

June 13, 2018

Consumer and Governmental Affairs Bureau

RE: CG Docket No. 02-278, 18-152

On behalf of the 2.2 million credit union members we represent, the Heartland Credit Union Association (HCUA) appreciates the opportunity to ACA Public Notice.

HCUA requests the Commission to confirm that to qualify as an ATDS, the equipment must use a random or sequential number generator to store or produce numbers to be called, and then to dial those numbers without human intervention. This functionality must be inherent in the equipment itself and must be used when making the call. Under this definition, predictive dialers would not qualify as ATDS.

The Commission should reverse its now-vacated reassigned number framework and interpret the “called party” as the intended or expected recipient of the call. To give meaning to the entire clause requiring the caller to obtain “prior express consent of the called party,” the better reading of called party is that it refers to the party that provided consent to be called, or the “intended recipient.” If the called party is the current subscriber and the caller has no knowledge that it is dialing a reassigned number and thus has no ability to obtain prior consent, the statute’s emphasis on obtaining consent is rendered ineffective for a significant universe of calls.

Today, all manner of informational calls, including debt collection calls, may be made to residential lines using an auto dialer or an artificial or prerecorded voice without any form of prior consent – but the same call for the very same purpose made to a wireless subscriber risks fines or litigation in the absence of consent. In an age when more than half of all telephone subscribers use a wireless phone for their residential line, and virtually all calls or texts to wireless phones are under unlimited plans and hence free to the end user, the distinction between residential and wireless informational calls is no longer fair or sustainable.

As noted, today’s telecommunications market place could not be more different. The Commission should use this opportunity and exercise its authority to devise rules that update the TCPA by eliminating the antiquated distinction between residential landline and wireless informational calling. Removing the element of consent, coupled with reasonable restrictions on call frequency to protect consumer privacy, provides a bright line compliance regime that eliminates the need to ascertain Commission or court interpretations of terms such as “called party” or “automated telephone dialing systems” or assess whether revocation of consent was reasonable. The revised interpretations of these terms will help minimize uncertainty, but clever and tenacious plaintiffs’ counsel may yet find ways to bring claims, notwithstanding the Commission’s best efforts. By not requiring consent in the first instance, yet ensuring consumer privacy through straightforward and reasonable calling restrictions, both industry and consumer will be better served.

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The D.C. Circuit's decision in ACA International affords an opportunity for the Federal Communications Commission ("Commission") to revise its rules and interpretations implementing the Telephone Consumer Protection Act ("TCPA") and restore the balanced approach Congress intended. The TCPA was primarily intended to protect consumers from annoying and invasive telemarketing calls without unduly interfering with the desired and expected communications. Defining key statutory terms such as an automatic telephone dialing systems ("ATDS") and "called party" and identifying reasonable methods to revoke consent consistent with the TCPA's language and intent will substantially reduce uncertainty and help mitigate the onslaught of TCPA litigation. The Commission should also use this opportunity to update antiquated distinctions between wireless and wireline calls when companies make informational calls to their customers or members, as requested in HCUA's petition for declaratory ruling.

We appreciate the opportunity to review this issue. We will be happy to respond to any questions regarding these comments.

Sincerely,

A handwritten signature in black ink that reads "Bradley D. Douglas". The signature is written in a cursive style with a large initial 'B'.

Brad Douglas
President/CEO