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VIA ELECTRONIC SUBMISSION

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex M)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: *Reply Comments of ACA International, Debt Collection 2.0, Project No. P1147802*

Dear Mr. Secretary:

The following comments are submitted on behalf of ACA International (“ACA”) in response to the issues raised at the April 28, 2011 Workshop on Debt Collection 2.0. Indeed, technological advances following the enactment of the FDCPA have heralded a new age of communication and efficiency. As discussed at the Workshop, these advances and changes in technology have surpassed the ability of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (FDCPA) to keep pace and continue to have a profound effect on consumers and debt collectors. In light of the issues raised and discussed at the Workshop, ACA would like to reemphasize several key points:

First, there are many new techniques and technologies which have been developed in recent years that enable third-party debt collectors to communicate effectively with consumers without risk of third party disclosure. For example, the availability and use of skip tracing databases enables collectors to aggregate data on a consumer-specific level, which helps protect privacy by ensuring that the correct consumers are contacted and minimizing the risk of third-party disclosures. These services also are of direct benefit to consumers by helping guard against identity theft.

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Moreover, insofar as e-mail communication will predominate over standard mail over the next thirty years, the FDCPA should be amended to allow collectors to communicate with consumers in a manner convenient to the consumer based on his or her preference. If a consumer has provided her email address to the creditor or debt collector, the collector should be able to communicate with the consumer without risk of third-party disclosure.

Another example is the use of autodialers and predictive dialers have proven to be invaluable tools to the modern collection agency by enabling debt collectors to more effectively manage the high volume of calls necessary to establish contact with consumers. These dialers confer important benefits to consumers, as well. The technology is precise and maximizes consumer privacy by eliminating dialing errors that risk inadvertent contacts with individuals other than those responsible for the debt. Autodialers are programmed to restrict calls to designated area codes within the calling times prescribed by law. The technology allows for a cost effective and reliable way for consumers to learn about their accounts and arrange for payment. This helps keep the cost of credit under control by keeping consumers informed and helping them avoid unnecessary defaults or legal action.

Notwithstanding these benefits and consumer preferences, the Federal Communications Commission restricts the use of these dialers such that they may be used to call wireless phones if the call is made for an emergency purpose or the caller has received the consumer's express consent to be contacted at that number. Indeed, the restrictions on the use of these dialers to call a consumer's mobile phone should be amended so that they apply only to telemarketing calls.

Second, the ability to communicate with a consumer about the status of his or her account is an essential part of the collection process that benefits all parties.¹ Accurate,

¹ The FDPCA broadly defines "communications" subject to the statute as the "conveying of information regarding a debt directly or indirectly to any person through any medium." 15 U.S.C. § 1692a(2). The Commission has construed this to include both "oral and written transmission of messages which refer to a debt." See Federal Trade Commission Staff Commentary on the Fair Debt Collection Practices Act, 53 Fed. Reg. 50097, 50101 (Dec. 13, 1998) (definition of "communication").

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timely account information empowers a consumer, for example, by affording the opportunity to notify a creditor of changed financial circumstances impacting the ability to pay, disputing the account information, or invoking the consumer's right to require verification of the debt or cease communications. Conversely, impediments to communication create a situation where creditors' efforts to recover payment without litigation are futile, thereby leaving the only recourse of costly and time-consuming litigation. Further complicating the process is the fact that the FDCPA's prescribed notices to consumers are ineffective at providing clear disclosures to consumers about their rights and responsibilities.

Currently, the validation notice that collectors are required to provide to consumers is not effective, nor is it sufficiently detailed to provide meaningful disclosure to consumers of the information needed to evaluate the debt. To avoid unintended violations, collectors provide a verbatim recitation of the statutory text, and they typically do not provide other information to avoid overshadowing the disclosure. This formulaic approach, however, omits other information that consumers find useful in determining whether they owe the debt that is being collected.

Therefore, in order to provide consumers with better, simplified communications, the FDCPA should be amended to change the validation notice and require it to include the name of the original creditor and to provide an itemization of the fees and interest applied by a collector after it is placed for collection or by a debt buyer after it is acquired. Ultimately, including this information in the validation notice will reduce consumer confusion and better enable consumers to evaluate the origination of the debt and the amount sought in collections.

Effective communications with consumers in today's technological environment requires the use of voicemail and pre-recorded messages. During the past several years, numerous courts have concluded a voicemail message is a communication under the FDCPA and requires the provision of the mini-Miranda as well as disclosure of the collector's identity. A few courts have also ruled that disclosing the call is from a debt collector on a message could cause a third-party disclosure in violation of section 805(b) if someone other than the consumer listens to the message. The inherent contradiction caused by these rulings, combined with no informal or formal interpretation from the Commission, lends to unnecessary confusion about the role of a compliance technology such as voicemail when communicating with consumers. Ambiguity helps none of the

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parties involved to know their respective rights and responsibilities.

Third, creditors must be required to document consumer debts properly. Creditors generate vast amounts of consumer information in the origination and maintenance of consumer accounts, and collectors rely upon the transfer of this information to effectuate recovery once the accounts are delinquent. In cases where creditors sell portfolios of consumer accounts to debt buyers, the robust transfer of complete consumer account information is critical to both consumer privacy and effective collections.

Industry critics have raised concerns that the consumer data is not always made available to collectors or is otherwise inadequate to verify consumer information and validate the amount of the debt. Currently, the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*,² and its implementing regulation, Regulation Z, do not require or identify the specific information that a creditor must maintain for a consumer account, nor do they mandate that this information be provided to collectors or asset buyers to whom creditors sell consumer accounts.

The FTC, GAO, and industry analysts have observed that the inadequate flow of information from creditors to collectors can result in consumers being contacted for debts they do not owe or for an amount that is incorrect. These concerns apply to documentation for collection purposes, as well as to possessing proper documentation for litigation.

Therefore, for purposes of documenting a debt placed for collection by a creditor, the Truth in Lending Act should specify the consumer information that must be maintained by a creditor and made available to a collector or a debt buyer to properly verify the consumer's responsibility for the obligation as well as the amount of the debt. Similarly, when documenting an account for litigation, the statute should be amended to specify that

² The Truth in Lending Act was enacted to promote the informed use of consumer credit by requiring disclosures to be made clearly and conspicuously so consumers know the terms of the credit extension. Regulation Z obligates initial disclosures and periodic statements to be provided to consumers, as well as additional disclosures for credit and charge card applications. Consumers must be notified of many material terms of an open-credit contract such as annual percentage rates, late fees, finance charges, grace periods, and overdraft fees.

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collectors should have access to a creditor's data that verifies the consumer and the amount of the debt. The mandated availability of this consumer information will help consumers better assess their responsibility for the debt and avoid wrong party contacts by collectors.

ACA appreciates the opportunity to respond to the points raised during the workshop. If you have any questions, please contact Andrew M. Beato at (202) 737-7777 or abeato@steinmitchell.com.

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