



January 15, 2024

VIA E-MAIL (REGULATIONS@DFPI.CA.GOV)

Department of Financial Protection and Innovation
Legal Division
Attention: DeEtte Phelps, Regulations Coordinator
2101 Arena Blvd.
Sacramento, CA 95834

Re: ***PRO 05-21; Invitation for Comments on Second Draft Text for Proposed Scope Rulemaking Under Debt Collection Licensing Act***

Dear Coordinator Phelps:

CTIA¹ respectfully submits these comments in response to the Department of Financial Protection and Innovation’s (“Department’s”) Invitation for Comments on Second Draft Text for Proposed Second Rulemaking Under the Debt Collection Licensing Act (“DCLA”), in the above-referenced docket.² CTIA appreciates the Department’s continued attention to its pending rules and renews its earlier request for minor changes to the proposed rules to avoid creating an unnecessary layer of regulation and oversight that will increase costs without providing any benefit to consumers.³

¹ CTIA – The Wireless Association (“CTIA”) (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association’s members include wireless carriers, device manufacturers, and suppliers as well as app and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

² *Invitation for Comments on Second Draft Text for Proposed Second Rulemaking Under the Debt Collection Licensing Act*, Pro 05-21 (rel. July 15, 2022), attaching Text of Proposed Regulations, Title 10, Chapter 3 (“Second Draft Text”).

³ See Comments of CTIA (filed Aug. 29, 2022) (“August Comments”).



I. CTIA URGES THE DEPARTMENT TO AMEND THE PROPOSED REGULATIONS TO BETTER REFLECT CONSUMER EXPECTATIONS FOR WIRELESS TRANSACTIONS.

In its earlier comments before the Department, CTIA noted that wireless consumers commonly purchase wireless service and devices through well-known retailers, such as Walmart or Target, as well as directly from a wireless provider. These well-known retailers serve as additional retail sales channels for wireless devices and service. Although many wireless providers operate their own stores at which consumers can conduct the same transactions, these additional retail sales channels help wireless providers meet tremendous consumer demand for wireless service and make it more convenient for consumers by giving them more locations at which they can purchase their devices and services.

From a consumer's perspective, there is no functional difference between purchasing devices and wireless service at a major retailer location or at a carrier-owned store. Regardless of where they purchase their service, consumers do so with the expectation that they are entering into a relationship with a wireless carrier, rather than a third-party retailer, and expect to interact solely with their selected carrier from that point forward.

While major retailers may enter into an initial retail installment contract with consumers at the time of purchase, this is done with the intention that the contract will promptly thereafter be transferred to the consumer's selected wireless carrier. This process happens seamlessly from the consumer's perspective, and without any further steps a consumer must take – no differently than if the wireless carrier had effectively entered into the sale with the consumer in the first instance. Retail installment contract forms used in third party retailer stores clearly disclose that the contract will be assigned to the wireless carrier selected by the customer.⁴ This disclosed, additional step of transferring the contract is seamless to the consumers and necessary to facilitate the convenience of purchasing a device in installments at retail sales locations beyond wireless providers' own stores. The result is a relationship between the consumer and the consumer's selected wireless provider that is no different than if the consumer had purchased a wireless device and service at a wireless provider owned store.

⁴ In some instances, the retail installment contract may be assigned to a wireless provider's affiliate, but such affiliates are wholly-owned subsidiaries of the same parent corporation. Such assignments are necessary because a wireless providers typically offer the wireless service itself through one affiliate and conducts billing through a separate affiliate.



Without further guidance or correction, however, the Department’s proposed exclusions for an “original creditor” and a servicer for the “original creditor” might apply only to consumers’ transactions at wireless-provider-owned sales channels, but not at the other sales channels described above. This would be so because the third-party retailer is technically the “original creditor” under a retail installment contract, even though the contract is swiftly transferred to a wireless provider.⁵ As discussed above, there is no meaningful distinction between the two sales channels from a customer’s perspective, and there is no practical or apparent reason to treat the two sales channels differently.

Accordingly, CTIA renews its request that the Department clarify its rules to clearly exclude the third-party wireless service and device retail installment contract transactions described above. Millions of such transactions occur in California each year, and have for many years, without creating any apparent consumer disadvantage or issue that needs addressing. Creating licensing and oversight requirements for transactions that meet consumers’ expectations simply increases costs and cannot benefit consumers. Such a result can and should be avoided.

To address this issue, the exclusion for an “original creditor” should be modified as follows (the deletions are shown as strikethroughs and the suggested revisions are shown in italics):

“A ~~creditor~~ *person*, including a provider of non-financial services, seeking, in its own name, repayment of consumer debt arising from a consumer credit transaction between itself *and a customer, or from a consumer credit transaction (or an interest therein) that was assigned or transferred to it before the transaction was 90 days past due or charged off as defined in*

⁵ There is typically a delay in transferring the retail installment contract in order to accommodate and protect consumers. Such delays exist to accommodate “consumer remorse periods,” during which consumers are entitled to return their devices or cancel their service. These delays may be required by law, by rule, by third-party retailer practice, or to align with CTIA’s Consumer Code for Wireless Service (“4. Provide a Trial Period for New Service and Disclose Early Termination Fees: ... the carrier will ... inform the customer that they have a trial period of not less than 14 days during which the customer may cancel service....” Available at <https://www.ctia.org/the-wireless-industry/industry-commitments/consumer-code-for-wireless-service>).



*subdivision (d), in its own name, and a customer, is not engaged in the business of debt collection, for purposes of licensure under the Debt Collection Licensing Act ...*⁶

II. THE DEPARTMENT SHOULD CLARIFY THAT WIRELESS PROVIDERS DO NOT “ENGAGE IN THE BUSINESS OF DEBT COLLECTION.”

The First Draft Text for Proposed Second Rulemaking Under Debt Collection Licensing Act proposed to define “engage in the business of debt collection,” and thus specify who must obtain licenses under the Act, as a person who both “engages in debt collection for a profit or gain” and does so on a “regular, frequent, or continuous” basis.⁷ This proposed definition is retained in the Second Draft Text.

CTIA urges the Department to provide clarification regarding this definition, under the same rationale discussed in CTIA’s comments submitted to the Department on August 29, 2022.⁸ CTIA understands that Second Draft Text reference to a person “engaged in debt collection for a profit or gain” applies to a person that is earning income from debt collection as the main purpose of the person’s business.⁹ Accordingly, the definition would not encompass a wireless provider whose business is selling wireless service and devices. Under this interpretation, wireless providers are not engaged in debt collection for a profit or gain when they service or collect payments incidental to their primary business of selling wireless service and devices. This would include collecting payments from customers who may be late or in default on payments. The Department should clarify that it interprets the Second Draft Text in this manner.

⁶ CTIA’s proposes this particular language in order to make this exclusion consistent with the Department’s proposed exclusion for servicers set forth in subdivision (d) of Section 1850.1 of the Second Draft Text, discussed below.

⁷ *Invitation for Comments on Draft Text for Proposed Second Rulemaking Under the Debt Collection Licensing Act*, Pro 05-21 (rel. July 15, 2022)

⁸ See August Comments at 2-3.

⁹ See *id.* at 3.



III. CTIA RECOMMENDS THE DEPARTMENT AMEND THE SECOND DRAFT TEXT TO MAKE THE EXCLUSION FOR SERVICERS CONSISTENT WITH A SIMILAR EXCLUSION UNDER FEDERAL LAW.

CTIA and its members urge the Commission to amend and clarify its rule as described above in order to appropriately exempt the described third-party retailer transactions, but the Commission can achieve that goal by instead (or also) taking an approach that would conform to an exclusion for servicers available under federal law.

Proposed subdivision (d) of Section 1850.1 of the Second Draft Text contains an exclusion for servicers of original creditors. The text states that “A person solely servicing debts on behalf of an original creditor, as described in subdivision (c), that are less than 90 days past due and have not been charged off, is not engaged in the business of debt collection for purposes of licensure under the Debt Collection Licensing Act.”

Although wireless providers support this exclusion, they are concerned that, as written, it might be misinterpreted to mean that the exclusion is lost if servicing starts before default, but the debt later is either 90 days or more past due or charged off - at which point a servicer would be suddenly obligated to become licensed under the Act. Such a change in status would be illogical, inefficient, and confusing.

To correct this issue, the Department could mirror the federal government’s approach under the Fair Debt Collection Practices Act (“FDCPA”). Under the FDCPA, an exclusion for “servicers” covers any person collecting a debt on behalf of another to the extent the activity “concerns a debt which was not in default at the time it was obtained by such person.” In other words, if servicing begins before a debt is in default, the person servicing the debt does not become a debt collector if later while servicing the debt, it goes into default and the servicer continues to handle the debt. The policy underlying this exclusion is that a person who begins handling a debt before default likely will not engage in abusive conduct, much like the creditor for whom it services the debt, and that likely will not change if the debt later goes into default.



The Department should modify the exclusion to remove uncertainty and reflect what likely was the Department’s intent in proposing the exclusion. CTIA suggests that the first sentence of subdivision (d) should be modified as follows (the suggested revisions are shown in italics):

“A person solely servicing debts on behalf of an original creditor, as described in subdivision (c), that are less than 90 days past due and have not been charged off *at the time the servicing of the debts began*, is not engaged in the business of debt collection for purposes of licensure under the Debt Collection Licensing Act.”

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CTIA appreciates the opportunity to comment on the proposed rules in this proceeding and encourages the Department to reach out if it has any questions regarding the wireless industry.

Respectfully submitted,

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Assistant Vice President – State Regulatory Affairs

cc: Emily Gallagher (emily.gallagher@dfpi.ca.gov)