Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Consumer and Governmental Affairs Bureau	)	CG Docket No. 18-152
Seeks Comment on Interpretation of the Telephone	)	
Consumer Protection Act in Light of the D.C.	)	
Circuit's ACA International Decision	)	
	)	
Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991	)	

Reply Comments of the Credit Union National Association

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Executive Summary

There is overwhelming consensus among all sectors of the business community on the three key issues raised in the P*ublic Notice* released in the aftermath of the *ACA International* opinion. Automatic telephone dialing systems ("ATDS") should be defined as equipment that has the present capability to generate random or sequential numbers and to dial those numbers without human intervention. Only when those essential functions of an ATDS are used to make the call should the restrictions in Section 227(b)(1) arise. This interpretation is most faithful to the statutory language and Congress's intent.

The business community also agrees that the "called party" should be defined as the intended recipient and that callers may reasonably rely on the prior consent of the person that provided the number called, absent actual knowledge of reassignment. Strong support exists as well for a safe harbor for companies utilizing compliance solutions, including using a comprehensive reassigned number database should one be adopted. Companies concur that the Commission should identify a set of reasonable, easy-to-use methods of revocation and a high degree of consensus exists on what those methods should entail.

Consumer groups, plaintiffs' lawyers, and a substantial number of individual consumers participating in what appears to be a write-in campaign, continue to express concerns that such TCPA revisions will open the flood gates to more "robocalls." These concerns are misplaced. The increase in complaints and "robocalling" cited by consumers occurred notwithstanding the broad interpretations of the TCPA stemming from the *2015 TCPA Order* and other Commission orders.[1] The unfortunate fact is that unscrupulous actors will engage in mass robocalling

[1] Comments of the National Consumer Law Center, CG Docket No. 02-278, CG Docket No. 18-152, at 3 (stating "robocalls" increased 285% over the past three years) (filed June 13, 2018)(*NCLC Comments*).

campaigns without regard to the rules, however they are written. Restoring the definition of an ATDS to align with Congressional intent and removing strict liability for inadvertently calling a wrong number will not spur further illegal robocalling by individuals or companies with no regard for compliance. These critical statutory revisions will, however, lift the fear of litigation that is chilling legitimate business communications.[2]

A number of credit unions and state credit union associations filed comments confirming the importance of communicating with their member-owners and the chilling effect of previous Commission interpretations.[3] Randolph-Brooks Federal Credit Union noted, for example, that its members have a "vested interest in being informed about different aspects of the credit union's operations, including governance, communications, fraudulent activity and account information such as overdue payments." [4] It spoke of the commitment to "serving members of modest means" many of whom live paycheck-to-paycheck, highlighting the need to communicate about account balances, upcoming bill payments and other account information.[5] The Ohio Credit Union League identified the increased costs and delays incurred by its member credit unions by having to forgo the use of efficient dialing technologies due to fear of litigation.

These credit unions, and other commenters as well, note the dramatic changes that have occurred in the way enterprises and consumers communicate, particularly the replacement of

[2] NCLC claims that class action lawsuits are necessary because the statutory damages of $500, or $1500 for willful violations, are insufficient to motivate consumers to seek relief NCLC Comments at 12. Ironically, as some commenters point out, consumers in TCPA class actions recover on average only between $4.12 and $9.53, while attorneys collect on average $2.4 million. Comments of the Electronic Transactions Association CG Docket No. 02-278, CG Docket No. 18-152, at 2 (filed June 13, 2018)(*ETA Comments*); Comments of U.S. Chamber Institute for Legal Reform, CG Docket No. 02-278, CG Docket No. 18-152, at 10 (filed June 13, 2018) (*Chamber of Commerce Comments*). Clearly consumers would be much better off financially if they filed *pro se* actions in small claims court, as Congress believed would be the case. *See Statement of Sen. Hollings,* 137 Cong. Rec 30821-30822, (1991).

[3] Comments of Ohio Credit Union League, CG Docket No. 02-278, CG Docket No. 18-152, at 4-8 (filed June 13, 2018); Comments of Randolph-Brooks Federal Credit Union, CG Docket No. 18-152, CG Docket No. 02-278 at 2 (filed June 13, 2018)(*Randolph-Brooks Comments*);. *See also*, Comments of the Credit Union National Association, CG Docket No. 02-278, CG Docket No. 18-152, at 3 (filed June 13, 2018) (*CUNA Comments*).

[4] Randolph-Brooks Comments at 2.

[5] *Id*.

wireline with wireless telephone services. The Commission should take this opportunity to update the TCPA to reflect today's modern communications environment and consumer preferences to treat informational calls to wireless phones the same way they are treated when calling residential wireline calls.

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Reply Comments of the Credit Union National Association

The Credit Union National Association ("CUNA"), by and through its counsel, submits these reply comments in response to the *Public Notice*.[6] In light of the ongoing uncertainty surrounding the interpretation of the Telephone Consumer Protection Act ("TCPA"), CUNA respectfully urges the Federal Communications Commission ("Commission") to act expeditiously on the issues identified in the *Public Notice*.

I. Consumer Groups and Plaintiffs Firms' Misinterpret the ATDS Definition

A. An ATDS Must Generate Numbers Randomly or Sequentially

Consumer groups and plaintiffs' firms wrongly argue that the statutory definition of an ATDS contemplates inclusion of any equipment capable of storing numbers and then dialing

[6] Consumer and Governmental Affairs Bureau Seeks Comment on Interpretation of the Telephone Consumer Protection Act in Light of the D.C. Circuit's ACA International Decision, CG Docket Nos. 18-152, 02-278 (rel. May 14, 2018) (*Public Notice*).

them.[7] They point to the use of the disjunctive "or" in the ATDS definition – "to store or produce telephone numbers to be called, using a random or sequential number generator" – and argue that the random or sequential number generator clause can only modify the term "produce."[8] In part this claim is predicated on a technical argument that equipment cannot store numbers using a random or sequential generator. They would thus rewrite the definition to include equipment that stores numbers and then dials them. In this way, they hope to retain coverage of predictive dialers.

This argument impermissibly reads out of the ATDS definition the concept of indiscriminately calling numbers generated randomly or sequentially, which was the key concern motivating this section of the TCPA. Congress was not primarily concerned with the privacy implications of the automatic functioning of the ATDS equipment. This can be readily discerned by the fact that Congress did not bar the use of ATDS to reach residential lines, which at the time was the overwhelming telephony medium.[9] When the TCPA was enacted, more than 93 percent of households had a landline phone, while the percentage of consumers with wireless phones was de minimis, and zero percent of Americans had cut the wireline cord and used only a wireless phone.[10] If Congress were primarily concerned with the privacy implications of autodialer

[7] Comment of Law Offices of Todd M. Freiman, P.C., Kazerouni Law Group, APC, and Hyde & Swigart, APC, CG Docket No. 18-152, at 6 (filed June 13, 2018) (*Jason Ibey Comments*); NCLC Comments at 16; Comments By John Herrick, CG Docket No. 02-278, CG Docket No. 18-152, at 12 (filed June 13, 2018) (*Herrick/Bock Comments*).
[8] NCLC Comments at 16-17; Comments of Justin T. Holcombe, CG Docket No. 02-278, CG Docket No. 18-152, at 3 (filed June 13, 2018) (*Holcombe Comments*); Herrick/Bock Comments at 13.
[9] See 47 U.S.C. § 227(b)(1)(B) (barring calls to residential lines "using an artificial or prerecorded voice" but not using an ATDS).
[10] *See, e.g.*, FCC Releases Semiannual Study of Telephone Trends, Press Release, Aug. 7, 1991 (reporting that 93.6% of households had telephone service, which at the time reflected landline usage). In 1991, when the TCPA was enacted, roughly 3 people out of a hundred had a cell phone and these were primarily professionals using their phones for business purposes. *See Mobile Cellular Subscriptions in the U.S.* available at https://fred.stlouisfed.org/series/ITCELSETSP2USA, (last visited June 25, 2018). The Commission did not begin reporting cellular phone usage until 1992, when it reported data compiled by the then-Cellular Telecommunications Industry Association showing some 7.5 million wireless subscribers in December 1991. *See* Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, 10 FCC Rcd. 8844, 8873, Table 1 (1995) (*First CRMS Competition Report*).

technology, it would have barred its use in calling the type of phone lines everyone had at the time – residential landlines.

Instead, as a number of comments point out, Congress was concerned that calling random numbers or large sequential blocks of numbers, *e.g.*, all numbers ranging from XXX-0000 to XXX-9999, without making any effort to ascertain who or what was being called, created risks to public safety and health.[11] Calls were being placed to emergency lines or hospital rooms or to all of the lines of a single business, precluding their use for important communications.[12] This concern is reflected in the structure of Section 227(b)(1)(A), which precludes use of an ATDS without prior consent for three discrete categories: (i) "to any emergency telephone line;" (ii) "to the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment;" or (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." As explained in CUNA's initial comments, the last provision reflects the concern that users of these wireless services incurred additional costs for incoming calls, causing a direct economic impact not incurred by residential landline telephone users receiving telemarketing calls.[13] There is no indication Congress was concerned with the use of autodialing technology to call specified lists

[11] *See, e.g.*, Comments of the Retail Industry Leaders Association, CG Docket No. 02-278, CG Docket No. 18-152, at 9-10 (filed June 13, 2018) (*RILA Comments*); Comments of Consumer Bankers Association, CG Docket No. 18-152, at 3 (filed June 13, 2018), Comments of TechFreedom, CG Docket No. 02-278, CG Docket No. 18-152, at 3 (filed June 13, 2018) (*TechFreedom Comments*); Comments of Tatango, Inc. In Response to the Consumer and Governmental Affairs Bureau's Public Notice, CG Docket No. 02-278, CG Docket No. 18-152, at 5 (filed June 13, 2018); Comments of Noble Systems Corporation, CG Docket No. 02-278, CG Docket No. 18-152, at 5-7 (filed June 13, 2018) (*Noble Comments*); Comments of Sirius XM Radio Inc., CG Docket No. 02-278, CG Docket No. 18-152, at 6-8 (filed June 13, 2018)(*Sirius XM Comments*).

[12] See, e.g., RILA Comments at 9; Sirius XM Comments at 7-8; TechFreedom Comments at 2-3.

[13] CUNA Comments at 12-13.

of numbers.[14] Calling predefined lists would typically not result in the harms motivating Congress as such lists would be unlikely to include numbers with little or no possibility of successful marketing.

A definition that applies the random or sequential number generator clause to the whole of Section 227(b)(1)(A) does not render the term "store" superfluous even if, as is argued, such a generator cannot be used to store numbers. The definition refers to a system and it is completely reasonable to read the definition as applying to equipment that has the capacity to store the numbers that were generated by a random or sequential number generator before those numbers are dialed, even if the storage lasts for matter of seconds or milliseconds, or stores randomly or sequentially generated numbers for calling at another time. Conversely, defining an ATDS as any equipment capable of storing and then dialing numbers would result in exactly the type of "eye-popping" overbreadth that the D.C. Circuit just struck down. Virtually any device with memory can store numbers. The Commission long ago ruled that the ability to store and dial numbers, for example, call forwarding or speed dialing functions, is insufficient to qualify as an ATDS.[15]

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[14] *See, e.g.*, Noble Comments at 7 (banning autodialers using random or sequential number generators was "carefully tailored to address" the problem of indiscriminate dialing); TechFreedom Comments at 3. Legislative history clearly shows that lawmakers were aware of the distinction between random and sequential dialing on the one hand, and dialing from a set list of specific telephone numbers on the other. For instance, one witness testified at a hearing on the precursor bill to the TCPA: "There is . . . a sharp technological distinction between 'random' or 'sequential' number generation and 'programmable' number generation. . . . Programmable equipment enables a business to transmit a standard . . . message quickly to a number of telephone subscribers . . . with whom the sender has a prior business relationship." *Telemarketing Practices: Hearing Before the House Subcommittee on Telecommunications and Finance*, 40-41, 101 Con. (1989) (statement of Richard A. Barton). Law Professor Robert L. Ellis commented on the same bill: "The definition of 'automatic telephone dialing system' . . . is quite limited: it only includes systems which dial numbers sequentially or at random. That definition does not include newer equipment which is capable of dialing numbers gleaned from a database." *Id*., at 71-72 (statement of Robert L. Ellis).

[15] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90, Report and Order, 7 FCC Rcd. 8752, 8776 ¶47 (1992) ("*1992 TCPA Order*")("The prohibitions of [Section] 227(b)(1) clearly do not apply to functions like 'speed dialing,' 'call forwarding,' or public telephone delayed message services (PIMS), because the numbers called are not generated in a random or sequential fashion.").

NCLC further argues that limiting ATDS to equipment that calls randomly or sequentially generated numbers would be nonsensical because calls to cell phones require prior consent, which could never occur if numbers were generated out of "thin air."[16] But that actually was the point. In order to stop calling numbers out of "thin air," or more accurately calling numbers indiscriminately using an autodialer, Congress required prior consent. The hoped-for effect was to stop calling numbers generated out of "thin air." Rather than render the statute nonsensical, the ATDS definition ban on indiscriminate calling by requiring prior consent fulfills the statutory purpose.

An additional point: a sequential or random number generator does not just generate numbers of out of "thin air." It could be programmed, as noted above, to dial every number in a ten thousand block sequence (the way numbers were traditionally assigned to carriers that in turn provided them subscribers). Those numbers are not generated out of thin air, but calling all such numbers creates the concern animating Congress, such as tying up all of the lines of a business which could have received hundreds or thousands of number in a sequence. The NCLC's suggestion that barring the use of random or sequential number generators would not address this problem reflects a misunderstanding of the systems and numbering schemes involved.[17]

Consumer groups also raise overblown policy concerns. They claim that an overly "narrow" definition of ATDS will leave consumers with no way to stop the "flood of calls."[18] This is just not true, at least for companies that make good faith efforts to comply. Consumers can simply ask for the calls to stop. When such requests are made of telemarketers, the rules

[16] NCLC Comments at 18-19. NCLC focuses just on calls to cell phones in 227(b)(1)(A)(iii), but the prior consent obligation of course applies to emergency telephone lines and lines to hospital rooms and similar facilities in subsection (i) and (ii) as well. Congress was likely much more concerned about the impact of indiscriminate calling on those lines than the very nascent wireless market.
[17] NCLC Comments at 16-17.
[18] NCLC Comments at 16; Comments of the Consumers Union, CG Docket No. 02-278, CG Docket No. 18-152, at 3 (filed June 13, 2018)(*CU Comments*).

require that internal do not call lists reflect that request – a rule unaffected by the ATDS definition. Marketing best practices require companies to honor a disclosed set of stop commands.[19] CUNA certainly does not support the ability to continue making calls after being asked to stop, as long as the request is reasonably conveyed.

B. Capacity Should be Limited to Present Ability

NCLC asks the Commission to retain the broad interpretation of capacity that the D.C. Circuit just reversed. Its sole concession is to suggest the Commission expressly carve out smart phones.[20] In this particular circumstance, NCLC is willing to confer upon the Commission broad regulatory authority "to implement the requirements" of Section 227(b)(2) that goes beyond the specific regulatory areas listed in subsection (b)(2).[21] NCLC's position regarding the scope of the Commission's authority to create exemptions based on this prefatory language differs dramatically from its position taken in response to CUNA's petition seeking adoption of an established business relationship exemption for credit union informational calls to the cell phones of their member consumers.[22] There, NCLC argued that this general grant of regulatory authority could only be used to create pro-consumer regulations and that the Commission could not establish any exemptions for calls to cell phones other than the free-to-end-user exemption

[19] See e.g., Mobile Marketing Association, U.S. Consumer Best Practices for Messaging, at 43 available at http://www.mmaglobal.com/files/Best_Practices_for_Messaging_Version_7.0%5B1%5D.pdf (last visited June 28, 2018).
[20] NCLC Comments at 20-21.
[21] NCLC Comments at 22 (quoting Section 227(b)(2) ("The Commission shall prescribe regulations to implement the requirements of this subsection.")). Subsection (b)(2) confers authority to exempt certain types of calls from the prior consent requirement, such as calls not charged to the end user, (b)(2)(C), or informational calls to residential lines (b)(2)(B). NCLC has previously argued that the Commission may not adopt any exemptions beyond those specifically identified in (b)(2). *See* Comments Opposing the Petition for Declaratory Ruling, National Consumer Law Center, *et al.*, CG Docket No. 02-278 at 10-11 (filed Nov. 6, 2017)(*NCLC Opposition*).
[22] Credit Union National Association Petition for Declaratory Ruling, CG Docket 02-278 at 11-15 (filed Nov. 21, 2017)(*CUNA Petition*). NCLC has previously argued that the Commission may not adopt any exemptions beyond those specifically identified in (b)(2). *See* Comments Opposing the Petition for Declaratory Ruling, National Consumer Law Center, *et al.*, CG Docket No. 02-278 at 10-11 (filed Nov. 6, 2017)(*NCLC Opposition*).

provided in subsection (b)(2)(C).[23] Recognizing that the free-to-end-user exemption provides no support to exempt equipment it would otherwise consider an ATDS, NCLC acknowledges that the Commission has broader exemption authority. Given this change of position, the Commission should disregard NCLC's objection to CUNA's petition on ground that Commission lacks authority to adopt an established business relationhip (EBR).

NCLC argues that the Commission should use this authority to exclude from the autodialer definition equipment not ordinarily used to make large numbers of calls in a short period of time. It does not propose to further define those terms. The problem with this approach is that provides essentially no guidance as to what would constitute an ATDS and would once again leave the legal landscape in a fog of uncertainty.

At any rate, the solution to addressing ambiguity around "capacity" can be resolved by requiring that the requisite functionality actually be used in making the calls at issue. Numerous commenters propose this approach.[24] NCLC claims, however, that limiting autodialer calls to those made using autodialer functionality is somehow contrary to the statute.[25] This is nonsensical. The statue is best read to require use of autodialer functions to trigger the prohibition. The calling restrictions in Section 227(b)(1)(A) of the TCPA only applies to calls "using any [ATDS]." It is therefore necessary to define what constitutes an ATDS, which the statute does, and that definition informs the scope of the prohibited practice.

[23] NCLC Opposition at 10 (the regulatory framework is quite explicit: the only "exemptions" permitted from the requirement of prior express consent for robocalls to cell phones are set out in § 227(b)(2)(C).").
[24] *See, e.g., See, e.g.,* Chamber of Commerce Comments at 10; Comments of Professional Association for Customer Engagement, CG Docket No. 02-278, CG Docket No. 18-152, at 9 (filed June 13, 2018) (*PACE Comments*).; Comments of TCN Inc., CG Docket No. 18-152, CG Docket No. 02-278, at 3-4 (filed June 13, 2018).
[25] NCLC Comments at 28.

II. There is Broad Consensus on Resolving Reassigned Numbers and Revocation Issues

Similarly, broad consensus exists on the issues around reassigned numbers and revocation. Virtually all businesses agree that a permissible, if not better, reading of the statute is that the "called party" should be interpreted as the intended recipient of the call. Virtually all agree that the Commission's reasonable reliance approach to prior consent should be retained and that this approach is best implemented by adopting an actual knowledge standard. A number of commenters also correctly argue that a similar approach should be used when a customer has provided a wrong number.[26] A broad consensus also exists for a safe harbor that should apply immediately for those using currently commercially available compliance solutions, and that a safe harbor should also apply to the use of a comprehensive reassigned number database should one be developed.

Opponents of these proposals have no qualms with imposing strict liability for inadvertently reaching the wrong person.[27] Moreover, opponents give no credence to the common-sense notion that businesses have no incentive whatsoever to reach an unintended recipient. Reaching a wrong or reassigned number wastes resources, staff time, and results in opportunity costs.[28] The sooner a business can learn that the number it is calling is not associated with the intended recipient the better. And virtually all agree with a standard that

[26] There is no meaningful distinction between calls or texts to wrong telephone numbers and reassigned numbers under the TCPA. Indeed, courts have treated them the same way under the 2015 Order. *See, e.g.*, *Bush v. Mid Continent Credit Servs., Inc*., No. CIV-15-112, 2015 WL 5081688, at *3 (W.D. Okla. July 28, 2015) (under the *2015 Order*, "calls placed by companies to 'wrong numbers' or 'reassigned numbers' are actionable"); Comments of CTIA, CG Docket No. 02-278, CG Docket No. 18-152, at 6-7 (filed June 13, 2018)(*CTIA Comments*); RILA Comments at 23.

[27] Jason Ibey Comments at 20 ("The plain language of the TCPA contains no safe harbor rule and imposes strict liability for calls that are not deemed to have been 'willful' violations.").

[28] Comments of PRA Group, Inc., CG Docket No. 18-152, CG Docket No. 02-278, at 11 (filed June 13, 2018); Comments of the Coalition of Higher Education Assistance Organizations, CG Docket No. 18-152, CG Docket No. 02-278, at 11 (filed June 13, 2018); Tatango Comments at 13.

would impose liability on entities that continue to call a wrong or reassigned number after learning of the mistake.

As to revocation, there is no disagreement that consumers may revoke consent and remarkable consistency in proposing methods by which an intent to revoke may be conveyed. Numerous commenters suggest multiple easy-to-use methods, such as emailing a designated email address, calling a designated toll-free number, filling out a request on a website or via postal mail.[29] For text messages, many commenters note that best practices require companies to honor a recognized string of commands, such as STOP, that systems are programmed to recognize.[30] Companies and their customers may also mutually agree by contract on a clear, simple method of revocation that cannot be unilaterally altered. CUNA agrees that use of these mechanisms, properly disclosed, should create a presumption of revocation and conversely, lack of their use should create the reverse presumption.[31]

III. It's Time to Update the TCPA

In its initial comments, CUNA urged the Commission to use its delegated regulatory authority to begin to update the TCPA to reflect the way companies and consumers predominantly communicate today.[32] A significant number of comments note the dramatic changes that have occurred in the communications realm since the statute was adopted in 1991.[33]

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[29] Comments of Edison Electric Institute and National Rural Electric Cooperative Association, CG Docket No. 02-278, CG Docket No. 18-152, at 12-13 (filed June 13, 2018) (*EEI/NRECA Comments*); Tatango Comments at 13-14; Chamber of Commerce Comments at 20-24; CTIA Comments at 3; RILA Comments at 29-30; Comments of Bellco Credit Union, CG Docket No. 02-278, CG Docket No. 18-152, at 2-3(filed June 12, 2018) (*Bellco Comments*); PACE Comments at 12-14.

[30] *See, e.g.*, Tatango Comments at 13 (citing CTIA, Shortcode Monitoring Handbook at §A.2.04 (2017)); Chamber of Commerce Comments at 22.

[31] Chamber of Commerce Comments at 21-22; PACE Comments at 14.

[32] CUNA Comments at 13.

[33] See eg., Comments of Selene Finance LP, CG Docket No. 02-278, CG Docket No. 18-152, at 2 (filed June 13, 2018)(Noting that 53.9% of households now rely solely on cell phones); NCHER Comments at 2-3 (noting that age groups typical of student loan borrowers are quickly abandoning landline, 73.3% of 25 to 29 year olds and 74.4% of 30-34 year holds live in cell phone only households); Tatango Comments at 7; Comments of the Bureau of Consumer Financial Protection, CG Docket No. 18-152, at 1 (filed June 13, 2018) (noting rapid increase of smart

The key change is the decline of residential landlines, particularly the traditional circuit-switched POTs lines, which have been replaced with VoIP or wireless services. The predominance particularly of wireless services replacing residential landlines is the exact opposite of where communications stood in 1991 when the TCPA was first adopted. The Commission believed then, when virtually every call was going to a residential landline phone, that consumer privacy would not be unduly harmed by calls to such lines from companies with which the consumer had an established business relationship ("EBR").[34] This was true even for telemarketing calls and is still true for informational calls. Although the Commission in 2012 eliminated the EBR for telemarketing calls to residential landlines, the Commission's rules still exempt informational calls to residential lines from the requirement of prior consent.[35] Callers, however, must obtain consent to make the same informational calls to cell phones, which the majority of the population now uses as their only telephone service. Commenters also recognize that virtually all texts and calls are now free to cell phone subscribers, eliminating the concern that animated Congress when it barred use of ADTS equipment to call cell phones and other telephone services in which the called party incurred a charge for incoming calls.[36]

The Commission should take this opportunity to not only revise and rationalize the definition of key TCPA terms, but also utilize it regulatory authority to eliminate the antiquated

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phones, texts and other newer methods of communication, which highlighs the importance of reviewing "how statutes and regulations apply to them."); Comments of Rushmore Loan Management Services LLC, CG Docket No. 02-278, CG Docket No. 18-152, at 3 (filed June 13, 2018). *See also, Broadnet Comments* at 3 (noting those who rely primarily on cell phones, which includes a disproportionate number of disadvantaged citizens, are being deprived of important opportunities to engage with their government.).

[34] 1992 TCPA Order, 7 FCC Rcd. 8752, 8770–71, ¶ 34.

[35] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 27 FCC Rcd. 1830, 1845–48, ¶¶ 35–43 (2012) ("*2012 TCPA Order*").

[36] *See, e.g.*, Chamber of Commerce Comments at 22, n. 67; Comments of the National Automobile Dealers Association, CG Docket No. 18-152, at 8 (noting that the Commission's decision to include text messages as calls reflected a concern about costs, but, today, the "vast majority" of cell phone customers no longer buy buckets of minutes or texts against which incoming calls or texts were charged.")(filed June 13, 2018). *See also*, CUNA Petition at 10.

distinction between residential landlines and cell phones.[37] As requested in the CUNA Petition, information calls to cell phones should, like residential landlines, not require prior consent. This may be accomplished by creating an EBR for informational cell phone calls or exempting all informational calls to cell phones where called party is not charged for the call, subject to reasonable limitations on call frequency.[38]

Conclusion

The Commission should act promptly to adopt the revisions to its interpretations of the TCPA as described above.

Respectfully submitted,

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[37] As noted, NCLC concurs that the Commission has broad authority to adopt exemptions. NCLC Comments at 22.
[38] *See, e.g.*, Ohio Credit Union Comments at 7; Selene Comments at 3 (stating that calling numbers generated from lists of consumers with whom the caller has a business relationship should be excluded the definition of an ATDS). *See also*, CUNA Petition at 9-11.