



INTERGOVERNMENTAL ADVISORY COMMITTEE
to the
FEDERAL COMMUNICATIONS COMMISSION
ADVISORY RECOMMENDATION No: 2015-6

In the Matter of Telephone Consumer Protection Act (TCPA); (regarding: (DA No. 14-1700). (Dkt No 07-135 02-278))

The Intergovernmental Advisory Committee ("IAC") to the Federal Communications Commission ("Commission") submits this Advisory Recommendation regarding the above referenced Public Notice addressing the TCPA Issues.

1. Robocalls are unsolicited prerecorded telemarketing calls to landline home telephones, and all autodialed or prerecorded calls or text messages to wireless numbers, emergency numbers, and patient rooms at health care facilities. (<https://www.fcc.gov/guides/robocalls>)

2. Pursuant to its authority under the Telephone Consumer Protection Act (TCPA), the FCC established, together with the Federal Trade Commission (FTC), a national Do Not Call Registry. That registry has worked very well to reduce the number of unsolicited marketing and other calls received by Americans. However, IAC members have heard from constituents about problems associated with robocalls to PSAPs, law enforcement agencies, schools, government offices, health care centers, and other public safety institutions. Such calls frequently tie up communication lines, preventing legitimate emergency and public

necessity calls from being received.

3. Although robocalls could be protected speech under the U.S. Constitution, when the calls are made not to individuals, but to government entities, such calls pose a threat to the effective operations of public safety organizations to which the public is entitled, as well as the conduct of essential government business. Incidentally, any First Amendment concerns are reduced due to the fact that government agencies are prohibited from engaging in the very transactions that robo callers are seeking to obtain (namely, political campaign contributions or the purchase of goods or services that have not been competitively procured).

4. As representatives of local, state, and tribal governments, IAC members are also very cognizant of the need to protect consumers from unwanted telecommunications contacts. Such contacts, in the form of traditional telephone calls, text messages, Internet-based communications, or other evolving formats, require actions by the consumer (e.g., answer the call, delete the message). When such communications are not predicated on a consumer's approval (e.g., existing business relationship), they are intrusive and rightfully subject to FCC protection of the consumer's rights and interests.

5. While IAC members believe that robocalls should be included in the list of calls prohibited by the Do Not Call Registry, this may be more aggressive than the Commission is prepared to be at this time. Nonetheless, the IAC strongly believes that such calls should not be made to PSAPs, other public safety and health care institutions, or to general government agencies.

6. **With this background, the IAC submits the following recommendations:**

7. Robocalls:

- The IAC recommends that the Commission review for completeness and appropriateness the list of government and public safety organizations eligible to be

on the Do Not Call Registry.

- We further encourage the Commission to work with organizations that serve such government and public safety operations to ensure that the local officials are aware of the existence of the supplementary Do Not Call Registry and how to register their numbers.
- The IAC also recommends that the Commission review the types of communications prohibited under the Do Not Call Registry for completeness.

8. Autodialers and Reassigned Numbers

- The FCC should require autodialers to include an easy way for consumers to exempt themselves from future contacts. The exemption option should be stated and provided early in the call, text, or other communication.

9. Consumer Consent

- Automatically accessing a consumer's contact list without specific and clear authorization is a very significant violation of that person's privacy and should be banned without exception.
- No marketer who accesses a consumer's contact list should be permitted to contact anyone on that list or make that list available to any other party.
- Consumers should be provided an easy way to exempt themselves from future contacts. Such exemption option should be stated and provided early in the call, text, or other form of communication.

10. Whether Internet-to-Phone Technology is an Autodialer

- Internet-to-phone or Internet to Internet or any other permutation of communications technologies reaching other communications technologies are covered under the TCPA and should be prohibited without a prior, clearly stated relationship between the marketer and the consumer.

11. On-Demand Texts

- An existing business relationship does not provide authorization for messages to be sent to public officials on the consumer's behalf without a positive action by the consumer (i.e., simply opening a message from a marketer does not constitute permission to send a message on behalf of the consumer).

12. Delivering Voicemail without Ringing the Phone

- If no consent business relationship exists, delivering messages without "ringing" the phone constitutes an intrusion in the privacy of the consumer and should be regulated under the TCPA.

13. TCPA Exemption for Certain Free-to-End User Communications

- Financial, health care provider, pharmacy, or similar businesses with whom a consumer has an on-going, regular relationship (e.g., prescriptions being filled, deposits/withdrawals, credit card payments) should be permitted to provide consumer notifications without a formal written consent. Such authorization exists so long as there is no cost to the consumer to receive the message and each message includes a clear and easily understood means by which the consumer can opt not to receive similar messages in the future. Such opt out procedure must be provided early in the message (voice, text, other) and easily implemented.

14. Spoofing

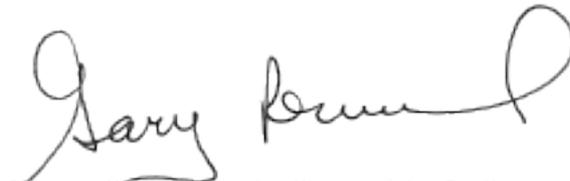
- Pursuant to its authority under the TCPA, the IAC recommends that the Commission encourage law enforcement and prosecutors to pursue and prosecute persons and entities that spoof law enforcement and other public safety, health, and government agency identities/numbers.
- Furthermore, the IAC recommends the Commission explore with

telecommunications providers; consumers; and state, local, and tribal governments how legitimate law enforcement and other government agencies' communication identity/numbers can be protected against call blocking technologies. Specifically, we recommend that the Commission and telecommunications providers develop policies by which providers will not block emergency and law enforcement numbers at the network level and will encourage consumers to identify emergency and law enforcement numbers before blocking them at the device level.

- The IAC further recommends that the Commission urge Congress to enact legislation that would make spoofing a crime at the same level as identity theft. Spoofing is a form of identity theft and has implications on large geographic and highly populated areas for threatening public health and safety.

Thank you for this opportunity to provide these recommendations.

Respectfully submitted,

A handwritten signature in black ink that reads "Gary Resnick". The signature is written in a cursive style with a large initial "G" and a long, sweeping tail.

Mayor Gary Resnick, Chair of the IAC

May 15, 2015