

Case No. 15-1211

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ACA International,

Petitioner,

v.

Federal Communications Commission,
named as United States of America,

Respondent.

AMENDED PETITION FOR REVIEW

ACA International hereby petitions this Court for review of the order of the Federal Communications Commission titled “Declaratory Ruling and Order,” *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, released on July 10, 2015, a copy of which accompanies this petition as Exhibit A. This amended petition replaces and supersedes the Petition for Review (July 10, 2015).

I

Nature of the Proceedings as to Which Review Is Sought

ACA International filed a petition for rulemaking with the Federal Communications Commission on February 11, 2014. The Commission

considered ACA's petition along with other petitions for clarification or expedited clarification, for a declaratory ruling or an expedited declaratory ruling, for an exemption, for rulemaking or expedited rulemaking, or for special temporary relief, under its dockets numbered GC Docket No. 02-278 and WC Docket No. 07-135. The Commission disposed of all such pending petitions in the order titled "Declaratory Ruling and Order," *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, released on July 10, 2015, a copy of which accompanies this petition as Exhibit A.

II

Facts on Which Venue Is Based

Pursuant to 28 U.S.C. § 2343, "[t]he venue of a proceeding under this chapter is in the judicial circuit in which the petitioner resides or has its principal office, or in the United States Court of Appeals for the District of Columbia Circuit." Venue therefore lies properly in this Court.

III

Grounds on Which Relief Is Sought

ACA International seeks relief on these grounds:

- (1) The Federal Communications Commission's treatment of "capacity" within the definition of an "automatic telephone dialing system" under the Telephone Consumer Protection Act is arbitrary, capricious, and an abuse of discretion, and results in an approach that does not comport with a caller's constitutional rights of due process and freedom of speech and that disregards the applicable statute.
- (2) The Commission's treatment of predictive dialers is not in accordance with law, and exceeded the Commission's statutory authority, in that it expands the statutory definition of an "automatic telephone dialing system" under the Telephone Consumer Protection Act beyond the definition that Congress enacted.
- (3) The Commission's treatment of "prior express consent" (including its treatment of reassigned numbers) was arbitrary, capricious, and an abuse of discretion, and does not comport with a caller's constitutional right of due process.
- (4) The Commission's order, both with respect to the topics enumerated above and otherwise, was arbitrary, capricious, and

an abuse of discretion because it disregards Congress's findings in the Telephone Consumer Protection Act, the statute from which the Commission's jurisdiction and authority derive.

IV **Relief Prayed**

ACA International therefore prays that this Court—

- (1) hold unlawful and set aside the Federal Communications Commission's treatment of "capacity" within the definition of an "automatic telephone dialing system" under the Telephone Consumer Protection Act, and compel the Commission to treat "capacity" in a way that comports with a caller's rights of due process and freedom of speech;
- (2) hold unlawful and set aside the Commission's treatment of predictive dialers, and compel the Commission to treat them in a way that does not expand the statutory definition of an "automatic telephone dialing system" under the Telephone Consumer Protection Act beyond the definition that Congress enacted;

- (3) hold unlawful and set aside the Commission's treatment of prior express consent, including the Commission's treatment of reassigned numbers, and compel the Commission to either—
- (A) establish a viable safe harbor for autodialed “wrong number” non-telemarketing calls to reassigned wireless numbers, or
- (b) define “called party” as a call's intended recipient.

July 13, 2015.

DYKEMA GOSSETT PLLC

/s/ Brian Melendez

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Certificate of Service

Within one business day of this petition for review being filed:

- (a) I will cause a date-stamped copy of this petition to be served by hand on these persons:

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Federal Communications Commission
Eighth Floor
445 Twelfth Street, SW
Washington, DC 20554

The Honorable Loretta E. Lynch
The Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

- (b) I will cause a copy of this petition to be served by first-class mail, postage prepaid, on these parties admitted to participate in the agency proceedings:

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