

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

CHAMBER OF COMMERCE OF )  
THE UNITED STATES OF )  
AMERICA )

*Petitioner,* )

v. )

FEDERAL COMMUNICATIONS )  
COMMISSION and UNITED )  
STATES OF AMERICA, )

*Respondents.* )

Case No. 15-\_\_\_\_\_

U.S. COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA  
FILING DEPOSITORY  
2015 SEP -2 PM 4: 34  
LEVEL 11

**PETITION FOR REVIEW**

Pursuant to Section 402(a) of the Communications Act of 1934, 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342-2344, 5 U.S.C. § 706, and Rule 15(a) of the Federal Rules of Appellate Procedure, the Chamber of Commerce of the United States of America (“Chamber”) hereby petitions this Court for review of an order of the Federal Communications Commission (“Commission”) captioned *In re Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, CG Docket No. 02-278, WC Docket No. 07-135, FCC 15-72 (rel. July 10, 2015) (“Declaratory Ruling and Order”). A copy of the Declaratory Ruling and Order is attached to this Petition as Attachment A.

Venue lies in this Court under 28 U.S.C. § 2343, and because this Court was selected pursuant to the lottery procedures set forth in 28 U.S.C. § 2112(a) as the

forum for consolidating multiple, previously filed petitions for review of the Declaratory Ruling and Order. *See* Consolidation Order, *In re Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991*, MCP No. 134 (J.P.M.L. July 24, 2015).<sup>1</sup>

In the Declaratory Ruling and Order, the Commission vastly expands the scope of the Telephone Consumer Protection Act of 1991 (“TCPA”) in several ways, including by sweeping in calls to wireless numbers made from equipment that is not currently able “to store or produce telephone numbers to be called, using a random or sequential number generator,” and “to dial such numbers.” 47 U.S.C. § 227(a)(1); *see* Declaratory Ruling and Order ¶¶ 10-24. The Declaratory Ruling and Order also improperly defines the term “called party” for purposes of the TCPA’s prior express consent provisions as the “current subscriber (or non-subscriber customary user of the phone),” rather than the intended recipient of a call. *See* Declaratory Ruling and Order ¶ 72. Moreover, it gives a caller only one call before imposing strict liability for calls made to numbers that, without the caller’s knowledge, have been reassigned from a person who previously gave express consent—even if that one call goes unanswered or the circumstances surrounding the call otherwise could not have provided the caller with actual or

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<sup>1</sup> Those petitions are now pending in lead Case No. 15-1211 and consolidated Case Nos. 15-1218, 15-1244, and 15-1278. This petition should likewise be consolidated with those cases.

constructive knowledge of the reassignment, and despite the fact that there is no practical way to verify the continued accuracy of numbers before a call is placed. *See id.* ¶¶ 85-97. The Declaratory Ruling and Order also sets forth certain rules that limit the TCPA’s consent defense. *See id.* ¶¶ 47-70, 98-102. Among other things, the Declaratory Ruling and Order provides that “a called party may revoke consent at any time and through any reasonable means” and affirmatively prohibits a caller from “limit[ing] the manner in which revocation may occur.” *Id.* ¶ 47.

The Declaratory Ruling and Order’s new, overbroad, and atextual interpretations of the TCPA will expose legitimate businesses across the country—of all sizes and types—to liability for simply attempting in good faith to communicate with customers who previously provided valid consent to be contacted. Furthermore, the Declaratory Ruling could turn even a mass-market smartphone into a covered “autodialer,” and threatens to create an utterly unworkable regime for the logistics of receiving and processing consent revocation. Because the TCPA is increasingly the basis for class actions that seek crippling damages, *see id.* ¶ 6, these results are particularly harmful for the Chamber’s members.

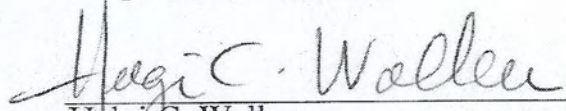
In these respects and others, the Declaratory Ruling and Order is arbitrary and capricious, an abuse of discretion, in excess of the Commission’s statutory authority, and otherwise contrary to the Constitution and other laws; and was

adopted without observance of procedure required by law. Accordingly, the Chamber respectfully requests that this Court (1) vacate or reverse the unlawful parts of the Declaratory Ruling and Order, (2) remand those unlawful parts to the Commission for an order consistent with this Court's findings, or (3) provide such other relief as this Court deems appropriate.

Dated: September 2, 2015

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Respectfully submitted,



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