



May 17, 2016

Via ECFS

Marlene Dortch
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: GC Docket 02-278, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; "Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Declaratory Ruling Filed by Todd C. Bank Regarding the TCPA's Provision Concerning Prerecorded Calls"

Dear Ms. Dortch:

I submit these Reply Comments in response to Public Notice DA 16-341.

Unwanted telephone calls comprise the largest complaint category at both the FCC and the FTC. Rules are in place reflecting the desire of the public at large to avoid these calls. Yet some of the responses in this docket indicate that perpetrators of the calls are looking for any opportunity to skirt the rules and want their calling campaigns legitimized. The Commission needs to act to reinforce the rules and make sure they offer to consumers the protections that were intended.

In the original Bell System days, telephone lines had explicit designations under tariff as business or residential (often coded as 1FR, single-party flat-rated residence, or 1MB, single-party measured service for business, or similar). But these distinctions have clearly faded and are often non-existent for mobile and VoIP and "virtual" telephone services. As responding parties have noted, there is no longer any explicit designation, and there is certainly no authoritative way for a party to know if a number they are calling is in one category or the other – or both, as it is clear from the responses that telephone lines can serve both a residential (personal) purpose as well as a business need. Further, respondents note that telephone lines and numbers are routinely transferred and repurposed.

Given the severity of the unwanted call problem, the Commission must put the burden on the caller, and give them bright-line rules allowing them to determine if a call they are about to place is in fact desired by the recipient and allowed under the rules.

There is nothing that gives any entity the explicit right to call another, but the TCPA (and other rules) make certain prohibitions. Pillsbury notes that "Congress has made clear that its goal has been to limit calls to actual residential lines while avoiding interference with the business-to-business calls that drive our economy." Their footnote indicates that "the TCPA authorized the FCC to consider whether regulations permitting businesses to avoid receiving calls using an artificial or prerecorded voice was appropriate and the FCC expressly declined to do so." But we now have 24 years of additional insight.

Our economy is not driven by unwanted telephone calls. Businesses that place 1,000 unsolicited calls justify that endeavor by the one recipient with whom they actually engage; the other 999 are collateral damage.

An automated call placed to a number that was explicitly provided in the course of a business interaction between the calling and called parties should be allowed. A business that chooses to call all of its distributors to alert them to a product defect, or to call all of its subcontractors to tell them about a suspension of production, or even to promote a sale to all of its established customers in its database that list a company name as the responsible entity should be able to do so. (Businesses may find that customers treated to the latter will stop being customers, and certainly they should be given the ability to opt out of future calls.)

However, a company that collects phone numbers from directory listings, web sites, the sides of trucks, and similar sources; or purchases a list or generates numbers at random should be required to screen those numbers against the Do-Not-Call list. When a party responsible for a telephone number places it in the Do-Not-Call database, it indicates that they do not wish to receive unsolicited calls. It is likely, but of course not guaranteed, that the number is used at least part of the time for residential (personal) purposes, and so deserves TCPA protection. And if in fact it the number is truly used exclusively for business purposes, the American economy is not going to collapse if they don't get that unsolicited call.

An association or other membership organization should be allowed to place calls to its business members without DNC screening. However, per the TCPA, those calls must be identified as to their source, and they must conform to other rules including, for example, Truth-in-Caller-ID. If, however, that organization sells or otherwise provides their membership list to a third party, that third party should be required to screen against DNC because some of those numbers are likely dual-use (business/personal) and the third party was not provided each number directly by each owner.

The Commission needs to mandate a bright-line solution that delivers the greatest net good to all affected parties. The burden must fall on the calling party to limit the scope of their campaign to those LIKELY to welcome the calls being placed.

Regards,



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