



September 15, 2009

The Honorable Barney Frank
Chairman
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Dear Chairman Frank,

We are writing regarding our concern with two provisions of H.R. 3126, the Consumer Financial Protection Agency Act of 2009, that could have the unintended consequence of sweeping cable, wireless, broadband, and telephone service providers into a bill intended to cover providers of financial services. First, the broad definition of credit that could inadvertently include postpaid services such as cable, Internet access, telephone, and utility services. Second, under the bill as currently drafted cable program networks, broadcasters, and other media might be held liable for violations of the regulations applicable to the advertising of financial activities. Each of these issues is discussed below.

Definition of Credit. The definition of credit in H.R. 3126^{1/} arguably includes the provision of communications and utility services that are billed on a recurring, postpaid basis, even though such services are not generally thought of as an extension of credit or a “financial activity.”

Postpaid services such as cable, telecommunications, or utilities that are provided in one month and billed in the next should not be considered to be extensions of “credit” under the Consumer Financial Protection Agency Act. We would propose that the definition of credit in the CFPA be amended to incorporate the same exceptions that exist under the Truth in Lending Act. Draft language is attached.

Liability for Advertising. Section 139 of H.R. 3126 makes it unlawful for “any person” to “advertise” a consumer financial product or service that is not in conformity with the CFPA or the regulations adopted under it. While the intent of this provision appears to be to ensure that the advertisements themselves comply with the law and the regulations, the broad language could be interpreted to hold cable programmers, broadcasters, or other media liable for

^{1/} H.R. 3126, § 101(10) (defining “credit” as “the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase”).

compliance even if they merely sell time or space to a provider of financial services or products to place an advertisement. We believe this potential ambiguity can be addressed with just a few words in section 139(1) stating expressly that the duty of a person to ensure that advertisements conform with the law is imposed with respect to the financial products or services *offered by that person*. Our suggested revision to section 139 is attached.

Thank you again for taking the time to consider these issues. We are available at your convenience to discuss them further or answer any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'KES', with a long horizontal line extending to the right.

Kyle E. McSlarrow
President & CEO
NCTA

A handwritten signature in black ink, reading 'Steve Largent' in a cursive style.

Steve Largent
President & CEO
CTIA