

Banking Lobbyists Back FCC Petition to Shield Companies from Penalties for Text Messaging Consumers

FOR IMMEDIATE RELEASE: DECEMBER 19, 2017 || **CONTACTS:** Margot Saunders (msaunders@nclc.org); Jan Kruse (jkruse@nclc.org) or (617) 542-8010

Robocallers want a “whoops” defense when they ignore consumers’ pleas to stop

WASHINGTON, D.C. - Outcome Health has petitioned the Federal Communications Commission (FCC) to allow companies to avoid liability for continuing to send unwanted text messages to consumers even after they have repeatedly asked for the texts to stop. Under the Telephone Consumer Protection Act (TCPA), companies can be held liable in court for such abusive and invasive practices, but Outcome Health’s petition asks that companies claiming that the messages were sent as a result of “an undetected and inadvertent technical error” should be shielded from liability. Allowing this petition would send a message that callers and texters can continue to bombard consumers with unwanted and illegal robocalls and texts without consequence.

The American Bankers Association, the Consumer Bankers Association, and the Financial Services Roundtable recently filed comments in support of Outcome Health’s petition. If the petition is granted, any company using automated text technology could simply claim an error occurred and it would then be shielded from the TCPA penalties for continuing to text consumers after they’ve revoked consent and asked for the texts to stop.

“This is an outrageous effort to allow businesses to circumvent a key consumer protection law. It would open the floodgates for robocallers to call and text a person repeatedly despite requests to stop. And it would seriously undermine the only federal law designed to protect consumers from unwanted calls and texts,” **said Margot Saunders, senior counsel at the National Consumer Law Center.**

Outcome Health’s petition erroneously argues that its request is grounded in a limited exception established in a 2012 FCC decision (Soundbite), which allowed a confirmation text message to be sent immediately after a consumer revoked consent to receive text messages. However, if the FCC approves Outcome Health’s request, it would shield unlimited text messages sent after a person revokes consent—no matter how many times the consumer asks that the texts stop, and no matter how long after consent is revoked—whenever the texting company claims that the problem was caused by a technical error.

“The TCPA does not allow an exemption from liability for calls or texts that are otherwise illegal under the law simply because the caller claims a mistake,” **Saunders added.** “Callers need to have robust systems in place to record and implement consumers’ requests to stop texting them. Moreover, the FCC is not in a position to take evidence and evaluate the veracity of the claims made in these petitions.”

Both Outcome Health and the banking trade groups argue that exemptions are needed because of “frivolous lawsuits” and “TCPA-driven trial lawyer abuse.” Yet data shows the TCPA is grossly under-used by consumers and their attorneys. Combined data from the FTC and FCC complaint databases shows while nearly 4 million complaints about robocalls and text messages were filed in 2016, in the

same year just 4,860 lawsuits were filed under the TCPA.

Comments urging the FCC to reject Outcome Health's request for this get-out-of-jail free card were submitted by the National Consumer Law Center, on behalf of its low-income clients, and Consumer Action, Consumer Federation of America, National Association of Consumer Advocates, Public Citizen, Public Knowledge, and U.S. PIRG. Consumers Union also submitted comments opposing Outcome Health's petition.