

Questions for the Record from Chairman John Thune
To
The Honorable Greg Zoeller

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: Opting out of receiving robocalls and other unwanted contacts should require no more effort than pressing a button or telling a caller to stop calling. The FDCPA requires a consumer to notify a debt collector in writing that the consumer wishes the debt collector to cease further communication. The FCRA allows a consumer to opt out of certain credit offers by notifying the credit reporting agency in writing or via a mechanism maintained by the agency. It is burdensome to notify a debt collector in writing to cease communications, especially when the consumer is not the debtor they are seeking.

Question 2. *Mr. Zoeller, you 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: Yes, it is. The majority of debt collection complaints are from non-debtors who receive unwanted calls intended for other people. Many of these complainants report multiple calls despite informing the callers that they are not the debtor.

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

Answer: Benefits might include fewer calls to consumers who acquire numbers that formerly belonged to debtors. Challenges include the cost of maintaining and updating the database and protecting it from unscrupulous telemarketers and scammers.

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 think not, assuming both types of calls are unwelcome and possibly illegal.

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: Anyone who has been awakened by the insistent buzzing of a text arriving in the middle of the night can attest that texts are not less intrusive than calls. Also, many people, especially those on discounted or pre-paid wireless plans, are charged for texts.

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: The movement of call centers overseas was a trend long before 2015. As for consequences of the FCC's 2015 ruling, we would like to see telecommunications providers move more quickly to provide more extensive call-blocking services for consumers, and solutions that would stop illegal calls before they got through to residential lines.

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

Answer: I believe there are third party providers who market this information, but I have not had occasion to research them.

Questions for the Record from Senator Deb Fischer

To

The Honorable Greg Zoeller

Question 1. *The FCC's 2015 order for TCPA reassigned numbers allows one call across an entire enterprise, even if it has multiple subsidiaries, before a caller can be liable for contacting a consumer. This is the case even though there is a no reassigned number list available to check, and the caller will often have no knowledge that a number has been reassigned. Is there a reason the caller should not be required to have "actual knowledge" that the called number is not that of the initial person? What reasonable means can a caller take to ensure a number has or has not been assigned?*

Answer: In its Order, the FCC noted that there are solutions in the marketplace to inform callers of reassigned numbers. A caller can easily avoid having "actual knowledge," and that is why the FCC deemed it reasonable to assume the caller has "constructive knowledge" after one postreassignment call. Assuming that the caller is a debt collector, then the caller can use a live operator to contact the debtor. It is only when callers attempt to contact debtors en masse via robocalls that they run afoul of the TCPA.

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 calls?*

Answer: In my experience, consumers want to receive a robocall when school is canceled due to a snow emergency, or their prescription medicine is ready to be picked up at the pharmacy. Most other robocalls are looked upon as unwelcome, impersonal intrusions into their privacy.

Questions for the Record from Senator Steve Daines
To
The Honorable Greg Zoeller

Question 1. *I appreciate your remarks during the hearing about the need for policymakers to “tighten the line of defense” for TCPA litigation.*

Answer: Last month I filed an amendment to the FCC Reauthorization Act which would incentivize businesses to voluntarily implement compliance programs to govern the activities taken by the independent, third-party dealers and service providers. Under my amendment, if a business has implemented robust compliance programming then that business could raise evidence of these measures as an affirmative defense during a private right of action. This would go a long way towards clarifying uncertainty that has arisen regarding the attachment of vicarious liability – uncertainty that is inhibiting more businesses from implementing these highly effective compliance programs.

If the TCPA were amended to include language that would incentive businesses to voluntarily implement TCPA compliance programs that would govern the activities of independent, thirdparty service providers, would such a modification constitute a “better defense” that would spur greater business compliance with TCPA, and fewer TCPA violations? Why or why not?

In my opinion, a defense is better than an exemption. An affirmative defense places the burden on the business to prove it has complied with the law. A compliance program would be preferable to businesses turning a blind eye to how its third party lead generators are contacting consumers.