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CGB
Consumers
Telemarketing
TCPA

Congress of the United States
Washington, DC 20515

June 11, 2015

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

The Honorable Edith Ramirez
Chairwoman
Federal Trade Commission
600 Pennsylvania Ave, NW
Washington, DC 20580

Dear Chairman Wheeler and Chairwoman Ramirez:

We appreciate the long-standing efforts of your agencies to oversee the implementation and enforcement of the Telephone Consumer Protection Act of 1991 (TCPA) and the Do Not Call Registry. These provisions are intended to protect consumers from the unwanted intrusion of telemarketing calls, including "robocalls." These efforts have been successful over the years in curbing disruptions to consumers, but despite these successes, we are nonetheless concerned that the rules in place today have not kept pace with technology.

The way that Americans communicate has changed drastically since 1991—today, 44 percent of American homes have only a wireless phone,[1] an option that likely was never anticipated in 1991, when the overall penetration rate of wireless was only 2.9%. As a result, some of the protections created by TCPA clearly need to be modernized to reconcile the law with the modern communications landscape.

This is evident through the data surrounding TCPA complaints and litigation. On the consumer protection side, TCPA complaints continue to top the charts at the FCC with over 200,000 consumer complaints filed in 2014.[2] The FTC data is similarly alarming, with over 1.7 million robocall complaints over the prior fiscal year.[3] For businesses, particularly small businesses, a lack of clarity in the rules has led to unintentional violations, which has created the opportunity for often-abusive litigation, with the number of TCPA class action suits growing 560 percent from 2010 to 2014.[4]

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[1] Wireless substitution: Early release of estimates from the National Health Interview Survey, January–June 2014. Blumberg SJ, Luke JV. National Center for Health Statistics. December 2014. Available from: http://www.cdc.gov/nchs/nhis.htm.

[2] *See* FCC Quarterly Consumer Complaint Reports for calendar year 2014 at: www.fcc.gov/encyclopedia/quarterly-reports-consumer-inquiries-and-complaints

[3] *See* FY2014 FTC Do Not Call Registry Data Book at: www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2014/dncdatabookfy2014.pdf.

[4] Debt Collection Litigation & CFPB Complaint Statistics, December 2014 & Year in Review, WebRecon LLC (Jan. 22, 2015), available at http://dev.webrecon.com/debt-collection-litigation-cfpb-complaint-statistics-december-2014-and-year-in-review/.

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According to reports, later this month the FCC is set to consider several reforms to the TCPA, including whether to take up recommendations from the FTC and state attorneys general to allow consumers to use new technological solutions to block unwanted calls. While this is a promising step, we have concerns that these proposals may not in fact reduce the number of unwanted calls. The FCC is considering new exemptions that could weaken the effectiveness of the current prohibitions on unwanted calls and the current statutory limits on fines and damages may not sufficiently deter bad actors, regardless of the rules. We therefore urge the FCC to consider the impact on consumers when contemplating the creation of new exemptions to its rules.

In addition to protecting consumers from unwanted calls, we urge the FCC to implement real reforms that provide greater clarity and guidance for businesses seeking to contact their customers for legitimate reasons. Currently, there are multiple petitions pending seeking clarification on the contours of the law. While the fact sheet released by the FCC indicates the Commission intends to address some of these issues, we have concerns that this item may not provide sufficient guidance and would leave businesses still unsure how to comply with an outdated law in a time of modern technology. This leaves businesses with the unenviable choice of scrapping modern technology or running the risk of litigation. Both of these outcomes unnecessarily raise costs for consumers and should be addressed in the Commission's item.

We share a bipartisan commitment to protecting consumers and creating certainty for legitimate business activity. The TCPA serves an important purpose, and the FCC has the opportunity to ensure that it is implemented and enforced in an effective and appropriate way. We urge the Commission as it updates its rules to include strong consumer protections and clear guidance for those seeking to conduct their business within the contours of the law. We also ask both the FCC and FTC to provide staff with a briefing on the challenges that agencies face enforcing this law. We need to ensure that Congress' intent to reduce the number of unwanted calls is realized.

Sincerely,

Gus Bilirakis
Member of Congress

Jerry McNerney
Member of Congress

Leonard Lance
Member of Congress

Tony Cárdenas
Member of Congress