

June 26, 2018

Federal Communications Commission
445 12th Street, SW, room TW-A325
Washington, DC 20554

Re: Comments on Interpretation and Implementation of the Telephone Consumer Protection Act (TCPA)¹, following the decision of the U. S. Court of Appeals for the District of Columbia in *ACA International v. FCC*²

The American Dental Association (ADA), the world's oldest and largest dental professional organization representing over 161,000 members in the United States, welcomes the opportunity to comment on the interpretation and implementation of the Telephone Consumer Protection Act following the decision of the U. S. Court of Appeals for the District of Columbia in *ACA International v. FCC*. As America's leading advocate for oral health, the ADA recognizes the importance of patient communications in the delivery of health care. The ADA is also aware of the general aging of the American population and the expected increase in others becoming involved with a patient's care. Effective and efficient delivery of health care and healthcare communications in the future will depend on the use of technologies that permit health care providers to spend more time on direct patient care and less on administrative tasks. It is with these principles in mind that the ADA submits the following comments.

Definition of an automatic telephone dialing system (ATDS).

The Telephone Consumer Protection Act (TCPA) defines an ATDS to mean "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." The American Dental Association (ADA) urges the Federal Communications Commission (FCC) to narrowly adhere to the statutory definition in interpreting the TCPA, and to define an ATDS to include only telephone dialing systems with the present capacity to use a random or sequential number generator to store or produce numbers.

Moreover, the ADA urges the FCC not to permit TCPA enforcement with respect to calls made using a system with such present capacity if the call was not made using a random or sequential number generator, or if the call was made as the result of any human

¹ The TCPA is codified at 47 U.S.C. § 227. The Commission's implementing rules are codified at 47 CFR § 64.1200

² *ACA Int'l, et al. v. FCC*, 885 F.3d 687 (D.C. Cir. 2018) (mandate issued May 8, 2018) (affirming in part and vacating in part Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, WC Docket No. 07-135, Declaratory Ruling and Order, 30 FCC Rcd 7961 (2015) (2015 TCPA Declaratory Ruling and Order)).

intervention, such as number entry into the system, populating a set list of numbers, programming the system to place calls, or dialing the calls.

Reassigned numbers.

With respect to reassigned telephone numbers, the ADA urges the FCC not to permit TCPA enforcement with respect to any call where the caller did not have, and could not reasonably have had, actual knowledge that the individual reached is not the individual who provided consent. With respect to properly dialed calls that are answered by an individual other than the individual who consented to the call, the ADA urges the FCC not to permit TCPA enforcement.

Patients and others involved in the patient's care.

The ADA urges the FCC not to permit enforcement with respect to calls placed by a health care provider to a patient, or another individual involved in the patient's care, such as a family member, friend, or caregiver, as long as the patient or the other individual provided the number to the health care provider. The ADA further urges the FCC to expand the exemption for calls and text messages made by or on behalf of a healthcare provider to include not only the wireless telephone number provided by the patient, but also the wireless telephone numbers of other individuals involved in the patient's care if such numbers were provided by the patient or by such other individuals.

Revocation of prior consent.

Finally, with respect to revocation of prior consent, the ADA urges FCC to permit callers to determine a reasonable consent method and to require individuals to use that method to revoke consent. For example, if a dental practice asks patients at each visit to let the front desk staff know of any changes to the way the dental practice communicates with them and others involved in their care, the dental practice should not be bound by a consent revocation provided by any other means.

Please contact Dr. Frank Kyle in our Washington, DC Government Affairs office at 202-789-5175 or kylef@ada.org.

Sincerely,



Joseph P. Crowley, D.D.S.
President



Kathleen T. O'Loughlin, D.M.D., M.P.H.
Executive Director

JPC:KTO:fk