Subject: FCC TCPA Press release + transcript

Raw transcript:

The final item on your agenda will be presented by the consumer and governmental affairs bureau. It is entitled Rules And Regulations Implementing The Telephone Consumer Protection Act of 1991.

Thank you very much.

Another first appearance sitting in the big chair, Alison Kutler, we are happy and proud to welcome you as the new Chief of Consumer And Governmental Affairs Bureau and welcome to your first presentation before the commission, which I think it's also your first commission meeting ever.

Correct.

The floor is yours.

Thank you. Good morning Mr. Chairman or good afternoon, and commissioners. Today I am pleased to introduce an item that addresses 21 request for the commission action on the topic of robo calls which includes robotech. Since the law that protects consumers against unwanted calls was enacted in 1991, the commission has consistently endeavored to protect consumers without inhibiting business interests. Communication. Despite these efforts, complaints as a whole are the largest category of consumer complaints we receive, and complaints regarding calls to wireless phone numbers are consistently one of the top consumer concerns. At the same time, petitions filed with the commission raise questions about the application to new technology and about well-settled long standard commission president [precedent?].

The declaratory ruling in order before you today provides clarity on an array of issues consumers and businesses care about including what calling equipment triggers the consumer consent requirement and whether consumers can revoke previous consent. For the first time, the item would clear the path for carriers to offer call blocking technologies to consumers who want to take back control of their phones. The decision before you today faithfully carries out the spirit and letter of the CPTA, sends a clear message that consumers have the right to control calls and text they receive and recognizes the legitimate interest of the callers. Before turning the presentation over, I would like to thank the other bureaus and offices at the commission for their input and collaboration. The Office of General Counsel, the Enforcement Bureau, the Wireline Competition Bureau, Office of Strategic Planning and Public Safety and Homeland Security Bureau. With me at the table are Curt Schroder, Chief of The Consumer Policy Division, John Adams, the Deputy at division and the attorney adviser who will present the item. :

Good afternoon Mr. Chairman and commissioners. The telephone consumer protection act was enacted in 1991 to address robo calls that pose risk to public safety. It requires a caller use an automatic dialing system and artificial voice or prerecorded voice to obtain previous consent for making nonemergency calls to wireless numbers or emergency lines among other locations and the TCPA requires prior consent for residential telephone lines using artificial or prerecorded voice. If any of these calls are for telemarketing purposes consent must be in writing. If not the consent maybe oral or written.

The declaratory ruling in order before you resolves 19 petitions for declaratory rulings are exemptions, a petition for rulemaking and a letter containing a request for clarification. These filings raised several distinct questions. By resolving these questions the commission gives consumers more control over the calls they receive and provides callers clarity about the calls they may lawfully make. Specifically the item clarifies that nothing in the communications act or the commission's rules prohibit carriers or other service providers from implementing consumer initiated call blocking technology. As such, wireline and wireless carriers as well as VOIP providers are free to provide consumers with services and technologies to block unwanted robo calls. The item also clarifies that the TCPA requires the consent of the actual call party, the subscriber to a phone number or the customary user of that number, not the intended recipient of the call. Callers will therefore have an incentive to use best practices such as database checks her e-mail confirmation to ensure they are actually calling the person and not another one who has the number reassigned. It finds it reasonable for the caller to have one opportunity to call in number to learn whether it's been reassigned before facing liability.

The item addresses several other issues regarding consent and it clarifies the consumers who previously consented to robo calls may revoke that consent at any time and through any reasonable means and that being on an acquaintances wireless phone contact list is not consent to receive robo calls from providers of third-party applications downloaded by the acquaintance, that consent survives when a phone number is ported from wireline to wireless and that prerecorded call setup information provided by the select call services including inmate call collect services is not a separate robo call requiring consent.

With regard to the TCPA rules that became effective in 2013, the item clarifies that a one-time on-demand text sent in response to consumer requests do not require separate consent and grant a limited waiver of the written consent rules of the petitioners may obtain updated consent from consumers to get written consent under the previous role. Further the item affirms the commission's past interpretations that if dialing equipment has the capacity even with some modification to dial random or sequential numbers it is an auto dialer. As a result, consumer consent is required for voice calls and text made within autodialer even if the callers not currently or presently dialing random or sequential phone numbers but is instead calling a set list of numbers.

The item also clarifies several of the TCPA terms. It clarifies the term capacity in the definition of autodialer is not unbounded or so broad as to make any equipment that can dial a number and autodialer. Addressing a question about who makes the call and is there for responsible for that call under the TCPA, the item clarifies an application provider that plays a minimum role in making a call such as just providing the application itself, but not the message content is not the maker of the call for purposes of the TCPA. The item reiterates to conclusions that text messages are calls under the TCPA making autodialed text messages subject to the consent requirement just like any other robo call to a wireless number and consumers are equally protected from telemarketing and informational calls to their wireless numbers that they don't want to receive those calls. The item also clarifies that an internet phone text message or an e-mail is addressed to wireless phone number and converted to a text message is covered by the TCPA.

Finally, the item grant exemptions from the TCPA consumer consent requirement for time sensitive financial alerts and healthcare related calls that are free to the consumer. The exemptions are subject to strict conditions to protect consumer privacy including prohibition on telemarketing and debt collection content and requirement that each message provide a way to opt out a future messages. We recommend adoption of this item and request editorial privileges. Thank you. Thank you very much

Commissioner Clyburn: Today the commission responds to 21 positions by a number of companies and trade organizations for relief and clarification on compliance with the telephone consumer protection act. Robo calls or prerecorded messages delivered by a computerized autodialer, which are covered by the TCPA are the subject of the highest number of complaints received at this commission. The record clearly demonstrates that just as many companies are aggressively using these autodialers to reach consumers in a lawful manner. Consumer advocates including members of the legislative branch are with equal vigor expressing concerns about the persistence of high volumes of unwanted communications. I am pleased that this declaratory ruling makes clear that we will maintain the consumer protections the act intended.

I understand that many companies feel this ruling does not go far enough in delineating how far and within what guidelines a business may communicate with consumers using autodialer technology. I believe however that by reaffirming the broad interpretation of the definition of an autodialer and by affirming the commitment to Congressional intent, we will further incentivize businesses to take the necessary steps to obtain prior consent when it comes to these communications. The commission is striking a difficult, but necessary balance in this item. Over the course of this proceeding, my office has received significant feedback from companies that are trying to reach consumers who gave prior consent to be contacted, but then that very same consent is effectively revoked when the person's number is reassigned. I am sympathetic to the challenges these companies face since the absence of a comprehensive database of reassigned phone numbers may be an issue.

I also appreciate how the commission has attempted to provide some buffer for companies acting in good faith by allowing them one call post reassignment in order to affirm any number reassigned. But I would like to see more. I am not going so far as to mandate any provider participates in the maintenance of a database of reassigned numbers however I would encourage voluntary participation by all providers and some type of comprehensive database or reassigned numbers. Another option suggestion in the record that might have merit would be that carriers establish a minimum times he would before reassigning numbers. Another issue raised is the limited free to end user call exemptions we provide here today in the cases of notifications regarding financial services and healthcare matters. These exemptions ensure that consumers do not suffer traumatic harm to their personal or financial health and security because of a lack of access to timely alerts, even so, I agree with commenters who are concerned that even these alerts could annoy consumers who have not provided prior consent so I believe the required immediate opt out mechanisms and the limited number of calls permitted balance the need for urgent information with the risk of intro should.

Finally, I believe that the decision to provide the clarity requested by the attorneys general is a win. The commission finds no legal barriers to carriers wishing to offer access to consumer call blocking tools in this ruling and providing consumers with tools that empower them to take control over the communications they receive is consistent with the intent of TCPA and is exactly the type of offering that we want to encourage carriers to provide.

To those concerned that today's decision to affirm the broad application of TCPA may result in consumers losing access to valued communications, I simply say that we will remain vigilant. Consumers have not hesitated to express their concerns about receiving unwanted calls through our complaint process and I have no doubt they will do the same if access is unintentionally lost. I would like to thank the staff of the consumer and governmental affairs bureau. I have not forgotten, for their hard work on this item particularly our former chair Kris Monteith. Your passionate vision is evident. I of course welcome the new Bureau Chief Alison Kutler to the team. Thank you.

Thank you, commissioner.

Commissioner Rosenworcel: Picture this. A family sits down to the dinner table. It's more than an occasion to eat. It's a chance to tell tales of the day and reconnect in a busy world where the demands on our time can feel unrelenting. I know the scene while because in my household with two parents, two jobs, two kids and very little time in the day, the dinner hour is sacred. But all too often the bliss of this ritual is interrupted by Rachel from cardmember services [laughing] by an announcement that we have been preapproved for a cruise or a credit card or by any number of other robo calls presenting us with information we did not ask for, do not want and do not need. I detest robo calls. I'm not alone. Year in and year out the telephone consumer protection act complaints are the largest category of complaints consumers lodge with us at the commission. We received thousands of complaints among and our friends across town at the FTC received tens of thousands more. At one point receiving nearly 200,000 in a single month.

It is time. Long past time to do something about this. This is exactly why Congress passed the telephone consumer protection act which paved the way for the Do Not Call Act and registry. Like any law, these are not foolproof but if we update the policies we cannot only give the modern meaning we can help find new ways to honor our cherished right to be left alone. In some ways we achieve this lofty goal today, but in others I think we fall short.

First, the good stuff. We bring clarity to the lock and empower consumers with tools to avoid unwanted harassing calls. Specifically we make clear that nothing in the law prevents phone companies from deploying the latest technologies to block unwanted robo calls. We also make clear that consumers have the right to revoke any prior consent to receive robo calls. When a consumer no longer wants to receive a company's robo calls they have the unequivocal right to say stop. These efforts will help consumers manage robo call reduce unwanted intrusions and bring more peace to the dinner hour.

Next, the imperfect. Consumers have made clear, abundantly clear they want you were [no more] robo calls. So I do not understand why for some sectors of the economy the commission gives the greenlight for more robo calls when consumers want a red one. The telephone consumer protection act is straightforward. It requires the company to get a consumer’s prior expressed consent before making robo calls to their number. But today, we do away with this requirement for big banks, healthcare providers and pharmaceutical companies. They get a loophole. This order coaches this exemption and high-minded rhetoric about informing consumers about the upcoming healthcare appointments and threats to their credit.

Despite this rhetoric, the result is obvious, consumers can expect to receive more robo calls from healthcare providers and banking institutions. Moreover, this puts the commission in the ridiculous business of policing speech made in the calls and itemizing the number of calls permitted by these entities. The same result could be accomplished through private contract. Every one of us knows that. Every one of us signed countless forms to see a doctor or set up a bank account or arrange a loan. Giving our consent on these forms is not only sensible, it would get this agency out of the business of enumerating what calls can be made and what can be said on those calls because, I think we need fewer robo calls and not more on this aspect of today's decision, I dissent.

Finally, I want to note that we have more work to do. Just last week the senate special committee on aging held a hearing about robo calls and scams in which bad actors prey on consumers by faking or spoofing caller id information. Call spoofing can be a pernicious tactic confusing consumers who believe they are getting calls from a legitimate government agency or company when in fact, it's a scammer on the other end of the line. We need to crack down on this predatory behavior and if we lack the tools to do so we need to revise our policies or seek help from Congress for ways to better protect consumers. In addition, we need to give serious consideration to how the robo call policies impact schools. To prevent truancy and create early warning for possible child abduction, many school districts call parents to alert them when students are not in class. Their efforts are getting caught in a web of lawsuits and the commission needs to take a hard look at how to fix this. I know this has been a rollicking effort and a contentious proceeding, but in many ways, today's efforts will bring a little more relief from commercial solicitation, a little more quiet in our homes and a little more peace to the dinner hour and to the extent it does, today's decision has my support.

Thank you, commissioner and the point you made about school alerts and this sort of thing very well taken. We do want those. Absolutely. Thank you.

Commissioner Ty. The telephone consumer protection act or TCPA to crack down on intrusive tele- marketers and scam artists, the TCPA prohibits telemarketing in violation of the Do Not Call rules and prohibits any person for making calls using the tool that telemarket or has their disposal in 1991. The TCPA includes a three prong enforcement mechanism for remedying violations. States, the FCC and individual consumers can each take illegal telemarketers to court. Statutory penalties starting at $500 per violation.

Problems persist. Last year, the FCC received 96,288 complaints for violations of federal do not call rules. More than any other category of complaints. Just last week, as my colleague Commissioner Rosenworcel pointed out the Senate Special Committee On Aging held a hearing on ending the epidemic of marketing calls. At that hearing the Attorney General Of Missouri testified the number one complaint he receives his illegal telemarketing. His office alone received more than 52000 telemarketing complaints in 2014. The Federal Trade Commission reported that increasingly, fraudsters who hide in other countries in an attempt to escape detection and punishment make robo calls that harass and defraud customers. The FTC noted a single scam artist made over 8 million deceptive robo calls to americans.

The bottom line is this, far too many Americans are receiving far too many fraudulent telemarketing calls. I know because my family and I get them on our cell phones during the day and on our home phones at night. I have to say parenthetically that I cannot identify with the rule Commissioner Rosenworcel set. She lost me at you sit down at the table. But seriously this problem is in fact, getting worse.

None of this should be news to the FCC. I remarked in this very room back in January, unwanted telemarketing calls in violation of the national Do Not Call registry are on the rise. In fact, such complaints made up almost 40 percent of consumer complaints at the latest report and the number jumped dramatically last year from 19,093 to . Let's fix this problem.

Fast forward five months. What has the commission done since then to enforce the rules? It has issued a single citation to a single potential violator of federal Do Not Call rules. Almost 1,000 complaints last year, one citation. That's not going to solve the problem. -- 100,000. The courts have not been better. The TCPA private right of action of $500 statutory penalty could incentivize marketers and fraudsters and trial lawyers have found domestic business much more profitable targets. As Adonis Hoffman known to many of these calls observed earlier in the Wall Street Journal a trial lawyer can elect about $2.4 million per lawsuit by targeting American companies so it's no surprise that the TCPA has become the poster child for lawsuit abuse. With the number of TCPA cases filed each year skyrocketing from 14 in 2008, 21,998 in the first four months in 2015.

Here's one example. The Los Angeles Lakers offered bands a fun opportunity. Send a text message to the team and you can place a personalized message on the Jumbotron at the Staples Center. Lakers acknowledged each text with a reply making clear that not every message would appear on the Jumbotron. The response a class action lawsuit claimed that every response was a violation of the TCPA.

Here's another case, taxi magic sent confirmatory text messages to customers who called for attack -- a cap. It indicated the cap number and when they were dispatched to the customer location. The customers appreciate the service and I bet they did, but one attorney sought instead an opportunity to profit and a lawsuit swiftly followed. Some lawyers go to ridiculous lengths. They've asked family members friends and significant others to download calling, voicemail and texting apps in order to sue the company's behind each app. Others have bought cheap prepaid wireless phones so they could sue any business that calls him by accident. One man in California hired staff to log every wrong number call he received to issue demand letters to reported violators and negotiate settlements. Only after he was the lead plaintiff in over 600 lawsuits the courts finally agreed he was a fix issues lydia and [vexatious litigant].

In practice the TCPA has strayed beyond its original purpose. And the FCC has the power to fix that. We could be taking an aggressive enforcement action against those that violate the federal Do Not Call rules and establish a safe harbor so carriers could block spoofed calls from overseas without fear of liability and we could be shutting down the abuse of lawsuits by closing the legal loopholes that unscrupulous trial lawyers have excluded for legitimate communications. Instead the order takes the opposite tack. Rather than focus on the illegal telemarketing calls that consumers really care about and hate, the order twists the words further to target useful communications between legitimate businesses and their customers. This order will make abuse of the TCPA watch much easier. The primary beneficiaries will be trial lawyers, not American consumers.

My written dissent will lay out my objections in more detail I will highlight through the ways the order makes things worse. First, the order dramatically expands the TCPA reach. Right now the act applies to what we call automatic dialing systems. Think clunky 19 era machines that automatically dial every seven digit number. After this order, each and every smartphone, tablet, VOIP phone, calling app, texting app, pretty much any phone that's not a rotary dial phone will be an automatic telephone dialing system.

What does that mean in the real world? It means we are taking the focus of telemarketing fraud and sweeping all kinds of phone calls within the TCPA. Consider this example. Jim meets jane at a party. The next day he wants to follow up on their conversation and ask her out for lunch. He gets her cell phone number from mutual friends and calls her from his smartphone. Pursued to the order, Jim has violated the TCPA and Jane could sue him for $500 in statutory damages. If he follows up with a text message it's another 500-dollar violation.

Second, the order opens the floodgates to more TCPA litigation against good faith actors. For example, there is no TCPA liability if the caller obtains the prior express consent of the called party. Accordingly many businesses only call consumers who have given their prior express consent. The problem is consumers often give up their phone numbers, which are then reassigned to other people and when that happens, consumers don't preemptively contact every business to whom they've given their number. So even though most well intentioned and well informed business will sometimes call a number that's been reassigned to a new person. After all over 37 million telephone numbers are reassigned each year. And no authoritative database, certainly not one overseen by the FCC exists to track all of the disconnected preassigned telephone numbers or to link all consumer names with their telephone numbers.

The order makes the situation for good faith actors worse by imposing a strict liability standard. That is even if the company had no reason to know it's calling the wrong number, it will be liable. This will help trial lawyers update their business model for the digital age. Don't take my word for it, just ask Rubio's, a West Coast restaurant. They send text message about food safety issues like to board illnesses to better ensure the health and safety of their customers. When one employee lost his phone, his wireless carrier reassigned his number to somebody else. Unaware of the reassignment, they kept sending text to what it thought was its employee phone number. The new subscriber never asked them to stop texting him. At least not until he sued them in court for nearly half million dollars.

Third, the order will make it harder to enforce our prohibitions on the legal advertising. That's because the order contains a special carveout for the prison payphone industry. This dispensation, but that industry make prerecorded voice calls to consumers to set up a billing relationship to pay for future services. You might have no interest in receiving phone calls from those behind bars. Prison payphone providers will be able to robo call you anyway. This exemption opens the door to more actual robo calls, the same type of robotic calls that made Rachel from cardholder services infamous. The rationale provided by the commission to justify this position is a roadmap for those seeking a lawful way to avoid our rules. I don't support creating a loophole. My view apart from truly exigent circumstances, the FCC should not condone new robo calls to American consumers, period.

There is of course, much more to the order. Many of the decisions reiterate well-known support are just the TCPA applies to text messages, as consumers have the right to revoke prior consent and yes, a cure may provide call blocking services with their customer's consent. None of these are surprising outcomes but none advance the ball for the decisions that strike new ground if you are good law. For instant app providers won't face liability because they don't initiate calls placed other users.

Most of the decisions in this item just shift the burden of compliance away from telemarketers onto legitimate businesses sometimes in a absurd ways. For instance how could any retail business possibly comply with the requirement that consumers can revoke consents orally at any will payment location. They have to record and review every single conversation between customers and employees as in a harried cashier at McDonald's has to be trained in the nuances of consumer consent for TCPA purposes? The prospect makes one grimace. In all the orders likely to lead the American consumer not to mention legitimate American businesses were often that's nothing we should support and for all these reasons I respectfully dissent. [applause] :

Commissioner O'Rielly. : Before I begin my formal statement I thought I would discuss the process used to get to this point. I recently ended a conference speech by sharing a core belief. All we have in life is the good name given to us by our family and our word. After 14 months working on this issue it is clear the process brought out a new low I've never seen in politics or policy making, which is saying something. Along the way some of us were led to believe we were working together to find resolution and instead we are deceived to produce one of the most slanted documents I’ve ever seen and I will not be so naïve to trust again certain people in leadership positions at the commission.

Today's order has been held as protecting Americans from harassing robo calls and taxes. It's a farce. Instead it penalizes business acting in good faith to reach their customers using modern technology. I'm sure will be said we are putting half of the petitions before us and that's a misleading point because many petitions were filed due to the belief that the commission would not do anything to properly address big issues re assigned numbers and autodialers. I've made clear on multiple occasions that I do not condone abusive calling practices. In fact, I’ve been working for over a year in the hopes of advancing an item that would protect and simmers from unwanted communications and enabling legitimate businesses to reach individuals that want to be contacted. That's the balance in the TCPA in 1995. Unfortunately that balance has been turned on its head by prior FCC decisions that expanded the scope of TCPA and through litigation across the country in many cases further increase liability for good actors. As my colleagues that it's been reported over 2000 TCPA class action lawsuits were filed in 2014 alone.

Far from protecting consumers, this current state of affairs where companies must choose between potentially crushing damages under the TCPA or cease providing valuable communication specifically requested by consumers contravenes Congress' intent that the statute not interfere with normal expected and desired communication that consumers have expressly consented to receive. These include alerts from a school that a child did not arrive at school or that the building is on lockdown, product recall and safety notifications, notifications of utility outages, immunization reminders for underserved or low income population, tweets and other social media updates and instant message notifications received by text. Updates from airlines to let consumers know their flight has been delayed. Moreover, this is despite the evidence in the record of the benefits of informational calls and text. Indeed other federal agencies including the department of health and human services have been promoting text messages as a way to benefit Americans. Some agencies require companies to make certain number of calls to consumers. Additionally companies may be obligated under state law to contact their consumers. The record also shows these types of services are popular with consumers as long as they provide timely and relevant information supporting examples are provided in my complete written statement. The commission's unfathomable action today further expands the scope of TCPA and sweeps in a variety of communication either by denying relief outright or by penalizing companies to dial-in number that unbeknownst to them has been reassigned to someone else. Indeed the order paints companies from virtually every sector of the economy as bad actors even when they're acting in good faith to reach their customers. Incredibly it concludes consumers experience the real harm in a harm and intrusion of privacy by receiving as few as 2 straight calls or text. To be sure the FCC merrily selects calls and text it thinks consumers should receive and allows them under very limited circumstances. I approve the relief provided to the extent it is granted, but cautioned it may not be helpful as some would claim. I'm not even sure it is workable. Otherwise the decision today will make it much harder for consumers to receive information that they want and need and will discourage companies from pursuing services that customers may find beneficial. Therefore, I strongly dissent from the remainder of the order.

Starting with the threshold issue I disagree with the premise that TCPA applies to text messages. The TCPA was enacted in 1991, before the first text message was ever sent. The commission should have gone back to Congress for clear guidance on this issue rather than shoehorn a broken regime on completely different technology. The order also impermissibly expanded statutory definition of an automatic telephone dialing system or an auto dialer far beyond what this TCPA contemplated.

First, the TCPA to find auto dialer as equipment that has the capacity to perform specific functions therefore it seems obvious the equipment must have the capacity to function as an auto dialer when the call is made. Not at some undefined future point in time. Moreover it bars companies from using autodialers to make any calls certain exemptions. It indicates the equipment must in fact be used as an auto dialer to make the calls. Not so according to the order. Equipment that could conceivably function as an auto dialer in the future comes as an auto dialer today indeed the new definition is so expansive that the FCC has to use a rotary phone as an example of technology that would not be covered because the modification needed to make an auto dialer would be too extensive. That is like the FAA regulating vehicles because with enough modifications, cars and trucks could fly and then using an example of a skateboard as a vehicle that does not meet that definition.

Second, the order misreads the statute by including equipment that has the capacity to call from a list of numbers. That is not what the TCPA says. Third, the commission previously declared to be considered automatic an auto dialer must function without human intervention therefore, it should be clear that non-de minimus human intervention would disqualify it from being an auto dialer. Fourth, distinction drawn between different types of apps is without merit. What is true that different apps may require different levels of engagement by the user, before sending messages to the contact, no messages would be sent at all , but for the user signing up for the service.

Turning to reassigned numbers, every day an estimated 100,000 cell phone numbers are recycled to new users. As a result, numerous companies acting in good faith contact customers who have consented to receive calls or text are exposed to liability when it turns out the numbers have been reassigned without their knowledge.

Today's order offers companies fake relief instead of a solution, one free pass. That is if a company makes a single call or text to a number that has been reassigned, the company would not be liable for that single contact. If the call is made to a wrong number, misdialed, no free pass at all. Indeed we may have provided a new way for consumers acting in bad faith to entrap legitimate companies. A person could take a call, never let on is the wrong person and receive subsequent calls solely to trip the liability trap. The idea that after one call a caller would have constructive knowledge that a number has been reassigned even if there was no response is absolutely ludicrous . The FCC expects callers to divine from silent the current status of a telephone number. Think about this in the context of twitter which consumers can set to text. Before twitter could even realize the number has been reassigned, they are already liable for hundreds or perhaps thousands of violations. The only solution is to stop the practice entirely. The FCC points to a list of suggestions in the record to help callers determine whether number has been reassigned such as checking a number database than the item does not provide any database or save over for doing so moreover some relief is anti-consumer, for example, the FCC notes that companies could require consumers to give consent to notify companies when they push their numbers. If they do not the FCC may observe that they seek remedies. In other words, the FCC thinks it is reasonable to have companies to their own customers . Sadly reasonable options the commission rejected. In particular a number of petitioners and commenters as the FCC to interpret call party intended recipient. This commonsense approach would have allowed a company to rely on consent obtained for particular numbers.

The order also decides that TCPA inc. Foods a right to revoke consent to receive non-telemarketing calls. At this right appears nowhere in the statute. Instead the order turns to common law principles to read in the statute a right to revoke consent. Talk about bureaucratic action and some. As a longtime staffer I was stunned by this analysis. Usually we start with the premise that the statute says what it means and means what it says. If Congress did not address an issue then the FCC should not presume to act and instead. I do not assume why the FCC would resort to these principles before returning to Congress for guidance or request a statutory fix. Clearly this is an area Congress has been active not just on TCPA generally, but on the very issue of revocation of consent. The order does grant relief in limited circumstances and varied merrily. Mainly to enable consumers to receive fraud alerts, data breach information, medical appointment and refill reminders, hospital registration and discharge information and home health care instructions. I support the relief to the extent it's provided, but would've gone further. Everyone will soon know that even the relief granted is limited and potentially unworkable. In sum, I am beyond incredibly disappointed in the outcome today. It will leave to more litigation that burdens on legitimate businesses without protecting consumers from robo calls made by bad actors. I dissent in part and approved in part for the reasons discussed.

: Thank you, commissioner. As we've heard multiple time today at robo calls are the number one complaint FCC's receives from American consumers. Last year that number was about 215,000 individuals that took time to write us asking we do something about the annoyance of robo calls. I am with them. This is a bipartisan issue. Surprise. 39 state attorneys general of both parties have written us saying will you do the kinds of things we are doing today. And why are these rulings necessary because technology has outpaced the implementation of the consumer telephone protection act. When the act was passed in 19915 people were making cold calls. Today those calls are made by machines. And that technology has made it cheaper and as a result there's been an explosion in the number of calls and explosion which has been aided by exploiting the wording of our rules to claim a route whole -- a loophole for automatic equipment. Clever lawyers have said the explosion in robo calls by claiming if the company substitutes software for hardware to drive the calls and/or does not call from the list that they are exempt from our rules. Today we do what Congress gave us the authority to do and that is to keep the enforcement of the law up to date with technology such as text messages, such as automated equipment. Because the loophole that has been excluded heretofore because we haven't had said the expansion of robo calls. It is now closed. Make no mistake about it, there are appropriate applications for automatic calling technology like when the consumer has granted permission or asked to be notified. There are sensible exception like when the delivery company notifies you that a package is coming your way when you did not give permission because she did not know there was a package similarly your bank should be able to call you about fraud concerned about a health emergency. But these legitimate purposes should not be a smokescreen that allows the opening of the door to unwanted calls.

There is a simple concept in the statute that we embrace today. You cannot be called unless you consent to be called. The consumer should be in control. The first way consumers can accomplish this is to tell their phone company to block calls from robo call numbers. The phone companies have resisted doing this because they said the FCC would not allow them to do so. Today that issue is cleared up. Phone companies, please start letting your consumers request to have robo calls blocked. We are also instituting a one strike rule to deal with the way in which mobile phone numbers are frequently reassigned. The new user of a reassigned phone number should not have to put up with being abused by callers for the old user of the phone number. Let me give you an example. We heard from one consumer in that flood of comments we hear from america, one consumer told us that their phone number, their new phone number, was inundated with 27,809 unsolicited text messages over 17 months despite repeated request to stop. That is 27,808 too many annoyances. And it stops today. We have heard a lot about class action lawsuits. If there is a problem in this regard, the proper form for resolution is Congress. Not the FCC. Congress explicitly gave consumers a private right of action to sue for those who violate TCPA. I am amazed that some of my colleagues who have strict adherence to the statute have flexibility in the law to allow of latitude to figure robo callers over consumers to do so in the name of stopping lawsuits expressly authorized by Congress. Congress told us to shut down unwanted calls. They are instructions including the instructions to keep up with technology were unambiguous. We will not turn our back on 215,000 Americans who were frustrated enough they turned to us for help. Listening to Congress, the American people, the message is clear, no un-authorized, automated calls. Stop it and stop it today. I will now call for the vote. All in favor say aye. Any opposed? The ayes have it. Are you looking at me commissioner? : i'm looking at you but don't worry about it. [laughing] : the ayes have it. The item is adopted and the request for editorial privileges is granted with the objection noted. Would any of my colleagues like to make any announcement at this time? Commissioner.