

June 28, 2018

Federal Communications Commission

Washington, DC 20554

RE: In the Matter of Rules and Regulations Implementing the
Telephone Consumer Protection Act and Interpretations in Light of
the D.C. Circuit's ACA International Decision; CG Docket No. 02-278,
CG Docket No. 18-152

Dear FCC:

In a recent decision, *Carpenter v U.S.*, 585 U.S. ____, (2018), the Supreme Court held that you have an expectation of privacy in the cell tower data generated by your cell phone.

In *Carpenter*, the Court found that a cell phone is almost a feature of human anatomy, it faithfully follows its owner into private residences, doctor's offices, political headquarters, and other potentially revealing locales. 585 U.S. ____, 13 (2018) It recited statistics that nearly 3/4ths of smart phone users report being within five feet of their phones most of the time, with 12% admitting they use them in the shower.

Congress passed the TCPA when cell phones were a new technology, when you paid by the minute to access the cell networks. Nobody wanted to pay for telemarketers or other unsolicited calls. Now cell phones (no longer car phones) are in everyone's pocket. There are more cell phones in the US than there are people.

While the protections provided by the TCPA were made with the intention to not waste precious minutes of the cell phone networks, they are even more relevant to us now. A cell phone is neither a personal luxury or a business perk, it is a necessity. Nearly everyone has a phone with them nearly all the time. While the drafters of the TCPA likely did not envision a world where people's primary phone was in their pocket and not attached to the wall, the TCPA is needed now more than ever. It gives us space to be free from machines that are capable of dialing a million phone numbers in a day.

Now industry wants to remove all restrictions from invading that space.

They want to be able to call you without your permission, or with permission granted as a condition of a consumer transaction. They want to be allowed to ignore your demands to stop calling. They want to call you into submission.

In Cal Newport's book Deep Work he cites studies that show that it takes approximately 20 minutes to recover your attention from an interruption.

My law firm handles cases where people's cell phones have been called numerous times in violation of the TCPA. Small business owners who receive 8 to 10 calls a day are not uncommon. Using Newport's sources this means that 160 to 200 minutes of work can be lost in a day. In a week that more than 15 hours of lost work. Nearly two 8 hour days.

The TCPA is essential, not only to privacy, but to a productivity and an engaged workforce. Companies that place calls in violation of the TCPA have shown that they intend to call as much as possible, leading to more interruption and more interference.

Do you want your surgeon called while you're on the operating table? How about a mechanic working on your car? A lawyer who is interrupted by an unwanted call will bill you for the 20 minutes it takes to recover her concentration.

Drivers getting unwanted calls and texts in the car are dangerous. NHTSA defines distracted driving as any activity that diverts attention from driving, including talking or texting on your phone. In 2016 NHTSA reports 3,450

people were killed and 391,000 were injured by distracted driving.

Removing restrictions on calling will lead to more distracted driving and more deaths and injuries.

I urge the FCC to allow people to have a say as to who can call them on their cell phones. The TCPA is the best protection we have from an increasingly distracted and dangerous world. At no time in human history has an object that is nearly always with us, had the power to profoundly interfere with our lives.

There are a myriad of issues and sub-issues with calls, ATDS, definitions, reassigned numbers, revocation, and reconciling court interpretations of all these. The only sensible way to deal with the TCPA it is to protect people from unwanted calls and texts with the broadest definitions, the absolute ability to revoke consent, no matter the context in which it was provided, and the most protection possible. The greatest living legal scholars have called cell phones "almost a feature of human anatomy" we should be protected from people who seek to use that anatomy to interfere with our lives.

Sincerely,

/s/William M. Clanton

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