

FCC Consumer Advisory Committee

Recommendation Regarding Regulations Implementing Exceptions to Consent Requirement for Calls Made to Cell Phones to Collect Debts Owed the United States.

WHEREAS, the Commission has issued a proposal to implement a provision of the Bipartisan Budget Act of 2015¹ that excepts from the Telephone Consumer Protection Act's² consent requirement for robocalls “made solely to collect a debt owed to or guaranteed by the United States.”³

WHEREAS, that the Budget Act requires the Commission to “prescribe regulations to implement the requirements” within nine months of enactment,⁴ and authorizes the Commission to adopt rules to “restrict or limit the number and duration” of these covered calls.⁵

WHEREAS, that by issuing its proposed rules on May 4, 2016,⁶ the Commission has already recognized the importance of preserving consumer choice over the receipt of autodialed and prerecorded calls and texts to cell phones.

WHEREAS, there is no requirement imposed on callers to have a documented rationale for believing that a particular phone number belongs to the debtor being

¹ Bipartisan Budget Act of 2015, Pub. L. No. 114-74, 129 Stat. 584 (Budget Act).□

² The Telephone Consumer Protection Act (TCPA) is codified at section 227 of the Communications Act of 1934, as amended. *See* 47 U.S.C. § 227.

³ Budget Act § 301(a)(1)(A) (amending 47 U.S.C. § 227(b)(1)(A)); *see also id.* § 301(a)(1)(B) (amending 47 U.S.C. § 227(b)(1)(B) to read, in part, that artificial- or prerecorded-voice calls cannot be made to a residential telephone line without the consent of the called party unless the call is “made solely pursuant to the collection of a debt owed to or guaranteed by the United States”). “Robocalls” include calls made either with an automatic telephone dialing system (“autodialer”) or with a prerecorded or artificial voice. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Declaratory Ruling and Order, 30 FCC Rcd 7961, 7694, para. 1 n.1 (2015) (*2015 TCPA Declaratory Ruling and Order*). The Commission has interpreted the TCPA to apply both to voice calls and to text messages. *Id.* at 8016-17, para. 107.

⁴ Budget Act § 301(b).□

⁵ Budget Act § 301(a)(2) (amending 47 U.S.C. § 227(b)(2)).

⁶ http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0506/FCC-16-57A1.pdf.

called or texted by the debt collector or servicer, thereby making private enforcement of the consumer protections in the proposed rule more difficult.

WHEREAS, that there are still several important outstanding issues to be addressed by the Commission before it issues its final rule implementing the Budget Act amendment.

WHEREAS, the Indiana Attorney General has testified that his office has “had more complaints about the IRS impersonation scam this year than any other telephone privacy complaint, with nearly 1,400 complaints received this year at a rate of 10 complaints per day.”⁷

THEREFORE BE IT RESOLVED that the Consumer Advisory Committee recommends that the Commission promulgate the Final Rule with the listed consumer protections:

1. Calls pursuant to the exception would only be permitted to be made to the debtors themselves, not to family, friends or others, including employers;
2. The rule would apply to texts as well as to calls to cell phones;
3. Calls would be allowed only when related to delinquent or defaulted debt, and only related to the debt status, and no telemarketing messages would be permitted to be included;
4. The number of allowed calls or texts made pursuant to the proposed rule is limited to three calls per month, per servicer or collector and each initiated call would count as one call;
5. Callers would be required to honor a request for the calls to stop;
6. Callers would be required to notify consumers of their right to request that calls stop;
7. The rule proposes to apply limitations in the Fair Debt Collection Practices Act to the permissible time of calls covered by the rule (8:00 a.m. to 9:00 p.m.);
8. The rule would only permit calls to be made under the exception for debts currently owed to or guaranteed by the United States, so that calls to collect these debts after they have been sold to independent third parties would not be permitted without consent;

⁷ See Testimony of Indiana Attorney General Greg Zoeller Re: TCPA and HANGUP Act before the U.S. Senate Committee on Commerce, Science, and Transportation, Wednesday, May 18, 2016.

9. The same rules for wrong number calls, such as to reassigned numbers, as was required by the FCC's 2015 Omnibus Order⁸ would apply to calls made pursuant to this rule (this only permits only 1 wrong number call). ; and

BE IT FURTHER RESOLVED, that the Consumer Advisory Committee also recommends that all of these consumer protections be placed in the body of the regulation itself, rather than simply in the text accompanying the regulation; and

BE IT FURTHER RESOLVED, that the Consumer Advisory Committee also recommends that the Commission require that callers must have documented rationale for believing that a particular phone number belongs to the debtor being called or texted by the debt collector or servicer; and

BE IT FURTHER RESOLVED, that to the extent possible the FCC should work with the FTC and CFPB to coordinate definitions for terms and protections across the debt collection landscape.

Adopted: June 10, 2016

Abstentions: Americans for Tax Reform; CenturyLink; International Center for Law and Economics; National Cable and Telecommunications Association; T-Mobile; Verizon

Respectfully Submitted:

Debra R. Berlyn, Chairperson

FCC Consumer Advisory Committee

⁸ See 2015 TCPA Declaratory Ruling and Order, 30 FCC Rcd at 8006-10, paras. 85-92.