New FCC Ruling Supports Advocates’ Petition Urging it to Stop Unwanted Robocalls from Federal Contractors but Leaves Gray Area Regarding States’ Role

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WASHINGTON, D.C. – Yesterday, the Federal Communications Commission (FCC) issued an order granting in part a Petition for Reconsideration filed by the National Consumer Law Center on behalf of a broad coalition of national, state and local legal services groups challenging the agency’s 2016 Broadnet Declaratory Ruling. The 2016 FCC order had erroneously held that contractors of the federal government could be exempt from the Telephone Consumer Protection Act’s (TCPA) restrictions on automated calls. In a carefully worded order, Chairman Pai, on behalf of the full Commission, determined that government contractors are not exempt from compliance with the TCPA’s requirements. Yesterday’s order also holds that local governments are “persons” under the TCPA, and thus may not make non-emergency automated calls to cell phones without consent.

However, although the law is ambiguous, the Order also holds that state governments, as sovereigns, are—like the federal government—not covered by the restrictions of the TCPA. As a result, the Order holds that federal and state government callers “in the conduct of official business” are exempt from the consent requirements of the TCPA. Commissioners Rosenworcel and Commissioner Starks both filed partial dissents, arguing that the FCC should have used its discretion to interpret the TCPA to protect consumers from unwanted robocalls from state governments.

“Consumers, no matter their political beliefs, are united in their disdain for robocalls, and we applaud the FCC’s ruling that the TCPA’s important protections apply to federal contractors and local governments. However, this was a missed opportunity to clarify that all state government robocalls without consent are subject to the TCPA, too. Hopefully the FCC will revisit the decision in the future,” said National Consumer Law Center Senior Counsel Margot Saunders. “A key issue for evaluating the legality of calls made by state governments under this Broadnet order will be whether they are actually for the conduct of government business, rather than for political purposes.”

The National Consumer Law Center, on behalf of its low-income clients, and 50 other national, state and local civil legal aid, civil rights, and public interest groups filed a petition in July 2016 with the FCC urging reversal of its Declaratory Ruling in the Broadnet Teleservices case. The FCC’s ruling allowed federal contractors that are agents of the government to make unlimited robocalls to consumer cell phones without consent, and eliminated the ability of consumers to stop these calls. Numerous courts, including the Supreme Court, have ruled that the federal contractors must abide by the TCPA.

Learn more about NCLC’s work to end unwanted robocalls.

Related Links
• NCLC’s Comments Opposing Professional Services Council Petition for Reconsideration of Broadnet Ruling, Sept. 9, 2016
• Group comments to FCC opposing Mortgage Bankers Association request for exemption to allow robocalls without consent, Aug. 26, 2016