

Questions for the Record from Chairman Thune  
To  
Ms. Margot Saunders

**Question 1.** *Would a concrete standard for revocation of consent in the TCPA regulations, as there is for the FDCPA, FCRA, and other banking laws, be helpful in reducing the types of contact intended to be prohibited by the TCPA?*

*Answer:* It would certainly be helpful for consumers to be provided with notice of their right to cancel, or revoke consent under the TCPA. The FDCPA does not have a right to cancel or revoke consent. It does provide consumers with the right to cease communications, under 15 U.S.C. § 1692c(c). That right is helpful, but not as valuable as one might think because a) consumers are not provided notice of this right, and b) consumers are often afraid to request that all communication cease because they fear that such a request will spur litigation.

The FDCPA also provides consumers with a right to be free from communications which are at “inconvenient” times pursuant to 15 U.S.C. § 1692c(a). This right does not require a written notice from the consumer for it to be exercised and is generally interpreted as providing a bright-line test for collectors on when not to call consumers.

The FCRA does not have a revocation of consent requirement of which I am aware.

**Question 2.** *Attorney General Zoeller and a number of other attorneys general sent a letter to this committee urging support for the HANGUP Act, arguing that it was necessary because, “As amended, the TCPA now permits citizens to be bombarded by unwanted and previously illegal robocalls to their cell phones if the calls are made pursuant to the collection of debt owed to or guaranteed by the United States.” Is that your understanding of what will necessarily be allowed as a result of the Federal Communications Commission’s implementation?*

*Answer:* The Federal Communications Commission is in the midst of a rulemaking on exactly this issue. Based on the proposals articulated in its Advance Notice of Proposed Rulemaking, we are hopeful that the final regulations will only permit a limited number of calls to debtors who have not consented, and that the consumer will have the right to stop unwanted calls. But we will not know what the limitations on the calls will be, if any, until the final regulations are promulgated.

**Question 3.** *What are some of the benefits and challenges of moving forward with a mandatory reassigned numbers database?*

*Answer:* The industry of callers has professed difficulties complying with the FCC’s 2015 Omnibus Order because they say there is no reasonable way for them to know when the phone numbers have been reassigned to new people. The chief benefit of a mandatory reassigned numbers database is that it would provide a near-perfect way for callers to determine which numbers have been reassigned since they obtained consent to call those numbers.

A database would be fully accurate and relatively inexpensive to operate and access by the caller if it has the following components:

1. All cell phone providers would be required to participate.
2. Each cell phone provider would give timely information about all cell phone numbers under its control for which there is a change in ownership.
3. The information provided to the data base would simply be—on each reporting date—any telephone number that had been returned to the cell phone company (because it was dropped or abandoned or terminated) since the previous reporting date.
4. The providers would submit these reports within a short time—likely one or two one days—from the date that the number was dropped.
5. Callers could access the database easily online and simply query: “For telephone number XYZ, when was the last time it changed ownership?” There would be no big data dump from the database, just the simple answer to the question, which would be along the following lines: “Number XYZ most recently changed ownership on ABC date.”
6. The fees charged to callers for accessing the information in the database would pay for the maintenance of the database.

The challenge to a fully effective database is simply having all of the cell phone companies agree to establish such a database and participate in it. The reassigned number problem need not really be a problem. A relatively simple solution is within reach.

**Question 4.** *Is there a helpful way to distinguish between random or sequential telemarketing calls and texts versus calls or texts to numbers originally provided by customers that have been subsequently reassigned?*

*Answer:* I am not sure that there is. This question seems to be mixing apples and oranges. Whether callers are calling random or sequential numbers goes to the issue of whether their calling methodologies meet the coverage requirements under the TCPA because the automatic dialing system used has that capacity (under 47 U.S.C. § 227(a)). The issue of whether of number has been reassigned goes to whether the person who receives the call has provided consent to be called, as is required if the call is made to a cell phone and is not for an emergency purpose (under 47 U.S.C. § 227(b)(1)).

**Question 5.** *Are texts less intrusive than phone calls? If so, would it make sense to have reduced penalties for text message violations of the TCPA in order to encourage contact through text messaging rather than phone calls?*

*Answer:* There are some minimal differences between the two, but texts are invasive of consumers’ privacy just as calls are. We do not think there should be different standards.

**Question 6.** *Are you aware of any negative consequences resulting from the Commission’s 2015 Omnibus Declaratory ruling, including the movement of call centers overseas?*

*Answer:* I am not aware of any negative consequences.

**Question 7.** *Is there a database on which callers can reasonably rely that identifies numbers that have been reassigned?*

*Answer:* My understanding is that there are several databases and other programs in the marketplace that either specifically provide the answer to the question of whether the number is reassigned, or provide other assistance to callers on this issue. Just a few of these examples include:

- Early Warning, a data exchange company,<sup>1</sup> whose website indicates that this company runs a database that can be accessed by callers to determine the status of each of the numbers they want to call.
- Another company appears to be Do-Not-Call-Protection,<sup>2</sup> which promises to help callers ensure they are calling the parties that provided consent.
- A company called Payfone<sup>3</sup> also offers a “solution [which] applies custom logic to the 8 million+ daily phone number and mobile operator change events in order to determine whether or not phone number ownership has changed.”<sup>4</sup>
- Neustar indicates that it provides solutions for TCPA potential liability by providing access to “Neustar’s unparalleled phone data repository. The solution provides users with the most accurate, comprehensive and up-to-date consumer and business data in the industry – updated every 15 minutes from over 250 sources, including the nation’s leading telecommunications service providers.”<sup>5</sup>

However, the best option to protect callers from liability for calling reassigned numbers would be for a database to be established in which all cell phone providers are required to participate. (Please see my answer to Chairman Thune’s question # 3 on this point.)

---

<sup>1</sup> For more information, see Early Warning’s website at <http://www.earlywarning.com/aboutus.html>.

<sup>2</sup> <http://www.donotcallprotection.com/blog/reassigned-numbers-right-party-verification-tcpa>

<sup>3</sup> <http://www.payfone.com/numberverification/>

<sup>4</sup> Id.

<sup>5</sup> <https://www.neustar.biz/resources/whitepapers/understand-tcpa-law-and-mitigate-risk>

Questions for the Record from Senator Fischer

To

Ms. Margot Saunders

**Question 1.** *In your testimony, you state that “Congress deliberately created statutory penalties in the TCPA to ensure compliance.” You also mention that these unwanted calls are increasing. Do you have data to indicate the amount of fines and awards that have been collected as a result of the increase in unwanted calls?*

*Answer:* I do not have specific data on the amount of fines and awards collected as the result of the increase in unwanted calls. I know that even as industry is complaining about TCPA litigation, the number of unwanted calls is increasing. This is evident from the escalating number of complaints to government agencies about these unwanted calls. As I said in my updated testimony: an average of 184,000 complaints were made to the Federal Trade Commission (FTC) every month in 2015 about robocalls.<sup>6</sup> The problem of unwanted robocalls is escalating: the FTC reported more than 2.2 million complaints about unwanted robocalls in 2015—over two and a half times as many complaints as there were in 2010.<sup>7</sup> More than half of these calls occurred after the consumer had already requested that the company stop calling.<sup>8</sup> Indeed, in the first four months of 2016, the complaint numbers have spiked again, increasing to an average of over 279,000 a month, which will produce a yearly rate of over 3.3 million complaints.<sup>9</sup>

So it seems that even though the litigation is increasing, and more fines and awards have been collected, these are still not sufficient to provide incentives to the calling industry to comply with consumers’ wishes to be free from these unwanted robocalls.

**Question 2.** *Throughout your written testimony, you highlight many negative instances of “robocalling,” many of which involve harassing telemarketing calls. I think we can all agree that we dislike telemarketing calls and that we would prefer that consumers not receive them. However, there can be uses for “robocalling” that can benefit consumers. For example, there are student loan providers and servicers in Nebraska who try to contact students who are at risk of defaulting on their student loans to help them rather than harass them. In your opinion, are there any times that robocalls should be permissible under the TCPA, such as where consumers might need or want to receive the call?*

*Answer:* Robocalls are entirely legal once the consumer has consented to receive them. 47 U.S.C. § 227(b)(1)(A). Moreover, according to the student loan servicing industry, over 90% of student loan debtors have consented to receive these calls.<sup>10</sup> Student loan servicers wishing to call the debtors for whom they do not have consent should manually dial these consumers until they receive consent. If the servicing industry believes that the calls will be so helpful to consumers, then it is their job to reach out

---

<sup>6</sup> Federal Trade Commission, National Do Not Call Registry Data Book, FY 2015, at 5 (Nov. 2015)

<sup>7</sup> *Id.* at 4.

<sup>8</sup> *Id.* at 5.

<sup>9</sup> The 2016 figures for robocall complaints to the FTC’s Do Not Call Registry were supplied by the FTC’s Bureau of Consumer Protection on May 12, 2016. The 2016 annualized complaint data was determined by averaging the total complaints received in the first four months and then multiplying that monthly average by twelve.

to them. However, they should do so in accordance with the TCPA. There is no inherent right for callers to use autodialers or prerecorded voice messages.

Questions for the Record from Senator Daines

To

Ms. Margot Saunders

**Question 1.** Today's students are graduating college with more debt than ever. Some of them go out into the workforce and forget about their student loans, or ignore them because they think they can't afford the payments. Because of the TCPA, loan servicing companies are not able to call the students to help them with a payment plan and unfortunately some end up defaulting on their loans. When the students default on their loans and ask 'why didn't someone call me' – what can we tell them? Is there any middle ground that can be reached that allows us to help our students without opening up the flood gates for unwanted calls?

*Answer:* Robocalls are entirely legal once the consumer has consented to receive them. 47 U.S.C. § 227(b)(1)(A). Moreover, according to the student loan servicing industry, over 90% of student loan debtors have consented to receive these calls.<sup>11</sup> Student loan servicers wishing to call the debtors for whom they do not have consent should manually dial these consumers until they receive consent. If the servicing industry believes that the calls will be so helpful to consumers, then it is their job to reach out to them. However, these should do so in accordance with the TCPA. There is no inherent right for callers to use autodialers or prerecorded voice messages