

November 15, 2018

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
455 12th Street SW
Washington, DC 20554

**Re: Interpretation of the Telephone Consumer Protection Act, CG Docket No. 18-152
Implementation of the Telephone Consumer Protection Act, CG Docket No. 02-278**

Dear Ms. Dortch,

On November 13, 2018, Steve Morris and Svetlana Gans of NCTA – The Internet & Television Association (NCTA), Audrey Connors of Charter Communications, and Beth Choroser of Comcast, met with Mark Stone, Dan Margolis, Kurt Schroeder, Kristi Thornton (by phone), and Christina Clearwater (by phone) of the Consumer and Governmental Affairs Bureau to discuss the above-referenced proceedings.

During the meeting, we explained that there is an urgent need for the Commission to provide guidance on the application of key terms in the Telephone Consumer Protection Act of 1991 (TCPA). The lack of predictability that currently exists due to the rejection of significant elements of the Commission’s *2015 TCPA Order* in *ACA International v. FCC*¹ has exposed companies to unwarranted litigation risk and substantially increased the challenge of communicating with customers.

Consistent with NCTA’s pleadings in these proceedings, we urged the Commission to clarify that equipment should be classified as an “automatic telephone dialing system” for purposes of the TCPA only if it has the present capability to generate numbers randomly or sequentially and that capability is used, without human intervention, in making the relevant calls.² An interpretation of the statutory definition that covered equipment that merely stores

¹ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Declaratory Ruling and Order, 30 FCC Rcd 7961 (2015) (2015 TCPA Order), *vacated in part, ACA International v. FCC*, 885 F.3d 687 (D.C. Cir. 2018).

² See Comments of NCTA – The Internet & Television Association, CG Docket No. 18-152 (filed Oct. 17, 2018), at 4-6; Comments of NCTA – The Internet & Television Association, CG Docket No. 18-152 (filed June 13, 2018) (NCTA June 2018 Comments) at 3.

numbers without use of a random or sequential number generator would be at odds with the statutory language and congressional intent.³

We also advocated for the Commission to establish a new safe harbor from liability for calls to reassigned numbers. The Commission should make clear that the intended recipient of the call is the “called party” for purposes of the TCPA until the caller is informed that the number has been reassigned.⁴ Moreover, a caller should not face liability under the TCPA if it makes a good faith effort to determine that the number is still held by the person that gave consent (e.g., by consulting a database of reassigned numbers).⁵

Finally, we encouraged the Commission to clarify the rules governing the revocation of consent. We expressed concern that the current approach enables consumers to revoke consent through means that may be extremely difficult for companies to execute (e.g., informing a repair technician who has no access to the requisite database). We suggested that the Commission could address this concern by allowing companies to establish a phone number and/or web address as the sole means of revoking consent provided such an approach is clearly defined and easy for customers to use.⁶

Respectfully submitted,

/s/ Steven F. Morris

Steven F. Morris

cc: Mark Stone
Dan Margolis
Kurt Schroeder
Kristi Thornton
Christina Clearwater

³ See, e.g., *2015 TCPA Order*, Dissenting Statement of Commissioner Ajit Pai, 30 FCC Rcd at 8076 (“Congress expressly targeted equipment that enables telemarketers to dial random or sequential numbers in the TCPA.”); Statement of Commissioner Michael O’Rielly Dissenting in Part and Approving in Part, *id.* at 8089 (“Second, the order misreads the statute by including equipment that merely has the capacity to dial from a list of numbers. That’s not what the TCPA says. It makes clear that the telephone numbers must be stored or produced ‘using a random or sequential number generator.’”).

⁴ NCTA June 2018 Comments at 7-8

⁵ *Id.*

⁶ *Id.* at 9, citing *ACA International*, 885 F.3d at 701.