

April 10, 2020

Via ECFS

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

Re: Notification of *Ex Parte* Presentation, CG Docket No. 02-278

Dear Ms. Dortch:

On April 8, 2020, I met by telephone with Zenji Nakazawa, Public Safety and Consumer Protection Advisor to Chairman Ajit Pai, and with Arielle Roth, Wireline Legal Advisor to Commissioner Michael O’Rielly, separately, to discuss the petition for expedited declaratory ruling, clarification, or waiver (Petition) filed by the American Bankers Association¹ (ABA) and six other trade associations.² The Petition asked the Federal Communications Commission to issue an expedited declaratory ruling, clarification, or waiver stating that phone calls and text messages placed by banks, credit unions, and other customer-facing financial services providers using an automatic telephone dialing system (autodialer) or prerecorded or artificial voice on matters related to the COVID-19 pandemic are “call[s] made for emergency purposes,” and thus may be placed without the consent of the called party, pursuant to 47 U.S.C. § 227(b)(1)(A) (Emergency Purposes Exception).

On behalf of ABA, I asked the Commission to act without delay to provide the relief requested in the Petition, such as through issuance of an interim declaratory ruling.³ Under the existing comment deadlines, reply comments may be submitted up to May 21 — nearly six weeks from

¹ The American Bankers Association is the voice of the nation’s \$18.6 trillion banking industry, which is composed of small, regional, and large banks. Together, America’s banks employ more than 2 million men and women, safeguard \$14.5 trillion in deposits, and extend more than \$10.5 trillion in loans.

² Pet. of the Am. Bankers Ass’n et al., *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278 (2020), https://ecfsapi.fcc.gov/file/10330137314199/ABA_JointTrades_Petition_Emergency_Purposes_Exception_2020_03_30_final.pdf (petition filed by 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).

³ See 47 C.F.R. § 1.2 (providing that the Commission may “on [a party’s] motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty”).

today. Financial institutions seek to place COVID-19-related informational calls to their customers *now*, not in six (or more) weeks.

Stakeholders from across the political spectrum agree that the Commission should act on the Petition without delay. As Commissioner Michael O’Rielly stated, it is “tough to reconcile [the] timing of [a] late May or June decision, at [the] earliest” on the Petition with the need for financial institutions to contact their customers now with COVID-19-related information.⁴ He asked rhetorically if the Commission could act with “[s]ome more urgency?”⁵ Six organizations dedicated to representing the interests of consumers, led by the National Consumer Law Center (NCLC), yesterday “urge[d] the Commission . . . as expeditiously as possible” to allow a subset of the calls described in the Petition to be placed under the Emergency Purposes Exemption.⁶

ABA shares the sense of urgency expressed by Commissioner O’Rielly, the National Consumer Law Center, and the other organizations aligned with NCLC. More than 17 million Americans have filed for unemployment benefits during the past four weeks.⁷ The number of unemployed is “moving with alarming speed . . . to what will likely be very high” levels, according to the Chair of the Board of Governors of the Federal Reserve System, Jerome Powell.⁸ Consumers need information about programs, relief, and resources offered by financial institutions now, not in

⁴ Michael O’Rielly, Comm’r, Fed. Commc’ns Comm’n, Twitter (Apr. 7, 2020, 9:18 AM), <https://twitter.com/mikeofcc/status/1247514009332580360>.

⁵ *Id.* A separate tweet by Commissioner O’Rielly described the Petition as “[v]ery reasonable.” *Id.*, Twitter (Apr. 2, 2020, 10:29 AM), <https://twitter.com/mikeofcc/status/1245720132984492044>.

⁶ Letter from Margot Saunders, Senior Counsel, Nat’l Consumer Law Ctr., et al., to Marlene Dortch, Sec., Fed. Commc’ns Comm’n (Apr. 9, 2020), <https://ecfsapi.fcc.gov/file/10410571401794/Consumer%20Group%20Ex%20Parte%20on%20ABA%20petition%20on%20pandemic%20calls.pdf> (*ex parte* letter submitted on behalf of the National Consumer Law Center, Americans for Financial Reform Education Fund, Consumer Federation of America, Consumer Reports, Consumer Action, and the National Association of Consumer Advocates). The groups expressed support for the Commission “allowing, during the declared national emergency, limited numbers of automated calls” from financial institutions “for the purposes of alerting their customers to the callers’ offers” of forbearance, payment deferrals, fee waivers, extension or relaxation of repayment terms, or loan modifications on loans secured by homes or vehicles, with limits on the number of exempted calls that may be placed. *Id.* at 1-2.

⁷ Heather Long & Andrew Van Dam, *America Is in a Depression. The Challenge Now Is to Make It Short-lived.*, Wash. Post (Apr. 9, 2020), <https://www.washingtonpost.com/business/2020/04/09/66-million-americans-filed-unemployed-last-week-bringing-pandemic-total-over-17-million/>.

⁸ Speech, Jerome Powell, Chair, Bd. of Governors of the Fed. Reserve System, COVID-19 and the Economy (Apr. 9, 2020), <https://www.federalreserve.gov/newsevents/speech/powell20200409a.htm>.

two months. We urge the Commission to issue an interim declaratory ruling or other immediate relief as soon as possible.

Sincerely,

A handwritten signature in black ink that reads "Jonathan Thessin". The signature is written in a cursive style with a large, looping initial 'J'.

Jonathan Thessin
Senior Counsel
Consumer & Regulatory Compliance
Regulatory Compliance and Policy