

TCPA | Q&A

Congress passed the Telephone Consumer Protection Act (“TCPA”) in 1991 when wireless phones were “luxury items,” consumers were charged by the minute, and text messages, Twitter, and iPhones had not yet been invented. On June 18, 2015, the Federal Communications Commission (“FCC”) issued an order (“TCPA Order”) that made things even worse by potentially eliminating helpful communications from businesses to their customers.

Q | Was the TCPA Order a victory for consumers?

A | No, the TCPA Order threatens communications consumers use on a day-to-day basis, including low balance bank account alerts, due-date reminders, school closures and start delays, class registration reminders, health program alerts, warnings from insurance companies about impending natural disasters, non-profit volunteer opportunities, and other useful communications.

Q | How do consumers prefer receiving communications about their bank accounts?

A | FDIC research found that text alerts give consumers access to account information; help consumers avoid fees; and help monitor accounts for fraud.¹ In fact, the FDIC research concluded underbanked consumers prefer texts to emails when receiving alerts because texts are faster, easier to receive, attention grabbing, and quicker and easier to digest.² The CFPB notes: “By enabling consumers to track spending and manage personal finances on their devices through mobile applications or text messages, mobile technology may help consumers achieve their financial goals.”³

Q | Does the TCPA Order protect consumers from being inundated with telemarketing and debt collection calls?

A | Telemarketing robocalls are subject to different standards than the informational calls including under TCPA Order.⁴ Further, debt collection is already governed by an array of laws including the Fair Debt Collection Practices Act, Fair Credit Reporting Act, and Dodd-Frank Act.

Q | Are institutions exempt from TCPA liability if they obtained permission from their customers to contact them?

A | Tens of millions of phone numbers are reassigned each year. Some of those consumers gave consent prior to their number being reassigned. When businesses then inadvertently contact the wrong consumer, the TCPA Order does not protect them adequately against liability for these inadvertent communications.

¹ FDIC Research pg. 19. <https://www.fdic.gov/about/comein/2015/come-in-2015.pdf>.

² FDIC Research pg. 21.

³ CFPB Mobile financial services (November 2015) at 10. http://files.consumerfinance.gov/f/201511_cfpb_mobile-financial-services.pdf.

⁴ In 2012, the FCC revised its TCPA rules to require telemarketers (1) to obtain prior express written consent from consumers before robocalling them, (2) to no longer allow telemarketers to use an “established business relationship” to avoid getting consent from consumers when their home phones, and (3) to require telemarketers to provide an automated, interactive “opt-out” mechanism during each robocall so consumers can immediately tell the telemarketer to stop calling. <https://www.fcc.gov/general/telemarketing-and-robocalls>.