

consumer action

Education and advocacy since 1971

June 11, 2018

Re: CG Docket No. 02-278 and CG Docket No. 18-152

Submitted by:
Consumer Action
DC Office
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Washington, DC 20024

Consumer Action¹ writes in support of a strong Telephone Consumer Protection Act (TCPA). The Federal Communications Commission (FCC) is currently considering re-interpreting the Act in ways that could harm consumers by unleashing millions more unwanted robocalls, particularly from scammers and predatory debt collectors. Consumer Action receives daily complaints from consumers across the country already plagued by these calls (more than 3.4 billion were made in April 2018 alone²).

Consumers are losing millions of dollars annually and falling victim to identity theft and account fraud at increasing rates due to scammers who use robocall technology to intimidate them and demand their personal and financial information. Consumers are also harangued daily by (often fraudulent) debt collectors to whom they may not even owe money (these callers often attempt to collect “zombie debt” that has been written off, passed applicable statutes of limitation or is completely falsified). Robocalls are an escalating problem and as such, the FCC should be responding to them by ramping up, not scaling back on consumer protections and providing loopholes for specific business practices.

In re-evaluating the TCPA, we suggest that the FCC:

- Refrain from redefining commonly used words and phrases included in the TCPA —words and phrases that are meaningful for consumers. A misstep here could create loopholes and mean the difference between a few harassing phone calls or hundreds a week for a single cell phone owner. In particular, the FCC is looking at

¹ Consumer Action has been a champion of underrepresented consumers nationwide since 1971. A non-profit 501(c)(3) organization, Consumer Action focuses on consumer education that empowers low- and moderate-income and limited-English-speaking consumers to financially prosper. It also advocates for consumers in the media and before lawmakers to advance consumer rights and promote industry-wide change.

² Yes, It's Bad. Robocalls, and Their Scams, Are Surging (New York Times, May 6, 2018)
<https://www.nytimes.com/2018/05/06/your-money/robocalls-rise-illegal.html>

changing the definition of an “automated telephone dialing system” (autodialers) and a “call.” The definition of autodialers *must* remain broad enough to include all equipment and methods used today to make these automated calls. This is critical in allowing the TCPA to continue governing robocalls. Currently under the TCPA, incoming autodialed calls to cell phones are not allowed without the consumer’s consent (this need for consent covers, and should continue to cover, calls coming from predictive dialers and “click” dialers). The FCC must reject any industry requests to narrow the definition of autodialers, which would render the definition (and the TCPA) effectively meaningless. The TCPA should be interpreted to encompass *any* device that dials numbers from a stored list, regardless of the sequence of numbers it dials and regardless of whether or not it generates those numbers. Furthermore, the TCPA currently governs *all* calls that use this autodialer technology—and the FCC should push back against any industry “concerns” or petitions asking to limit this.

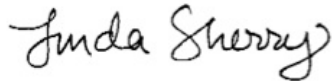
- Ensure that consumers always can revoke permission to receive robocalls to their cell phones, even when consent was contractually required and enlisted during onboarding of new cell phone service (which we oppose as a practice). The FCC should go a step further and create standard methods by which consumers can easily revoke consent in the future.
- Recognize and enshrine that public enforcement alone is not sufficient to stem the rising tide of robocalls. Consumers must remain free to engage in both private and class action lawsuits against callers that fail to comply with the TCPA. (In 2017 alone, individuals made seven million robocall complaints to the FCC and Federal Trade Commission.) Class actions regarding TCPA violations have increased over the past several years, but they have not increased nearly as dramatically as the number of robocalls has increased. Without class actions there would be little incentive for callers to comply with the TCPA. Class actions provide a much-needed deterrent effect to callers against violating the TCPA, thereby limiting the work of short-handed government enforcement agents.
- Adopt strong rules governing debt collection calls by collectors of federal debt. When, in late 2015 Congress wrote into a must-pass budget bill a measure to specifically exempt robocalls that involve the collection of debts owed to the federal government, it also directed the FCC within nine months to come up with new rules defining exactly when and how frequently these new robocalls could be made. Yet, although the FCC issued regulations in 2016 that would have created consumer protections for these calls, it withdrew its request that OMB approve them. The FCC should finalize these rules without further delay.
- The FCC’s 2016 Broadnet Ruling concludes that the term “person” [section 227(b)(1)] **does not** include a contractor acting on behalf of the federal government. This was a grave error in our view. The FCC should retract such language. It definitely should not extend the ruling to contractors working for state and local governments or to independent contractors. Consumers must be given rights to protect them from unwanted robocalls and texts sent by government contractors.

Debt collectors make the vast majority of robocalls. Unfortunately, the Fair Debt Collection Practices Act does not offer protections from unrelenting collection calls by creditors collecting their own debts. This leaves the TCPA as the principal federal law providing protections against harassing collection calls to consumer cell phones.

Consumer Action believes that without the robust protections of the TCPA the robocall crisis, as awful as it is, would quickly mushroom to epic proportions. We call on the FCC to stop nibbling away at these protections and to strengthen the rule to protect consumers from the robocall scourge.

Thank you for your consideration to this urgent matter.

Linda Sherry

A handwritten signature in cursive script that reads "Linda Sherry".

Director, National Priorities