

March 23, 2017

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Pai:

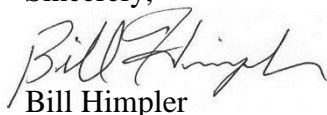
The American Financial Services Association (AFSA)¹ congratulates you on your appointment and looks forward to working with you in your new role. As you know, a few weeks ago President Trump issued an Executive Order directing federal agencies to establish a regulatory reform task force. The goal of the task force is to ensure that every agency has a team of dedicated people to research all regulations that are unnecessary, burdensome and harmful to the economy, and therefore harmful to the creation of jobs and business. The president has directed each task force to make recommendations to repeal or simplify existing regulations.

We understand from a meeting with one of your staff at the beginning of March that the FCC has included the regulations implementing the Telephone Consumer Protection Act (TCPA) on the list of recommendations for regulations to be simplified. Bringing the TCPA, which was enacted in 1991, into the 21st century will improve communications between businesses and their customers. (Additional information is provided on the attached sheets.)

In announcing the Executive Order, the president said, “We will stop punishing companies for doing business in the United States. It’s going to be absolutely just the opposite. They’re going to be incentivized for doing business in the United States.” Modernizing the TCPA will help businesses keep jobs in the United States. In order to comply with the antiquated autodialer restrictions in the TCPA regulations (that restrict calls from businesses to their customers’ cell phones), some businesses have had to move their call centers off-shore, which means that American workers lose good, well-paying jobs.

Simplifying the TCPA regulations will bring back these jobs and create additional opportunities. We hope that the FCC’s regulatory task force focuses on the benefits to reviewing and modifying the current TCPA regulations and we are happy to provide any assistance that might be useful. Please contact me by phone, 202-466-8616, or e-mail, bhimpler@afsamail.org, with any questions.

Sincerely,



Bill Himpler
Executive Vice President
American Financial Services Association

¹ Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

Modernizing the Telephone Consumer Protection Act (TCPA)

AFSA urges the Federal Communications Commission (FCC) and Congress to modernize the Telephone Consumer Protection Act (TCPA). At the request of the Obama Administration, Congress granted an exemption from the TCPA for collecting debts owed to, or guaranteed by, the United States of America in the interest of reducing delinquencies on student loans and other obligations owed to the government. By the same principle, AFSA urges expanding the scope to include calls made by any entity servicing its customers.

TCPA PROBLEMS

There are several major problems with the TCPA and particularly with the FCC's 2015 Declaratory Ruling and Order (DRO). Specifically:

- 1 The definition of **auto-dialer** needs to be modernized and clarified,
- 2 Issues around **reassigned numbers** must be resolved, and
- 3 The methods by which a consumer can revoke **consent** need to be formalized.

AUTO-DIALERS

Enacted in 1991, the TCPA was intended to prevent consumers from being harassed by telemarketers using auto-dialing equipment to randomly contact individuals with unwanted and unsolicited calls. In 2015, the FCC held that any system that has the "capacity" to store and dial telephone numbers is an auto-dialer. Therefore, all modern telephones are arguably auto-dialers.

REASSIGNED NUMBERS

Businesses regularly obtain "prior express consent" to contact their customers upon initiation of a customer relationship. Even so, according to the FCC, when a business calls a cell phone number without knowledge that the number has been reassigned, it can make only one call to the old number before subsequent calls violate the TCPA.

CONSENT

A business can no longer safely rely on consent because a number may change hands without warning. In addition, a customer may revoke consent by "any reasonable means." In fairness, the FCC should provide for a reasonable standard, such as requiring revocation in writing.

CONSEQUENCES

Because of the above referenced short-comings in the TCPA, the law has become fertile ground for class action lawsuits. The proliferation of these lawsuits has bad public policy consequences.

- The TCPA's restrictions force some lenders to choose between competing statutes.
- It has a chilling effect on communication between lenders and borrowers.
- In an effort to avoid the strict liability that comes with the statute, lenders may (and some already have) decide to move their call centers to countries with low wages where the calls can be made at an affordable rate from rotary or simple push-button phones.

In the best interest of the consumer, the TCPA should be modernized to address the issues discussed above. AFSA urges an exemption for all collection calls, not just those made to collect a debt owed to or guaranteed by the government.

AFSA recognizes that consumers have been deluged by unwanted telemarketing calls from those who ignore the Do Not Call list. AFSA seeks to work with policymakers to find a solution to this problem while preserving the ability for legitimate businesses to service their existing customers.