



February 24, 2015

The Honorable Edith Ramirez
Chairwoman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairwoman Ramirez:

On behalf of our over 3,000 members in 32 states, I want to thank you for holding today's workshop on *Examining U.S. Health Care Competition*. One of the issues not being addressed is the need for the healthcare sector to keep pace with technology.

Technology is driving our economy, yet in the healthcare sector, we are falling farther and farther behind by keeping outdated rules and regulations in place. This in turn keeps healthcare costs from coming down. One area we are seeing this in, is the continued reluctance of the FTC and FCC to address issues being raised by industry groups concerning the current rules and regulations governing the Telephone Consumer Protection Act (TCPA).

In politics, Social Security is called the "third rail" that politicians won't touch. In the healthcare sector we refer to the TCPA as our third rail because of the FTC, FCC or Congress' unwillingness to take a hard and honest look at the need to modernize this outdated regulation. We understand the need for the TCPA, but in today's global environment the FTC, FCC and Congress seem unwilling to allow industry to have an honest discussion about the TCPA, its original intent, and the need for reforms today.

It is ironic that our hospital partners can use auto dialer technology to call their patients on their landline, but cannot use the same technology to reach patients on their cell phones. We are not talking about telemarketing, nor are we talking about randomly generated phone numbers. We are talking about phone numbers given to us by patients. Even though the TCPA should protect us when patients provide these numbers, we are still seeing an increase in the number of lawsuits being filed. The TCPA was never meant to be a lottery of sorts for consumers and trial lawyers. It is meant to protect the public from unwanted telemarketing calls. We agree with that intent, but today the TCPA has become a vehicle for consumers and trial lawyers to pursue frivolous lawsuits for supposed violations of the TCPA.

The TCPA should be amended immediately to improve the communication infrastructure between and among consumers, and those service providers with whom consumers choose to engage. Proper communication between businesses and consumers is a vital

component of a strong consumer protection environment. It ensures consumers are made aware of changes they may not otherwise be made aware of, and provides them an opportunity to address pressing issues that stave off otherwise unavoidable, adverse financial action, such as foreclosure, negative credit reporting or litigation. We are not talking about telemarketing calls as some would suggest. **Changes to the TCPA would not change any of the current telemarketing rules and regulations.**

In the healthcare industry, if a physician needs to remind patients of their appointments or notify them their medication is ready, they have to utilize real people, when in fact this could be done more efficiently and effectively with the use of technology.

However, the TCPA prohibits all “person(s)” ***including healthcare providers or their agents*** from contacting consumers on their wireless phones by way of an auto dialer or prerecorded message. Notably, many of these same consumers do not even have landlines. Today 40% of homes do not have landlines, and therefore healthcare costs continue to escalate because we cannot utilize technologies making it more effective for us to stay connected to our patients. Modernizing the TCPA would make clear that consumers who provide their wireless numbers to service providers with whom they have a relationship, have granted the calling party consent to call them on their cell phone, even if the communication is actually initiated by an auto dialer or provides a prerecorded message.

The Affordable Care Act (ACA) requires hospitals and outpatient clinics to perform post-discharge follow-up with patients to reduce the rate of readmission, a big contributor to the cost of healthcare. We know the reminders, surveys, and education that have proven to lower readmission rates, can be successfully and cost effectively conducted by telephone. However, under the TCPA, these calls are high risk if the patient’s primary contact number is a mobile number and the patient didn’t expressly provide the mobile phone number for that purpose.

This issue has broad bi-partisan support in the House and Senate, as well as support by President Obama. Earlier this year, the President released his budget and included this very provision. In the proposal, the Administration recommends amending the Communications Act of 1934 to facilitate collection of debts owed to or guaranteed by the Federal Government by allowing contact with debtors on their cell phones. The President’s recommendation recognizes that an increasing share of households no longer have landlines, and rely instead on cell phones. This falls in line with the changes we are proposing.

It is a financial strain on a hospital or doctor’s office to try and determine if the phone number a patient left is a cell number or landline number. It also causes increases in the cost of the healthcare system when a hospital and/or doctor’s office cannot communicate with their patients, as now required by the ACA, using auto dialer technology, provided that these calls are not for telemarketing purposes and are not randomly generated.

The TCPA needs to keep pace with the rate at which technology is changing and how it is being used by businesses and consumers. We strongly urge the FTC to begin an honest dialogue with the industry, and look at the need for modernizing the TCPA. Regulations need to keep pace with the use of technology and this is one case where technology has clearly outpaced the intent of regulations. Change is needed and we hope the FTC will move on this issue this year.

Sincerely,



Victoria Di Tomaso, CRCE-I, System Director, Central Business Office
Lee Memorial Health System
AAHAM President
11240 Waples Mill Road
Suite 200
Fairfax, VA 22030