

June 12, 2018

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington DC 20554

Re: CG Docket No.: 18-152 – Comment on Interpretation of the Telephone Consumer Protection Act in Light of the D.C. Circuit’s ACA International Decision

Dear Ms. Dortch:

Bellco Credit Union (“Bellco”) is pleased to submit this comment letter in response to the Consumer and Governmental Affairs Bureau’s (the “FCC’s”) request for comments related to the Interpretation of the Telephone Consumer Protection Act in Lights of the of the D.C. Circuit’s ACA International Decision (the “Public Notice”). In the Public Notice, the FCC requests comments on several issues. Bellco will be responding to several of the requests, but will not provide comments on all issues raised.

First, the FCC seeks comments on what constitutes an “automatic telephone dialing system.” Specifically, the FCC seeks comments on what the term “capacity” means in the official definition found in the Telephone Consumer Protection Act of 1991 (the “Act”), particularly in light of the D.C. Circuit Court’s (the “Court’s”) guidance. For this issue, Bellco believes that “capacity” should equate to present ability. In other words, the telephone system must be capable, without having to make any changes or additions, of storing or producing numbers to be called, using a random or sequential number generator, and dialing such numbers. A telephone system that has to be modified, or to which functionality or equipment has to be added, is not yet capable of performing the requisite steps. Such a system may have the potential (with sufficient time, effort and money), but is not capable (and therefore lacks capacity) at the present moment.

Second, the FCC seeks comments on how “automatic” a telephone system must be in order to be considered an “automatic telephone dialing system,” as well as how much of the functionality of the system must be used to trigger the prohibitions. Bellco will answer both of those questions together. Bellco believes that to be consistent with Congressional intent, the telephone system must not only have the present capacity to store or produce numbers, but must also make such calls without any human intervention. Moreover, unless the full functionality of this type of system is used (e.g., a random or sequential telephone number is generated and the system dials such number without any human intervention), the callers are not “using” an automatic telephone dialing system.

In support of this interpretation, we only have to refer to the Congressional Findings found in the Act itself. Congress clearly intended to ban automated calls, and not automatic telephone dialing systems. Paragraph 12 of the Findings states “Banning such automated...telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.” Furthermore, in Section 15, Congress concluded that the “Federal Communications Commission should consider adopting reasonable restrictions on automated...calls to businesses as well as to the home, consistent with the constitutional protections of free speech.” The clear indication was that an automated call, and not the telephone system being used, was the cause of the nuisance, invasion of privacy and interference with interstate commerce being addressed in the Act.

Third, the FCC seeks comments on how to treat calls made to reassigned wireless numbers under the Act. Bellco believes the proper interpretation of the “called party” should be viewed from the perspective of the entity being imposed upon by the Act (i.e., the caller). In that light, the “called party” would refer to the person the caller intends to call, since the caller is the party being prohibited from making such calls, and the party held liable for violating the Act. The fact a wireless number has been reassigned to another person without the knowledge of the caller should not be held against the caller. If the person to whom the number was reassigned does not want the calls to continue, such person only needs to notify the caller that the number was reassigned. Also, if the caller becomes aware through other means that the number has been reassigned, for example by the original owner of the number or a free database containing information related to reassigned cell numbers, then the consent to call that number has been effectively withdrawn, provided the caller has a reasonable amount of time to act on this new information. In other words, the caller should be allowed to rely on the prior express consent until such time as the caller has actual knowledge that the number has been reassigned. At such time, consent has been effectively withdrawn.

Finally, the FCC seeks comments on how a called party (or the new owner of a reassigned wireless number) can withdraw prior express consent. Bellco believes a called party should have the right to withdraw consent, and the caller should not place unreasonable obstacles in the way of such withdrawal. Bellco also believes that if liability is being imposed on the caller based on withdrawn consent, the caller should also have the right to place reasonable conditions on how a called party can withdraw their consent. To that end, Bellco proposes that a called party be required to have at least three channels by which a called party can withdraw consent. For example, a called party may be allowed to withdraw consent by: calling a specific toll-free number; by mailing their notice of withdrawing consent to a specific address made readily available to the called party; and by sending notice to an email address of the caller made available for that purpose. As long as the called party has reasonable means by which to withdraw consent, the called party is protected. By allowing the caller to control the reasonable means by which they receive these withdrawals, the caller is also

protected. Allowing the called party to withdraw consent “by any reasonable means” they choose places an unreasonable burden on the caller, and only invites litigation.

In conclusion, Bellco appreciates the opportunity to submit these comments, and Bellco would welcome the opportunity to discuss these issues with the Commission staff. Please feel free to contact me if you have any questions or would be interested in discussing these comments in more detail.

Respectfully,



Juan Carlos Campos, Esq.
General Counsel