**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 No. 18-152**

**CG Docket No. 02-278**

**Comment Date: June 13, 2018**

**“Capacity” of the auto dialer:**

* TCPA’s definition: “*automatic* telephone dialing system” as “equipment which 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*.”
* This definition is overly broad as many phone systems may have the capacity to complete the functionality outlined in the definition but in fact do not have the functionality active.
  + Smart phones and other phone systems have the capability to have this function added or flip a switch to have the functionality turned on but if they are not using it, should not be penalized for purchasing a phone that could in fact be used for that purpose but never chose to.
* The other issue is the use of the words “random” or sequential number “generator”. If these words are continued to be used there are situations in which the TCPA should not apply as it has asserted it does today.
  + **Collections**:
    - As it relates to collections which has found itself having to deal with the issues of autodialing regulation the numbers are not used at “random” but chosen specifically due to a particular stage of delinquency. In other words, these are calculated lists that are pulled with only the numbers of those members with a relationship with the creditor that have reached a specific stage of delinquency. The numbers are then routed to a software that then tries to reach out to the members on the list, if it reaches the member it forwards the call to a specialist to assist the member. If it does not reach the member, it then leaves a message to call a specialist regarding their account. This allows the specialist to be assisting other callers while the dialer tries to reach others. Under this scenario, these calls should not fall under the purview of the TCPA.

**Calls with reassigned numbers**

* The interpretation of a called party
  + the person the caller expected to reach”?
  + Or does it refer to the party the caller reasonably expected to reach?
  + Or does it refer to “the person actually reached, the wireless number’s present-day subscriber after reassignment”?
  + Or does it refer to a “‘customary user’ (‘such as a close relative on a subscriber’s family calling plan’), rather than . . . the subscriber herself”?
* With regard to the interpretation of a called party above, it should be the party the caller reasonably expected to reach.
* A business (non-telemarketer) has the intent to call the number on record that has been provided to it by a member completing an application for membership, credit, etc. When this business calls the number they are expecting to reach the party that completed the application process. The member/consumer has the responsibility to provide the business with updated information when that number is no longer their contact method. If the number is reassigned and the business reaches out to that number expecting it to be their customer/member then they should not be penalized for dialing that number as it was not done in a malicious intent to call an “unknown” party to solicit.
* If the party does not answer and the business still would not have reasonable knowledge to indicate that number no longer belongs to the party they have a business relationship with, then the number of calls to that number until such knowledge is known should not be considered to fall under the TCPA.
* Once the party that has the relationship or the party with the reassigned number notifies the business that it is no longer the correct number for the intended recipient, at that time the TCPA should kick in.
* The matter is twofold - a safe harbor is necessary if this contact would fall under the TCPA as an attempt. However, if this scenario would not be considered then a safe harbor would not be required.
* Note: The need to make it convenient for the telephone companies to not have to issue new numbers and allow numbers to be recycled it what has led to the need for this provision. If a number was disconnected and no longer used once a party was no longer using, the issue would not arise wherein an unintended party was being called that had not consented to contact.

**How a called party may revoke prior express consent to receive robocalls**

* Sufficient methods for a party to be able to revoke their consent is verbally or in writing. A business should have procedures in place to cease communication with the consumer/member if they so revoke their consent. Unfortunately, in collection world, this would prompt litigated action versus the ability to work with someone to come up with a better solution or modification but it is up to them.