information regarding their financial service providers' COVID-19 related response and customer-facing mitigation measures.

The Commission has been quick to recognize that the country is gripped in the throes of an unprecedented health, social, and economic crisis, and has taken crucial steps to mitigate roadblocks in getting members of the public critical information related to the COVID-19 pandemic. Most notably, on March 30, 2020, the Commission, *sua sponte*, issued a Declaratory Ruling confirming that the COVID-19 pandemic constitutes an “emergency” under the TCPA, and calls and texts sent by or on behalf of emergency and medical facilities and personnel that relate to COVID-19 fall within the Emergency Purposes Exception.² This measure, however, fell short of applying the Emergency Purposes Exception to communications from businesses that convey important informational and outreach on matters related to, or growing out of, the COVID-19 pandemic, and which are intended to advise customers and members of the public of branch closings, service limitations, reduced hours, or the availability of remote banking or other remote access customer service options that seek to protect the health and safety of consumers and employees by preventing unnecessary physical contact between consumers and employees.

² Declaratory Ruling, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, at 1 (Mar. 20, 2020).

The financial security of a substantial portion of the nation's consumers has been shattered, as has the stability of the overall economy. Each day, an ever-growing percentage of the population must contend with a new reality of unemployment, furloughs, and reduced hours. These consumers have an immediate need to be contacted by their lenders and financial service providers to secure their housing and other necessities, and to be alerted to fraud and abuses of consumers in the marketplace. These calls provide consumers with critical information about payment deferrals, fee waivers, extension of repayment terms, or other delays in payment, modification, or forbearance on mortgage payments or other loans, as well suspected fraudulent activities that are maliciously designed to victimize American consumers. Through the use of an automatically-dialed or pre-recorded call or text message, financial industry stakeholders and ETA members would be able to transmit this critical information in real-time, safely and conveniently so consumers can make informed financial decisions.

While the Commission has rightly recognized that the pendant health crisis is the most important priority, there are, unfortunately, other crises that not only continue to plague consumers during times of disaster but have proven to proliferate and thrive in such contexts. Regrettably, bad actors and unscrupulous callers have been emboldened by the national focus on the COVID-19 crisis and have increased their fraudulent and abusive practices to the detriment of an increasingly vulnerable citizenry and consumer base. On the same day it granted the waiver, the Commission warned consumers of a severe uptick in scam phone calls and texts related to the coronavirus pandemic “promoting bogus cures, offering fake test kits, sending hoax text messages, and generally preying on virus-related fears.”³ The Federal Trade Commission has also showed no signs of decreasing the

³ FCC Consumer Advisory: COVID-19 Scams (Dated Mar. 30, 2020).

number of actions it brings against those who make, and those who facilitate the making of, illicit robocalls.⁴ Calls that warn consumers of potential fraud on the consumer's account, or of known or suspected scams, enable individual consumers to better protect themselves and their financial health.

The Commission's Public Notice DA 20-384 established a comment period that will not close until 52 days after the original filing, and 45 days after the issuance of the Public Notice. As the ABA's April 10, 2020, *Ex Parte* Letter makes clear, the Commission's delay in granting the Petitioners' request, in contrast with its recent *sua sponte* action, has left the banking industry hobbled in its abilities to inform customers of relief measures available to them.⁵ It also left ETA members curtailed in their ability to protect their clients – including financial institutions and small business merchants – and consumers from fraud and other abuses of the payments system. During this crucial six-week period of delay, an untold amount of financial damage may accrue to American consumers, small businesses and the economy at large.

As the Commission is well-aware, the Administrative Procedure Act specifically empowers agencies to shortcut the normal Notice and Comment process during emergency situations. The Commission's Declaratory Ruling specifically permits good-faith informational calls made to consumers regarding COVID-19 if they are made by certain health care providers and government officials. Pursuant to its authority, the Commission

⁴ See e.g., Kelcee Griffis, *FTC Docs Reveal Scope of Robocall Enforcement Efforts*, Law360 (Apr. 15, 2020) available at: https://www.law360.com/telecom/articles/1263977/ftc-docs-reveal-scope-of-robocall-enforcement-efforts?nl_pk=c0844750-f2c6-409d-b2b3-b56bbdd5a4a&utm_source=newsletter&utm_medium=email&utm_campaign=telecom.

⁵ *Notification of Ex Parte Presentation*, CG Docket No. 02-278 (Filed on Apr. 10, 2020).

can and should take immediate action to expand this ruling to cover the time-sensitive communications between businesses and their customers. The requested ruling should be narrowly-tailored to exclude calls made for the purposes of advertising, telemarketing, or debt-collection. Should the Commission desire to further define the subject matter of calls that it considers to fall within the Emergency Purposes Exception, it should defer such determination until the outcome of the comment cycle. Although the comment cycle might help fashion a more precise definition of the types of calls that should be permitted, it would come at the cost of hindering the transmission of crucial time-sensitive information to countless consumers and small businesses. Given the serious financial and other adverse consequences to which consumers may be exposed from fraudulent and deceptive practices, alerting them to the possibility of suspicious activity as quickly as practicable provides not only valuable and timely assistance to the individual consumer, but also to all the other individuals and businesses that may be negatively impacted by such bad acts, as well as a public service to the economy overall.

April 24, 2020

Respectfully Submitted,

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