

May 23, 2018

Federal Communications Commission  
Attn: Office of the Secretary – Commission's Secretary  
445 12<sup>th</sup> Street SW, Room TW-A324  
Washington, DC 20554

RE: Comments to CG Docket No. 18-152, No 02-278 – Comments on interpretation of the Telephone Consumer Protection Act (TCPA)

Dear Sir or Madam;

I appreciate the opportunity to add comments for your consideration as protecting consumers, meeting the intent of the TCPA and not creating unmanageable litigation risks make this a very important topic. I am the Senior Vice President and Compliance Officer for a bank that issues credit cards.

**QUESTION 1:** What constitutes an Automatic Telephone Dialing System (ATDS). TCPA defines it as "equipment that has the capacity – (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers". You are seeking how to interpret capacity: how much user effort should be required to enable the device to function as an automatic telephone dialing system? Does it have the capacity if it requires the simple flipping of a switch? If the addition of software can give it the requisite functionality? "Making any call...using any automatic telephone dialing system".

**RESPONSE:**

Mirriam-Webster Dictionary defines capacity as 'the maximum amount that something can contain' and 'the ability or power to do something'. The definition of ability means 'possession of the means or skill to do something' with capacity a synonym for ability.

Therefore, under the theory that Congress said what it meant and meant what it said, the TCPA sentence should be read as 'equipment that [possess the means] (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers'. Adding theory about revisions or other options that are not currently possessed changes the intent and meaning of the sentence such that it drifts far from Congressional intent. Just like courts are required to use common definitions when a term is undefined, the common definition of capacity should be used to meet the intent of Congress and be defined as possessing the ability (ie: currently able to and configured to create random or sequential phone numbers and calling those phone numbers).

In reference to the question about the bar against making any call using an ATDS applying only to calls made using the equipment's functionality; the bar should only apply to calls made through equipment that HAS randomly or sequentially generated phone numbers and dialed

those numbers. There is nothing in the TCPA that should be interpreted that Congress intended to deny legitimate companies the ability to contact their customers when consent has been given (and not revoked) or that Congress intended to increase the costs of contacting customers when consent was given and not revoked by restricting technology and the efficiency that technology brings to business when conducting legitimate activities. Changing the definition of capacity to include some theoretical future changes that might allow random/sequential numbers such that human intervention is required before ANY dialer calls can be made to consented consumers increases costs.

Congress intended to make a law to stop marketing calls where consent was not given and calls were made by ATDS to randomly generated phone numbers. As a consumer, I am continually harassed on my cell phone from exactly the type of calls Congress intended to restrict. I have received forty five (45) scam calls to my cell phone in approximately the last thirty days (30) days. We need to build a regulatory environment that allows legitimate businesses to contact their consenting customers and then find ways to actually resolve the marketing/scam calls Congress intended to address.

**QUESTION 2:** Reassigned Numbers: Statutory exceptions are calls made with the express consent of the called party. You are seeking comment on how to interpret the term 'called party' for calls to reassigned numbers including whether the called party should refer to the person the caller expected to reach, the party actually reached or a customary user.

**RESPONSE:**

The ideal methodology to address re-assigned numbers is a layered approach:

- (a) When a business has obtained consent to contact a telephone number, that consent should be able to be relied upon by the business until or unless the consent is withdrawn.
  - a. A customer should be able to withdraw consent using any reasonable means and the business should be required to update their records within a reasonable timeframe, such as within 3 days.
  - b. A non-customer should be able to withdraw the former consent of a customer using any reasonable means and the business should be required to update all their records to reflect this revocation also within a reasonable timeframe, such as within 3 days. Since this is a non-customer, it may be necessary to define the reasonable timeframe as shorter than a customer notice. Furthermore, a non-customer should be required to tell the caller that the number is wrong for the customer being called before there can be any liability to the caller. The previous concept of one call to a re-assigned number did not recognize that just because a call was dialed does not mean that there was any meaningful way to identify it was re-assigned as most calls are not answered. Therefore, the former rule of a one-call safe harbor providing any protection from a violation was empty. However, it could have provided a fair balance if the "one call to a reassigned number" had been defined as "reaching a person and being advised that the telephone number does not belong to the intended party".
- (b) A database of terminated telephone numbers should be created by FCC. All cell phone carriers should be required to provide notice to this database upon the permanent termination of a cell phone number. Permanent termination should be defined to mean that the phone number cannot be reinstated to the former party.

- a. Business should be able to access this database to identify that matched telephone numbers have been terminated. This will allow the business to update their records to reflect the number is not callable LONG before the number is re-assigned.

Creating a "re-assigned" database means there are risks that calls will be made to the new phone number holder before the data is available in the database.

- b. There should be (and maybe there already is) a minimum timeframe between the date a phone number is terminated and the date it can be reassigned to a new party. If there is not a current timeframe, one should be established to be at least 90 days.

In summary, we do not want to call the wrong party, we want to talk to our customers about their accounts, and we do not want unreasonable litigation risks because compliance cannot be attained unless we never try to call our customers. As consumers, we want to be protected, too. I think that with the right rules and support processes in place, we can accomplish all of these things.

Again, I appreciate the opportunity to respond to the request for comments and respectfully request that they be considered so we can support Congressional intent achieving a well-designed consumer protection process.

Sincerely,



Sherry Tunender  
Senior Vice President / Compliance Officer