

# FCC Chairman Pai Offers Ideas for “Aggressive Action” on TCPA Issues

January 29, 2017

To close out his first week as Chairman of the Federal Communications Commission, Ajit Pai spoke briefly at a meeting of the FCC’s Consumer Advisory Committee on Friday, January 27, 2017 and made clear that one of his priorities will be to address “robocalls,” which are the number one source of complaints to the FCC. However, we expect that his methods will be much different than those employed during Chairman Wheeler’s tenure.

Chairman Pai is a supporter of the Telephone Consumer Protection Act (TCPA or Act), the federal statute aimed at limiting the number of telemarketing calls that consumers receive. However, he was highly critical of the FCC’s interpretation of the Act under his predecessor. Notably, then-Commissioner Pai issued a scathing dissent to the Commission’s 2015 omnibus TCPA Declaratory Ruling and Order, which in his view, improperly expanded the definition of an “autodialer” and imposed a near-strict liability standard by adopting the one-call safe harbor for calls to reassigned phone numbers. Chairman Pai also dissented in part from the Commission’s determination in a July 2016 declaratory ruling that federal contractors are not persons under the Act and therefore not subject to TCPA liability. In that dissent, he stated that the Commission’s interpretation contradicts the plain meaning of the statute, and “it is odd to suggest that a contractor’s status as a ‘person’ could switch on or off depending on one’s behavior or relationship with the federal government.” Less than a month later, he likewise dissented from the Commission’s order adopting rules to implement a new government debt collection exemption to the TCPA, on the basis that the restrictions the FCC imposed contravened Congress’s intent in creating the exemption.

During his remarks on Friday, Chairman Pai said “the problem is only getting worse and that’s why I hope the Commission will take aggressive action, hopefully with your counsel, to end it.” He did not detail any particular initiatives that he plans to undertake to address the issue of unlawful telemarketing calls. However, we anticipate that his approach will focus more on industry collaboration rather than unilateral action by the Commission. Some ideas for which he suggested he might seek industry input include establishing a safe harbor for carriers so they can block spoofed calls from overseas without fear of liability and developing a reassigned number database to help legitimate callers avoid dialing the wrong number. Chairman Pai also noted that the Commission may consider overturning the federal contractor exemption in order to “close a potential loophole in [the Commission’s] robocalling regulations.”

We will continue to monitor the FCC’s TCPA-related actions in the coming months. Check back here for any updates.