

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC**

In the Matter of	)	
	)	
Consumer And Governmental Affairs Bureau	)	CG Docket No. 18-152
Seeks Comment On Interpretation Of The	)	
Telephone Consumer Protection Act In Light	)	
Of DC Circuit’s <i>ACA International</i> Decision	)	
	)	
Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991	)	

**COMMENTS OF THE AMERICAN ASSOCIATION OF HEALTHCARE  
ADMINISTRATIVE MANAGEMENT**

The American Association of Healthcare Administrative Management (“AAHAM”) respectfully submits these comments in response to the Federal Communication Commission (“FCC” or “Commission”) Consumer & Government Affairs Bureau’s *Public Notice*,<sup>1</sup> which seeks comment on the “interpretation and implementation of the Telephone Consumer Protection Act [“TCPA”] following the recent decision of the U.S. Court of Appeals for the District of Columbia in *ACA International v. FCC*.”<sup>2</sup>

AAHAM is the premier professional organization in healthcare administrative management focused on education and advocacy in the areas of reimbursement, admitting and registration, data management, medical records, and patient relations. AAHAM was founded in 1968 as the American Guild of Patient Account Management. Initially formed to serve the

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<sup>1</sup> *Consumer and Governmental Affairs Bureau Seeks Comment on Interpretation of the Telephone Consumer Protection Act in Light of the D.C. Circuit’s ACA International Decision*, CG Docket Nos. 18-152, 02-278 (rel. May 14, 2018) (“*Public Notice*”).

<sup>2</sup> *Id.*; see *ACA Int’l, et al. v. FCC*, 885 F.3d 687 (D.C. Cir. 2018) (addressing the appeal of *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 et al.*, Declaratory Ruling and Order, 30 FCC Rcd 7961 (2015) (“*2015 Declaratory Order*”).

interests of hospital patient account managers, AAHAM has evolved into a national membership association that represents a broad-based constituency of healthcare professionals. Professional development of its members is one of the primary goals of the association. Publications, conferences and seminars, benchmarking, professional certification and networking offer numerous opportunities for increasing the skills and knowledge that are necessary to function effectively in today's health care environment.

AAHAM actively represents the interests of healthcare administrative management professionals through a comprehensive program of legislative and regulatory monitoring and its participation in industry groups such as ANSI, DISA and NUBC. AAHAM is a major force in shaping the future of health care administrative management, and one of its main focuses has been on efforts to change the TCPA for the healthcare profession.

Today's TCPA framework is outdated and limits AAHAM members' ability to meet all the regulatory requirements placed on the healthcare industry through the Affordable Care Act. Changes in healthcare have transformed how we reach patients and consumers. That is why AAHAM continues to be engaged in an effort to modernize the FCC's implementation of the TCPA to fit today's healthcare environment. To that end, AAHAM urges the Commission to take the following measures to modernize the TCPA.

**First**, the Commission should grant the Petition for Declaratory Ruling filed by a diverse array of industry stakeholders, including AAHAM,<sup>3</sup> and clarify that: (1) to be an automatic telephone dialing system ("ATDS"), equipment must use a random or sequential number generator to store or produce numbers and dial those numbers without human intervention; and

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<sup>3</sup> U.S. Chamber Institute for Legal Reform *et al.*, Petition for Declaratory Ruling, CG Docket No. 02-278 (filed May 3, 2018).

(2) only calls made using actual ATDS capabilities are subject to the TCPA's restrictions. These are the only logically valid interpretations of the TCPA's statutory text.

As an initial matter, the Commission should clarify that ATDS equipment must possess the functions referred to in the statutory definition: storing or producing numbers to be called, using a random or sequential number generator, and dialing those numbers. The TCPA defines an ATDS as a device that has the capacity to “store or produce telephone numbers to be called, using a random or sequential number generator; and to dial such numbers.”<sup>4</sup> A device must be able to generate numbers in either random order or in sequential order to satisfy the definition. Otherwise, the device cannot do anything “using a random or sequential number generator.”<sup>5</sup> Next, it must be able to store or produce those numbers called using that random or sequential number generator. This ability to store or produce telephone numbers to be called, alone, is insufficient; the clause “using a random or sequential number generator” modifies this phrase, requiring that the phone numbers stored or produced be generated using a random or sequential number generator. Finally, the device must be able to dial those numbers. The Commission should not deviate from the TCPA's straightforward statutory language.

In addition, the Commission should confirm that the TCPA is only implicated by the present use of actual ATDS capabilities in making calls. This interpretation would best give effect to the words “use” and “make,” which the TCPA employs in the present tense. Clarifying that an ATDS does not include devices that dial human-generated lists of numbers, meanwhile, would comport with the plain meaning of the word “automatic” and the FCC's original

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<sup>4</sup> 47 U.S.C. § 227(a)(1).

<sup>5</sup> *Id.* at (a)(1)(A)-(B).

understanding of that word.<sup>6</sup> It would also heed the D.C. Circuit’s suggestion that the absence of human intervention is important, “given that ‘auto’ in autodialer—or equivalently, ‘automatic’ in ‘automatic telephone dialing system’—would seem to envision non-manual dialing of telephone numbers.”<sup>7</sup> To that end, the Commission should adopt a bright-line safe harbor under which a caller is not deemed to use an ATDS if there is any human intervention to generate or dial the number(s).

**Second**, the Commission should clarify the treatment of calls to wrong or reassigned numbers by: (1) confirming that the TCPA’s statutory phrase “called party” means “expected” recipient; and (2) allowing callers to “reasonably rely” on the “prior express consent” that they had received, including by adopting a safe harbor for callers that use commercial TCPA compliance solutions. As Chairman Pai has noted, the “expected-recipient approach respects Congress’s intent that the TCPA balance the privacy rights of the individual and the commercial speech rights of the telemarketer,” by giving “individuals the right to stop unwanted, wrong-number phone calls in the first instance” and informing “a caller that he has the wrong number.”<sup>8</sup> The expected-recipient approach also “rightfully sanctions the bad actors” who “repeatedly call after an individual has told them they’ve got the wrong number.”<sup>9</sup>

AAHAM also supports proposals by the Commission and numerous commentators to adopt a safe harbor for callers that check commercially available TCPA compliance solutions. As CTIA has noted, “[t]he Commission may reasonably determine that ‘called party’ means

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<sup>6</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014, 14115 ¶ 132 (2003) (“The basic function of such equipment, however, has not changed— the capacity to dial numbers without human intervention.”).

<sup>7</sup> *ACA Int’l*, 885 F.3d at 703 (citation omitted).

<sup>8</sup> *2015 Declaratory Order* at Dissent of then-Commissioner Pai.

<sup>9</sup> *Id.*

‘intended’ or ‘expected’ recipient, and that when a caller checks one or more database(s) but nevertheless reaches a reassigned number inadvertently, the caller does not violate the TCPA because it has established that it ‘intended’ or ‘expected’ to reach the prior subscriber (who had granted consent).”<sup>10</sup> Similarly, the Commission can and should establish a safe harbor as an interpretation of “reasonable reliance.” Either or both interpretations would incentivize callers to use products that help avoid placing calls to wrong or reassigned numbers.

**Third**, the Commission should allow callers to adopt reasonable mechanisms for consumers to opt out of unwanted calls. In particular, AAHAM urges the Commission to adopt the approach that the Second Circuit articulated in the *Reyes*<sup>11</sup> decision, which confirmed that callers and called parties may agree to specific consent revocation methods, including through the terms and conditions of a bilateral consumer contract. The *Reyes* approach would best harmonize TCPA consent revocation with common law contract principles and give callers the certainty needed to honor consumer preferences in a predictable manner.

**Finally**, AAHAM urges the Commission to grant without further delay the pending Joint Petition for Expedited Declaratory Ruling and/or Clarification<sup>12</sup> filed by Anthem, AAHAM, Blue Cross Blue Shield, and Wellcare, for the reasons set forth in separate comments in this

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<sup>10</sup> Comments of CTIA, CG Docket No. 17-59, at 12 (filed June 7, 2018).

<sup>11</sup> *Reyes v. Lincoln Automotive Fin. Svcs*, 861 F. 3d 51, 54 (2d Cir. 2017).

<sup>12</sup> See Joint Petition of Anthem, Inc., Blue Cross Blue Shield Association, WellCare Health Plans, Inc., and the American Association of Healthcare Administrative Management for Expedited Declaratory Ruling and/or Clarification of the 2015 TCPA Omnibus Declaratory Ruling and Order, CG Docket No. 02-278 (filed July 28, 2016); Reply Comments in Support of Joint Petition of Anthem, Inc., Blue Cross Blue Shield Association, WellCare Health Plans, Inc., and the American Association of Healthcare Administrative Management for Expedited Declaratory Ruling and/or Clarification of the 2015 TCPA Omnibus Declaratory Ruling and Order, CG Docket No. 02-278, at 3 (filed Oct. 4, 2016).

proceeding.<sup>13</sup> The Joint Petition requests narrow clarifications to bring the FCC's TCPA rules for healthcare-related calls more in line with consumer expectations and the medical services industry. As a general matter, the Joint Petition asks the Commission to clarify that certain non-marketing calls that are already allowed under the comprehensive privacy and data security regime of the Health Insurance Portability and Accountability Act are also permissible under the TCPA. The Joint Petition has earned the bipartisan support of Congress and the endorsement of an overwhelming number of commenters on the record. After nearly two years of inaction, the time is ripe for the Commission to grant the Joint Petition and support the critical public policy goal of providing effective and efficient medical care, especially to at-risk populations.

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AAHAM applauds the Commission for releasing the *Public Notice* and encourages the Commission to take further actions to help modernize the TCPA. Doing so will help bring relief to good faith callers, including the many thousands of healthcare professionals within AAHAM's membership that serve patients every day.

Respectfully submitted,

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<sup>13</sup> See Comments of Anthem, Inc., Blue Cross Blue Shield Association, WellCare Health Plans, Inc., and the American Association of Healthcare Administrative Management, CG Docket Nos. 18-152, 02-278 (June 13, 2018).