

Telephone Consumer Protection Act (TCPA) Reform

Issue: Congress passed the TCPA in 1991 to protect consumers from telemarketers using automated telephone dialing systems ("autodialers") or artificial or prerecorded voice messages. The TCPA does not clearly define "autodialer," but does prohibit the use of an autodialer to call any wireless number absent an emergency purpose or the "prior express consent of the called party." In 2015, the Federal Communications Commission (FCC) issued an Omnibus Declaratory Ruling and Order (2015 Order), which has proven to be problematic in a number of ways. In fact, until recently, it was the subject of ongoing litigation in the D.C. Circuit Court of Appeals – *ACA International v. FCC*.

ACA International v. FCC challenged the validity of the 2015 Order's interpretations of what type of equipment qualifies as an "autodialer," whether a TCPA violation occurs when a consenting party's phone number has been reassigned, and how a consenting party may revoke consent. On March 16, 2018, the D.C. Circuit issued its opinion and held: (1) the FCC's interpretation of the definition of "autodialer" is invalid, bringing the FCC back to the limited definition in the TCPA; (2) the FCC's one-call safe harbor for reassigned numbers is arbitrary and invalid, but a "called party" is the consumer currently assigned to the number, not the intended recipient; and (3) the FCC's standard for revoking consent by "any reasonable means" is a permissible interpretation of the TCPA.

This provides some relief for credit unions, but NAFCU supports a definition of "called party" as the intended recipient of a communication and believes that consumers should not be allowed to revoke consent by "any reasonable means." Credit unions should be able to dictate clear opt-out methods for consumers to provide consistency and limit their potential TCPA liability. NAFCU also supports the FCC's efforts to evaluate the creation of a database of reassigned numbers. NAFCU has urged the FCC to create a single, FCC-designated reassigned numbers database that allows credit unions to access reassigned numbers data at little or no cost.

The TCPA authorizes the FCC to create exemptions for calls "that are not made for a commercial purpose" or "do not include the transmission of any unsolicited advertisement" to residential lines. The TCPA also provides the FCC with exemption authority on autodialed or prerecorded calls to wireless numbers so long as the calls are free to the consumer and may be subject to conditions prescribed by the FCC to protect consumers' privacy rights. NAFCU has urged the FCC to expand its existing exemption (from the 2015 Order) for financial institutions to contact consumers regarding fraud or data breaches. Sometimes consumers are difficult to reach and more than three communications (both calls and text messages) over a three-day period immediately following the fraud or data breach event may be necessary.

NAFCU Ask: We urge Representatives and Senators to raise NAFCU's concerns with the FCC so that credit unions may communicate important information to their members without fear of inadvertently violating the TCPA. NAFCU supports the FCC's recent rules aimed at targeting illegal and fraudulent robocalls as well as exploring the creation of a single, FCC-designated database for reassigned numbers at little or no cost to credit unions. The FCC should continue to find ways to tailor its regulations to single out the bad actors who are harassing consumers with unwanted and potentially harmful robocalls instead of sweeping in good actors like credit unions in broadly-written regulations. NAFCU also supports an expanded exemption for credit unions making communications regarding fraud or a data breach.