

May 6, 2019

The Honorable John N. Kennedy  
Chairman  
Subcommittee on Financial Services and  
General Government  
Committee on Appropriations  
United States Senate  
Washington, DC 20510

The Honorable Chris Coons  
Ranking Member  
Subcommittee on Financial Services and  
General Government  
Committee on Appropriations  
United States Senate  
Washington, DC 20510

Dear Chairman Kennedy and Ranking Member Coons:

On behalf of the American Financial Services Association (AFSA)<sup>1</sup>, I am writing in advance of the hearing to determine the 2020 fiscal year budget for the Federal Communications Commission (FCC). We applaud the Federal Communications Commission (FCC) for its work on the regulations implementing the Telephone Consumer Protection Act (TCPA). We encourage the subcommittee to assist the FCC in adopting regulations as soon as possible that provide much needed clarification to the TCPA.

The TCPA was signed into law in 1991, at a time cell phones were not nearly as ubiquitous as the present day. Congress enacted the TCPA to restrict telemarketing calls to landlines during dinner and prevent consumers having to pay for telemarketing calls to their cell phones. Now, of course, much has changed in telephone communications, with cell phones being more and more a part of everyday life for millions of Americans. However, while the wireless marketplace and consumer use of this technology have rapidly evolved, the TCPA has not.

In growing numbers in the past few years, plaintiffs' lawyers have exploited the law's outdated language and conflicting federal court rulings to bring abusive and costly class action lawsuits against businesses. Reform is needed to clarify interpretation of the law and to protect businesses from these lawsuits.

The TCPA covers "autodialed" calls to cell phones. The current TCPA rules define autodialed calls broadly, as any call made not using a rotary phone. We urge the subcommittee to encourage the FCC to adopt a definition that tracks the statutory language and purpose better. The FCC should confirm that to be an autodialer, the calling equipment must use a random or sequential number generator to store or produce numbers and dial those numbers without human intervention.

This clarification will prevent lawsuits that are harming consumers as well as businesses. An auto manufacturer was sued under the TCPA for contacting its customers about an important safety recall. An airbag manufacturer was sued for telling drivers that they were at risk of being in a car

---

<sup>1</sup> 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.

fire if they did not replace a defective air bag. Some financial institutions may not contact their customers to alert them of potential fraud because they lack consent to call.

The FCC has the opportunity to address these issues, and the Senate should encourage this process when it considers the FCC's 2020 budget. Thank you for your attention to this important matter. If you have any questions, please feel free to contact me at [acarmichael@afsaonline.org](mailto:acarmichael@afsaonline.org) or (202) 466-8606.

Sincerely,

A handwritten signature in cursive script that reads "Ann Carmichael". The signature is written in black ink on a white background.

Ann Carmichael  
Vice President, Congressional Affairs  
American Financial Services Association