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## Official FCC Blog



## TCPA: It is Time to Provide Clarity

by: **Michael O'Rielly**, FCC Commissioner

March 25, 2014 - 01:10 PM

For those that might not be familiar, the Telephone Consumer Protection Act (TCPA) ([47 U.S.C. § 227](#)) was enacted in 1991 to address the issue of unwanted [telephone marketing calls](#) and [faxes](#). It restricts making telemarketing calls, using automatic telephone dialing systems and artificial or prerecorded voice messages (often referred to as robocalls), and sending unsolicited faxes. From most accounts, it appears to have been a general success.

In enacting the TCPA, the Congress aimed to strike a balance between protecting consumers from unwanted communications and enabling legitimate businesses to reach out to consumers that wish to be contacted. Over time, as the FCC and the courts have interpreted the TCPA, business models and ways of communicating with consumers have also changed. As a result, the rules have become complex and unclear. In addition to prohibiting abusive robocalls and junk faxes, which was the original intent, the rules are creating situations where consumers might not receive notifications and offers that they want and expect, and where new and innovative services and applications that help friends and family members communicate with each other could be restricted. Clear rules of the road would benefit everyone.

Indeed, the problems caused by this lack of clarity are evidenced by an increasing number of TCPA-related law suits and a growing backlog of petitions pending at the FCC. According to data cited by the U.S. Chamber of Commerce in its recent [comments](#), TCPA lawsuits have increased 30 percent over the last year. Meanwhile, there are several dozen petitions asking the FCC to declare or clarify that a particular service or method of communicating would comply with the TCPA. It is very troubling that legitimate companies feel they have to ask the government for its blessing every time they need to make a business decision in order to avoid litigation.

That is why the FCC needs to address this inventory of petitions as soon as possible. Through this process, the FCC has the opportunity to answer important questions and provide much needed guidance on a variety of TCPA issues, including what it means to initiate a call, whether there is liability for calls made to reassigned phone numbers, whether consent can be obtained through intermediaries, whether consent can be inferred from consumer behavior or social norms, whether devices including smartphones could be considered automatic telephone dialing systems, and what types of faxes are actually unsolicited. Tackling this backlog in a comprehensive manner will help restore certainty

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and reduce the need to file additional petitions.

The FCC also needs to take a hard look at its own precedent. Some of these prior interpretations of the TCPA, while well-meaning, may have contributed to the complexity by enlarging the scope of potential violations. For example, the FCC expanded certain TCPA requirements to encompass *solicited* fax advertisements even though the statute is limited to *unsolicited* fax advertisements. Specifically, the TCPA makes it unlawful “to use any telephone facsimile machine, computer, or other device to send, to a telephone facsimile machine, an unsolicited advertisement” unless certain conditions are met. And, even if those conditions are met, the TCPA specifies that the “unsolicited advertisement” must “contain[] a notice” so that consumers are able to opt-out of receiving future faxes. The FCC’s [rules](#), however, require the notice to be provided on all fax advertisements, whether solicited or unsolicited.

The TCPA is supposed to protect consumers from unwanted commercial robocalls, texts, or faxes. The FCC must hold bad actors accountable when they violate this law. But the FCC should also follow through on the pending TCPA petitions to make sure that good actors and innovators are not needlessly subjected to enforcement actions or lawsuits, which could discourage them from offering new consumer-friendly communications services.

Updated: March 26, 2014 - 05:15 PM

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**Caitlyn@techdealsmag** · 3 months ago

Well, more clarity is needed

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**Elena** · 3 months ago

Where can I find the full text of the TCPA with all updates? Thank you.

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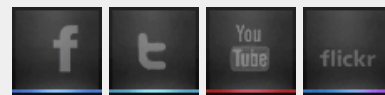
**Ken Reagan** · 3 months ago

Thank you for post your concerns. I work in the Health Insurance industry and we're under increased pressure to enroll, engage and solicit Young Invincibles, a key target segment necessary to make Obamacare work. However, TCPA regulations are hampering our efforts to engage this populaton on their mobile

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device. We use a 59 dialer and have live operators, but because of the increased litigation and risks our outreach efforts have been limited. No company wants to face a potential multi-million dollar lawsuit similar to the recent Capito One settlement. Can the Health industry get an exception, at least during Open Enrollment? Consumers have the right to opt out, but government forces working in opposition to one another make for an impossible outcome.

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**Serena gomes** • 4 months ago

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**Jason Roozee** • 5 months ago

The FCC really needs to consider "fair use" of auto-dialers. If the only difference between a auto-dailer and manually calling is the possibility of higher call volume, then the TCPA should regulate CALL VOLUME not the TECHNOLOGY used to make the call. If a company has a small staff (10 debt collectors) but has over a 100,000 accounts. The use of a auto-dialer with live agents (no pre-recorded messages) is the only efficient way to call the delinquent accounts and they the overall call volume to each phone # is very low.

In the debt collection industry, one of the biggest issues is the fact that the TCPA is restricting the user of a "auto-dialer" instead attacking the broader issue which is harassment by high call volume/frequency.

I think a "fair use" policy should be seriously considered for companies with a existing business relationship. 200 or more calls in a entire year to a phone # I think is OUTRAGEOUS. I think the maximum limit should be under 100 calls in a 12 month period, and a maximum of 20 calls in a 12 month period that are "answered" by the receiving end by a live person.

I am all FOR "no pre-recorded messages" to cell-phones or any device for which the consumer is charged.

Another idea may be a new form of a DNCL that is for specific inbound phone #'s - if the consumer adds their phone # to a list for ANY outbound # that is associated with company XYZ, then XYZ is restricted from making calls to that consumers specific #. This would be a very simple way for a consumer to get calls to stop from a specific company.

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**Rana Nile** • 5 months ago

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**rörintspektion** • 5 months ago

vattenskada Interesting to see ... thank you it's well done :)

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**Leon** • 5 months ago

I was called 9 times one day on my cell phone by 1 mortgage company 8 times in 15 minutes. I'm on "DO NOT CALL REGISTRY" told 2 different telemarketers it's the wrong number and then they called me 6 more times one minute between calls. I really don't care what kind of equipment they use to make my cell phone or home phone RING and disrupt my life. To call me every 60 seconds " until I'm forced to listen to their sales pitch weather I like it or not so I can wait on the phone paying for the call until their salesman can hard sell me a loan I don't need or want " Then spend more time trying to figure out who called then send a letter asking them to remove me from their list and get 60 more calls in 30 days. Waiting for them to take my number out of their Automated Telephone Dialing system that calls me all that they want to, And then say well it doesn't dial randomly it only predictive dials me over and over again. So that's ok we can use that.  
Well it made my phone ring and that's what I thought the no call registry was for? No Calls??

At least that is what the FCC web sight says But when a automatic dialer wants to call leave a message call again and again over and over. That's ok as long as it's not in some mode, they make up, doesn't make it right or legal.

There are more lawsuits because telemarketers are breaking the law. Stop braking the law and the lawsuits will stop. It's not that hard to figure out. Stop dialing the phone with what ever makes it the phone ring , for things I don't want or need and make it a law. " Oh I forgot Congress did that already"

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**Richard Kovacs** • 6 months ago



What part of "Do Not Call" doesn't the Federal government, businesses, and political and charitable organizations understand? I don't want to receive any phone solicitations from businesses and their affiliates nor political nor philanthropic organizations, including those with which I have a relationship. I shouldn't be burdened with having to follow up on each and every unsolicited call to request an opt-out, which are usually ineffectual. I can visit the websites of those entities with which I have a relationship, at my convenience, to be alerted to opportunities and problems. They may also flood my email inbox at their convenience at risk of being labeled scammers. Give me via my phone service providers unlimited blocking capability and easy reporting of violators for government enforcement action. Quit permitting exceptions, which are invariably and transparently self-serving at my expense. I dare you to convince me of any worthy exception.

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**No Free Money** > Richard Kovacs • 4 months ago

If a company lends you money and you become delinquent on that "loan," should that company be allowed to try and contact you?

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**Scott** • 8 months ago

Thank you, Commissioner, for revealing the hidden flaw in a well-intended and otherwise productive law. As co-founder of an SMS provider that strives to comply with both legal restrictions and carrier requirements (occasionally even more restrictive and onerous than the law, by the way) we fit the "good actor" profile as well as anyone could.

We provide informational and emergency SMS alerts to utilities, municipalities

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