

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Rules and Regulations Implementing the) CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)

DECLARATORY RULING

Adopted: March 20, 2020

Released: March 20, 2020

By the Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. The COVID-19 pandemic has endangered American lives with a respiratory illness that has spread throughout the United States.1 Efforts to slow the spread of the disease depend in part on effective communications with the American public about measures such as social distancing that can mitigate transmission of the illness, as well as other health and safety information that could save lives.

2. With this Declaratory Ruling, we ensure that public health authorities can efficiently and effectively communicate vital health and safety information to the American people. Specifically, we confirm that the COVID-19 pandemic constitutes an "emergency" under the Telephone Consumer Protection Act (TCPA) and that consequently hospitals, health care providers, state and local health officials, and other government officials may lawfully communicate information about the novel coronavirus as well as mitigation measures without violating federal law.

II. BACKGROUND

3. Congress enacted the TCPA to address certain calling practices that invade consumer privacy and threaten public safety.2 In relevant part, the TCPA and the Commission's rules prohibit autodialed, prerecorded, or artificial voice calls to wireless telephone numbers and other specified recipients in most circumstances.3 The Commission has concluded that the TCPA's protections against unwanted calls to wireless numbers encompass both voice calls and text messages, including short message service (SMS) texts, if the call is made to a telephone number assigned to such service.4

4. The TCPA expressly excepts from this prohibition calls made for "emergency

1 See Centers for Disease Control and Prevention, Coronavirus (COVID-19), https://www.cdc.gov/coronavirus/2019-ncov/index.html (last visited Mar. 18, 2020).

2 The Telephone Consumer Protection Act (TCPA) is codified at section 227 of the Communications Act of 1934, as amended. See 47 U.S.C. § 227. Unless otherwise indicated, the term "automated calls" includes calls made either with an automatic telephone dialing system ("autodialer") or with a prerecorded or artificial voice.

3 See 47 U.S.C. § 227(b)(1), (b)(2)(C); 47 CFR § 64.1200(a)(1).

4 See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014, 14115, para. 165 (2003) (2003 TCPA Order); see also Satterfield v. Simon & Schuster, Inc., 569 F.3d 946 (9th Cir. 2009) (noting that text messaging is a form of communication used primarily between telephones and is therefore consistent with the definition of a "call").

purposes.”⁵ The Commission’s rules define “emergency purposes” to mean “calls made necessary in any situation affecting the health and safety of consumers.”⁶ The “emergency purposes” exception is intended for “instances [that] pose significant risks to public health and safety, and [where] the use of prerecorded message calls could speed the dissemination of information regarding . . . potentially hazardous conditions to the public.”⁷

III. DISCUSSION

5. On March 13, 2020, the President proclaimed that the COVID-19 outbreak in the United States constitutes a national emergency.⁸ Many state governors have also declared states of emergency.⁹ Efforts to slow the spread of the disease and mitigate strain on the nation’s health care system have resulted in the dramatic disruption of many aspects of Americans’ lives, including social distancing measures intended to prevent person-to-person transmission that have required the closure of schools, workplaces, and community institutions such as parks, restaurants, and houses of worship. A critical component of the nation’s efforts to address and contain this health-related emergency is the ability of health care and public safety organizations to communicate effectively with the public.

6. On our own motion, we confirm that certain callers may lawfully make automated calls and send automated text messages to wireless telephone numbers when such calls are necessary to protect the health and safety of citizens pursuant to the TCPA’s “emergency purposes” exception.¹⁰ In the *Blackboard-Edison Declaratory Ruling*, the Commission made clear that automated calls to wireless numbers made necessary by incidents of imminent danger including “health risks” affecting health and safety are made for an emergency purpose and do not require prior express consent to be lawful.¹¹

7. We find that the current pandemic constitutes such an imminent health risk to the public. In determining whether a call relating to the COVID-19 pandemic qualifies as a call made for an emergency purpose, we look to the identity of the caller and content of the call. *First*, the caller must be from a hospital, or be a health care provider, state or local health official, or other government official as well as a person under the express direction of such an organization and acting on its behalf. *Second*, the content of the call must be solely informational, made necessary because of the COVID-19 outbreak, and directly related to the imminent health or safety risk arising out of the COVID-19 outbreak.¹²

⁵ 47 U.S.C § 227(b)(1)(A)-(B).

⁶ See 47 CFR § 64.1200(f)(4).

⁷ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90, Report and Order, 7 FCC Rcd 8752, 8778, para. 51 (1992) (*1992 TCPA Order*).

⁸ See Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (Mar. 13, 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

⁹ See, e.g., Governor Newsom Declares State of Emergency to Help State Prepare for Broader Spread of COVID-19 (Mar. 4, 2020) <https://www.gov.ca.gov/2020/03/04/governor-newsom-declares-state-of-emergency-to-help-state-prepare-for-broader-spread-of-covid-19/>.

¹⁰ Pursuant to section 1.2 of the Commission’s rules, the Commission may, “on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.” 47 CFR § 1.2.

¹¹ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, *Blackboard, Inc. Petition for Expedited Declaratory Ruling*, CG Docket No. 02-278, Declaratory Ruling, 31 FCC Rcd 9054, 9063, para. 21 (2016) (*Blackboard-Edison Declaratory Ruling*) (concluding that calls or messages relating to weather closures, incidents of threats and/or imminent danger to the school due to fire, dangerous persons, health risks, and unexcused absences constitute calls made for an emergency purpose because they potentially affect the health and safety of students and faculty).

¹² See 47 CFR § 64.1200(f)(4), (12), (14); *Blackboard-Edison Declaratory Ruling*, 31 FCC Rcd at 9061, paras. 17-18.

8. Thus, a call originating from a hospital that provides vital and time-sensitive health and safety information that citizens welcome, expect, and rely upon to make decisions to slow the spread of the COVID-19 disease would fall squarely within an emergency purpose. An informational call designed to inform and update the public regarding measures to address the current pandemic made on behalf of, and at the express direction of, a health care provider would be made in a situation that “affect[s] the health and safety of consumers” and would thus be exempt.¹³ In turn, a call made by a county official to inform citizens of shelter-in-place requirements, quarantines, medically administered testing information, or school closures necessitated by the national emergency would be made for an emergency purpose as such measures are designed to inhibit the spread of the disease.¹⁴

9. In contrast, calls that contain advertising or telemarketing of services do not constitute calls made for an “emergency purpose” (e.g., advertising a commercial grocery delivery service, or selling or promoting health insurance, cleaning services, or home test kits). Calls made to collect debt, even if such debt arises from related health care treatment, are not made for an “emergency purpose,” as those calls are not time-sensitive, do not “affect the health and safety of consumers,” and are not directly related to an imminent health or safety risk.¹⁵ Such debt collection, advertising, or telemarketing automated calls require the prior express consent of the called party.¹⁶

10. Unscrupulous callers should not view the relief we provide here as a retreat from our aggressive work to combat illegal robocalls. As the COVID-19 pandemic continues to impact the United States, phone scammers have seized the opportunity to prey upon consumers. We are aware that some consumers have already received telemarketing and fraudulent robocalls related to the pandemic.¹⁷ For example, we have received reports of scam and hoax text messages and automated calls offering free home testing kits, promoting bogus cures, and preying on virus-related fears.¹⁸ We will be vigilant in monitoring complaints about these calls and will not hesitate to enforce our rules when appropriate.

¹³ See 47 CFR § 64.1200(f)(4); see also *Blackboard-Edison Declaratory Ruling*, 31 FCC Rcd at 9062, para. 20.

¹⁴ We note that the broader question of whether governments and their contractors are subject to the TCPA remains pending before the Commission, and nothing herein is intended to pre-judge those decisions. See *Petition of National Consumer Law Center et al. for Reconsideration of Declaratory Ruling and Request for Stay Pending Reconsideration*, CG Docket No. 02-278 (filed July 26, 2016). The calls described in this paragraph are provided as examples, not as an exhaustive list of calls permitted under this Declaratory Ruling.

¹⁵ See *1992 TCPA Order*, 7 FCC Rcd at 8778, para. 51.

¹⁶ See 47 CFR § 64.1200(a).

¹⁷ See Federal Communications Commission, *COVID-19 Consumer Warnings and Safety Tips* (<https://www.fcc.gov/covid-scams>) (last visited Mar. 20, 2020).

¹⁸ *Id.*

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to sections 1-4 and 227 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 227, sections 1.2 and 64.1200 of the Commission's rules, 47 CFR §§ 1.2, 64.1200, and the authority delegated in sections 0.141 and 0.361 of the rules, 47 CFR §§ 0.141, 0.361, that this Declaratory Ruling IS ADOPTED.

12. IT IS FURTHER ORDERED that this Declaratory Ruling shall be effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Patrick Webre
Chief
Consumer and Governmental Affairs Bureau