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Along with the Attorneys General of
Illinois, New York, Tennessee and Utah

February 18, 2015

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Wheeler,

We write to encourage the Commission to rule against petitions filed by the American Bankers Association (“ABA”) and the Consumer Bankers Association (“CBA”). The ABA and CBA have proposed changes to the Telephone Consumer Protection Act (“TCPA”) which would dramatically increase the number of unwanted and unregulated automated robocalls to consumers’ cellphones. These consumers—our constituents—have made it clear that they are tired of the millions upon millions of calls they receive from telemarketers. Therefore, any regulatory changes that make it easier for telemarketers to disturb the peace of our constituents should be rejected.

I. Background

A. The TCPA

The TCPA, 47 U.S.C. §§ 227, *et seq.*, is one of two federal laws aimed at reducing the number of unwanted telemarketing calls to consumers’ telephones. Pursuant to the TCPA, automated calls (commonly referred to as “robocalls”) and text messages to consumers’ cellphones are unlawful unless the consumer has given “prior express consent.” *See* 47 U.S.C. §227(b)(1)(A)(iii). On October 16, 2013, the FCC amended 47 C.F.R. § 64.1200 to specify that any “prior express consent” must be in writing.

Pursuant to 47 U.S.C. § 227(g), the state attorneys general have the power to file suit on behalf of the consumers of their states against telemarketers that violate the TCPA.

B. The ABA Petition

On October 14, 2014, the ABA filed a petition to modify the rules related to automated calls. In the petition, the ABA asks the FCC for an exemption from the rules requiring the caller to obtain the prior express consent of the recipient before placing calls to a mobile phone for calls concerning the following: “(1) transactions and events that suggest a risk of fraud or identity theft; (2) possible breaches of the security of customers’ personal information; (3) steps consumers can take to prevent or remedy harm caused by data security breaches; and (4) actions needed to arrange for receipt of pending money transfers.”

C. The CBA Petition

On September 19, 2014, the CBA filed a petition to amend the TCPA’s definition of “called party” to specify that it only applies to the “intended recipient of the call.” In essence, this would allow telemarketers to claim that calls were made to the “wrong number,” and require the government to prove otherwise (a difficult task).

II. Position of the Attorneys General

On its face, the proposed changes to the TCPA by the ABA appear to protect consumers, especially those who are the victims (or could potentially become the victims) of fraud. However, we are concerned with the slippery-slope that will inevitably occur if one trade association is permitted to start chipping away at the TCPA’s protections. There is no reason why a financial institution cannot request prior express consent from its customer to contact the customer by mobile phone for various purposes. The customer may either grant or deny the request, depending upon the customer’s preference. Therefore, we encourage the Commission to deny the ABA’s request.

The proposed changes by the CBA present a much more serious attack on consumers’ rights under the TCPA. Expanding the definition of “called party” to the “intended recipient of the call” opens the door to abuse by debt collectors and other callers. Wireless customers leave their carriers at an average rate of 2% per month.¹

¹ *Average Monthly Churn Rate for Wireless Customers in the United States from 1st Quarter 2013 to 3rd Quarter 2014*, Statista.com.

The rate is higher for prepaid customers who are not bound by a contract.² In Indiana, for example, approximately 56% of 2014 Telephone Privacy complaints about debt collectors involved autodialer calls to the wrong parties, and 16% were calls to wrong parties on their wireless phones. A disturbing result of the CBA request would be an increase in the number of automated calls to wireless subscribers who do not owe the debt that the caller is trying to collect.

Moreover, when an attorney general files suit under the TCPA to prosecute illegal telemarketing, the telemarketer could attempt to avoid liability by falsely claiming that the calls were to the wrong numbers. Our constituents expect vigorous prosecution of illegal telemarketing calls, and any move by the Commission to weaken our tools to do so benefits the telemarketers at the expense of the consumers we were elected to protect.

III. Conclusion

In conclusion, the undersigned urge the FCC to continue to protect consumers from robocalls to their wireless phones by rejecting the petitions of the ABA and CBA.

Respectfully,



CHRIS KOSTER
Missouri Attorney General



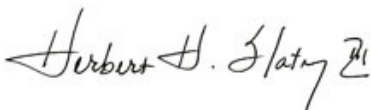
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² Gary Kim, *Mobile Customer Churn is a Complicated Issue*, Mobility TechZone, April 13, 2012.