

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

**In the Matter of** )  
 )  
 ) **CG Docket No. 02-278**  
**Rules and Regulations Implementing the** )  
**Telephone Consumer Protection Act of 1991** )

**COMMENT OF THE NATIONAL CONSUMER LAW CENTER<sup>1</sup>**

**Consumer Complaints About Debt Collector**

Debt collection is a tough business. As the ACA's petition states, in 1999 debt collectors only recovered about \$30.4 of the \$216 billion in debt referred for collection, or just about 14%. Congress recognized this when it passed the Fair Debt Collection Practices Act in 1977: "...the vast majority of consumers who obtain credit fully intend to repay their debts. When default occurs, it is nearly always due to an unforeseen event such as unemployment, overextension, serious illness, or marital difficulties or divorce."<sup>2</sup> Faced with these tough odds, debt collectors sometimes cross the boundaries of legal behavior and engage in abusive telephone tactics resulting in their close regulation by Congress. In a dramatic example, the FTC "...charged that as much as 80 percent of the money CAMCO collects comes from consumers who never owed the original debt in the first place."<sup>3</sup>

Consumer complaints to the Federal Trade Commission about debt collectors grew for 7th consecutive year in 2004, the last year reported. Consumers continue to complain about third-party collectors at a higher rate than any other specific industry, according to the Federal Trade Commission's 2004 Annual Report to Congress.<sup>4</sup> The FTC report for 2004 indicates that these complaints grew 34.9% in 2004 and 27.7% the year before. Consumer complaints about collection agencies at the BBB rose to the

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<sup>1</sup> The **National Consumer Law Center** is a nonprofit organization specializing in consumer issues affecting of low-income and elderly people. We work with thousands of legal services, government and private attorneys, as well as community groups and organizations, from all states who represent low-income and elderly individuals on consumer issues. As a result of our daily contact with these advocates, we have seen examples of abusive practices against low-income people in almost every state in the union. It is from this vantage point--many years of dealing with the abusive debt collection faced by the less sophisticated and less powerful in our communities--that we supply these comments. We publish and annually supplement fifteen practice treatises which describe the law currently applicable to all types of consumer transactions, including the 1045 page treatise, *Fair Debt Collection*. This comment is filed on behalf of our low-income clients.

<sup>2</sup> Sen. Rep. No. 95-382, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess. 3, *reprinted in* 1977 U.S.C.C.A.N. 1695.

<sup>3</sup> See FTC Press Release, *FTC Asks Court to Halt Illegal CAMCO Operation; Company Uses Threats, Lies, and Intimidation to Collect "Debts" Consumers Do Not Owe* (Dec. 8, 2004), available at [www.ftc.gov/opa/2004/12/CAMCO.htm](http://www.ftc.gov/opa/2004/12/CAMCO.htm) ("Many consumers pay the money to get CAMCO to stop threatening and harassing them, their families, their friends, and their co-workers.")

<sup>4</sup> See [www.ftc.gov/reports/fdcpa05/050729fdcpaprpt.pdf](http://www.ftc.gov/reports/fdcpa05/050729fdcpaprpt.pdf).

fourth spot from fifth the year before and ninth the year before that.<sup>5</sup> At the FTC, complaints about creditor collections rose in 2004 after falling slightly in 2003. (Credit cards commanded the third spot for complaints to the BBB.)

Consumers complained to the FTC most frequently about claims for excessive amounts of debt, repeated contacts, vulgar language, false threats, and calls to employers and to other unobligated persons. Nearly 3000 consumers complained that they received no notice of their debt validation right, while just over 2000 complained about not receiving the requested debt validation, and just over 2000 complained that their cease collection request was not honored. The Report acknowledges that the complaints received by the FTC represent but a small portion of aggrieved consumers.

### **Consumer Privacy**

Most consumers reasonably expect their cell phone number to be private, limited to calls only from those to whom they have given their number. Cell phone companies have marketed cell phones without offering directories of cell numbers that are basic to land line phone numbers. This privacy is one of the popular features of cell phones that has resulted in their exponential growth and allows its unique fee structure where the person called is generally charged a fee for the call. Consumers carry their cell phones with them in places where they would not want to receive a debt collection call: their car, the bus, a restaurant. Consumers will be hard pressed to see the benefit in allowing bill collectors to use automatic dialers to use up the consumer's high cost daytime minutes in places where it is inconvenient to receive such calls.

The consumer's ability to refuse answer unwanted incoming cell phone calls is no longer a sufficient answer to this problem. Caller identity information may now be faked<sup>6</sup> and some debt collectors are using these deceptive services to make debt collection calls to a consumer with a relative's, employer's, or neighbor's phone number appearing as the caller's identity. While this is clearly illegal deception, that has not stopped some elements of this industry.

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. Moreover, ACA's petition is not limited to calling cell phone numbers where the number was supplied to the creditor. The ACA would petition would allow them to use any other list of cell phone numbers they could obtain encouraging further incentives to expand this market and at the same time eroding further the cell phone users' privacy. Consumers consent to debt collection calls to their cell phone must be expressly and directly given to the debt collector to be consistent with the TCPA.

The ACA petition is thin on facts on which to base such a profound change in federal policy. It concludes that auto dialers are more accurate and efficient without any substantiation at all for the record. For example, the tremendous problem of abandoned or orphaned calls that result from automatic dialing systems is not addressed at all by the ACA petition.

Additionally, it is not at all clear that Congress permits collection agencies and attorneys to call consumers' cell phones under the Fair Debt Collection Practices Act,

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<sup>5</sup> See [www.bbb.org/about/stat2004.asp](http://www.bbb.org/about/stat2004.asp).

<sup>6</sup> See e.g. [www.telespoof.com](http://www.telespoof.com).

which closely regulated collect calls<sup>7</sup> to consumers, in the age before cell phones. The cell phone does not have a capability of disclosing that the call is from a debt collector before the consumer begins to incur high daytime minutes charges.<sup>8</sup> So the exemption that the industry seeks quite arguably violates 15 U.S.C. § 1692f(5) if not the general prohibition of unfair means to attempt to collect a debt.<sup>9</sup> Moreover the Fair Debt Collection Practices Act prohibits calls to consumers at inconvenient places<sup>10</sup> which is often the case because of the mobility of cell phones.

It is beyond the authority conferred by Congress to the FCC to grant this requested exemption. 47 U.S.C. § 227(b)(1)(A)(iii) explicitly prohibits the placing of automatic dialed or prerecorded calls to a cell phone without the express consent of the person called. The only exemptions allowed to this prohibition are for calls that are placed without causing charges to the person called, a feature not currently offered by most of the cell phone market. Congress also required the Commission to protect the privacy rights of the public if the cell phone market did adapt to allow the caller to absorb all charges on a call.<sup>11</sup> The ACA has not offered how it will protect the public's privacy rights if granted an exemption. This request raises a plethora of issues which are best left to Congress.

For these reasons, the ACA petition should be denied.

Respectfully submitted,

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<sup>7</sup> See 15 U.S.C. § 1692f(5): "...the following conduct is a violation of this section: ... (5) Causing charges to be made to any person for communication by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees."

<sup>8</sup> 15 U.S.C. § 1692c(a)(1) restricts debt collection calls to convenient times, presumed to be between 8:00 a.m. and 9:00 p.m. local time, the period of many cell phone's highest rates.

<sup>9</sup> 15 U.S.C. § 1692f.

<sup>10</sup> 15 U.S.C. § 1692c(a)(1).

<sup>11</sup> 47 U.S.C. § 227(b)(2)(C).