



THE ADVOCACY DIVISION OF CONSUMER REPORTS

June 13, 2018

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Rules and Regulations Implementing the Telephone Consumer Protection Act, CG Docket No. 02-278, and Interpretation in Light of the D.C. Circuit's ACA International Decision, CG Docket No. 18-152

Dear Ms. Dortch:

Consumers Union, the advocacy division of Consumer Reports,¹ thanks the Federal Communications Commission (“FCC” or “Commission”) for the opportunity to provide input on several issues relating to the Telephone Consumer Protection Act (TCPA)² following the D.C. Circuit’s *ACA International* decision.³ The decision set aside portions of the FCC’s 2015 rules having to do with the definition of an autodialer and the one-call safe harbor for calls made to reassigned numbers, and confirmed that consumers may revoke consent to be robocalled by any reasonable means.⁴ In its Public Notice, the FCC also asks for comment on two additional issues: the yet-to-be-implemented rules, which were finalized in 2016, regarding debt collection robocalls made on behalf of the federal government; and Petitions for Reconsideration regarding the FCC’s *Broadnet Declaratory Ruling*, which exempted federal contractors from the TCPA.⁵

We join the comments of the National Consumer Law Center et al. (“Consumer Group Comments”).⁶ We file this separate comment to highlight the importance of consumer control over robocalls to the consumers we represent. They have made it clear that they receive far too many unwanted robocalls, and that more needs to be done to stop them. In 2016, we helped direct

¹ Consumers Union is the advocacy division of Consumer Reports. Consumers Union works for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves, focusing on the areas of telecommunications, health care, food and product safety, energy, financial services, and competition policy, among others. Consumer Reports is the world’s largest independent product-testing organization. Using its dozens of labs, auto test center, and survey research center, the nonprofit organization rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 7 million subscribers to its magazine, website, and other publications.

² Fed. Commc’ns Comm’n, Public Notice, Consumer and Governmental Affairs Bureau Seeks Comment on Interpretation of the Telephone Consumer Protection Act in Light of the D.C. Circuit’s *ACA International* Decision, CG Docket No. 18-152 CG Docket No. 02-278 (May 14, 2018), <https://ecfsapi.fcc.gov/file/0514497027768/DA-18-493A1.pdf> [hereinafter “Public Notice”].

³ *ACA International et al. v. Federal Communications Commission*, 885 F.3d 687 (D.C. Cir. 2018).

[https://www.cadc.uscourts.gov/internet/opinions.nsf/D87F7922A514214085258252004FCE41/\\$file/15-1211-1722606.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/D87F7922A514214085258252004FCE41/$file/15-1211-1722606.pdf) [hereinafter “*ACA International*”].

⁴ *Id.* at 5.

⁵ Public Notice, *supra* note 2, at 4-5.

⁶ Comments of the National Consumer Law Center et al., CG Docket Nos. 02-278 and 18-152 (Jun. 13, 2018) [hereinafter “Consumer Group Comments”].

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approximately 20,000 consumer comments and signatures asking the FCC to issue strong protections against unwanted, automated debt collection messages.⁷ In addition, nearly 750,000 consumers have joined our End Robocalls campaign, calling on the major phone companies to offer free tools to automatically block unwanted robocalls.⁸ To better address the problem of unwanted robocalls, we ask the FCC to:

- Issue a definition of “autodialer” that covers all automated dialing equipment currently in use, written with the flexibility to cover other technologies that may become available in the future;
- Reiterate that “called party” refers to the person reached by the caller, and establish a reassigned number database to better prevent “wrong number” calls;
- Affirm that consumers can revoke consent to receive robocalls at any time, by any reasonable means, and establish several nonexclusive methods that consumers may use to do so;
- Reconsider the *Broadnet Declaratory Ruling* and clarify that government contractors are “persons” subject to the TCPA;⁹ and
- Issue strong rules limiting debt collection robocalls made to consumers on behalf of the federal government.

We thank the FCC for its attention to scam robocalls, which it is investigating in two separate proceedings.¹⁰ But consumers are fed up with robocalls from purportedly legitimate companies, too, which are at issue in this proceeding. This concern is also reflected in many of the more than 50,000 complaints that we have received about unwanted robocalls.¹¹ Consumers tell us that they receive debt collection robocalls intended for others, and are unable to get them to stop.¹² We have also heard from the children of elderly parents, who report that telemarketers have harassed these vulnerable consumers into purchasing items they do not want or need.

Because robocalls are so cheap and easy to send, callers have strong incentives to use them.¹³ Indeed, they can send many calls in a short amount of time, raising the potential for abuse and harassment. This is reflected in federal complaint data. According to the Federal Trade Commission (FTC), complaints about unwanted calls increased from over 5 million in fiscal year 2016 to more than 7 million in fiscal year 2017—more than twice as many complaints as in fiscal year 2014.¹⁴ And they are consistently a top complaint to the FCC.¹⁵ Thus, consumers need strong legal protections that give callers incentives to comply and that ensure consumers have the means to protect their privacy and to stop unwanted robocalls.

⁷ Comments of Consumers Union, CG Docket No. 02-278 at 2 (Jun. 6, 2016), <https://ecfsapi.fcc.gov/file/60002097418.pdf>.

⁸ Consumers Union, EndRobocalls.org (last visited Jun. 10, 2018).

⁹ In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act, CG Docket No. 02-278, Declaratory Ruling (Jul. 5, 2016), <https://ecfsapi.fcc.gov/file/0705087947130/FCC-16-72A1.pdf> [hereinafter “Broadnet Ruling”].

¹⁰ See, for example, Comments of Consumers Union, National Consumer Law Center, et al., CG Docket No. 17-59, Advanced Methods to Target and Eliminate Unlawful Robocalls (Jan. 23, 2018), <https://consumersunion.org/wp-content/uploads/2018/01/Consumer-group-comments-FNPRM-1.23.18.pdf>; and Reply Comments of Consumers Union et al., WC Docket No. 17-97 (Sept. 13, 2017), <https://consumersunion.org/wp-content/uploads/2017/09/Reply-Comments-Caller-ID-NOI-final.pdf>, on additional means to address unwanted and particularly scam robocalls.

¹¹ Consumers Union, *supra* note 8.

¹² Comments of Consumers Union, *supra* note 7, at 3.

¹³ *Statement of the Fed. Trade Comm’n, before the U.S. Senate Commerce Comm.* at 17-18 (2018), https://www.ftc.gov/system/files/documents/public_statements/1366628/p034412_commission_testimony_re_abusive_robocalls_senate_04182018.pdf.

¹⁴ *Nat’l Do Not Call Registry Data Book FY 2017*, FED. TRADE COMM’N at 6 (Dec. 2017), https://www.ftc.gov/sites/default/files/filefield_paths/dnc_data_book_fy2017.pdf.

¹⁵ Fed. Commc’n’s Comm’n, Consumer Complaint Center, Unwanted Calls (last visited Jun. 10, 2018), <https://consumercomplaints.fcc.gov/hc/en-us/articles/115002234203-Unwanted-Calls>.

The FCC should issue a definition of “autodialer” includes all automated dialing equipment currently in use, written with the flexibility to cover other technologies that may become available in the future.

ACA International vacated the FCC’s 2015 interpretation of an autodialer because it could sweep in the average consumer’s everyday use of a smartphone.¹⁶ As it considers this issue, however, we urge the FCC not to overcorrect but to instead issue a definition that covers all existing equipment used to send autodialed messages, and written with the flexibility to also cover other technologies that may become available in the future. Issuing an overly narrow definition would subject consumers to billions more unwanted calls and exempt from the TPCA, for example, most debt collection, telemarketing, or even scam calls to cell phones using automated equipment but bringing in a live operator whenever a robocall connects to a called party who answers. We support the position outlined in detail in the Consumer Group Comments, including that the FCC should issue a definition of an autodialer that covers equipment that calls numbers from a stored list, and that extends to equipment with the present and future capability of engaging in random or sequential dialing, with a carve-out for ordinary use of a smartphone.¹⁷

The FCC should reiterate that “called party” refers to the person reached by the caller, and establish a reassigned number database to better prevent “wrong number” calls.

ACA International also set aside, as arbitrary, the FCC’s 2015 rule establishing a one-call safe harbor for robocalls to reassigned numbers.¹⁸ The TCPA requires callers to obtain the consent of the “called party” before sending a non-emergency call using an autodialer to a cell phone, and has no safe harbor for calls made in violation of the consent requirement.¹⁹ We support strict limits on robocalls to reassigned numbers, to deter casual inadvertence in making “wrong number” robocalls. As it explores the questions raised by the court decision, the FCC should reiterate that “called party” means the person who was actually called, not the person who was on the robocaller’s list to be called. Consumers who change numbers, or who get their first phone, should not be subjected to unwanted robocalls, with no way to stop them, simply for doing so.

The FCC has proposed to create a reassigned number database so that callers can check to see whether a number has been given to someone else.²⁰ We support this proposal. As outlined in comments filed by the National Consumer Law Center and joined by six other groups, including Consumers Union, to ensure that there are appropriate incentives to use it, the FCC should issue rules requiring the phone companies to participate, with a narrow safe harbor that applies only for calls made as a result of an error in the database.²¹ This will result in a useful resource for callers wanting to reduce their exposure to TCPA liability, and will help reduce the number of “wrong number” robocalls that consumers receive.

¹⁶ *ACA International*, *supra* note 3, at 5.

¹⁷ See, Consumer Group Comments, *supra* note 6, at 15-29.

¹⁸ *ACA International*, *supra* note 3, at 5.

¹⁹ 47 U.S.C. § 227(b).

²⁰ In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls, Second Further Notice of Inquiry, CG Docket No. 17-59 (Mar. 22, 2018), *available at* <https://ecfsapi.fcc.gov/file/032399073325/FCC-18-31A1.pdf>.

²¹ Comments of National Consumer Law Center et. al, CG Docket No. 17-59 at 5, 8-9 (May 29, 2018), <https://ecfsapi.fcc.gov/file/10529677826789/Comments%20on%202nd%20notice%20on%20database%20May%2029%2C%202018.pdf>.

The FCC should affirm that consumers can revoke consent to receive robocalls at any time, by any reasonable means, and should establish several nonexclusive methods that consumers may use to do so.

ACA International upheld the FCC’s 2015 rule that consumers can revoke their consent to receive robocalls by any reasonable means. Nevertheless, as outlined in the Consumer Group Comments, the FCC should reiterate this point, and clarify that consumers can revoke their consent at any time, even if that consent has been obtained as a result of a term in a contract. Moreover, it would be helpful for the FCC to outline several nonexclusive methods for callers to give consumers the opportunity to decline to receive further robocalls and messages.²² This would help standardize the opt-out process, making consumers more likely to be aware of and to take advantage of their right to revoke consent, should they wish.

The FCC should reconsider the *Broadnet Declaratory Ruling* and clarify that government contractors are “persons” subject to the TCPA.

In the Public Notice, the FCC has requested comment on the *Broadnet Declaratory Ruling*, which broadly exempted federal contractors from the TCPA on the grounds that contractors were not “persons” under the law.²³ We joined the National Consumer Law Center and 49 other legal aid and consumer advocacy groups in filing a Petition for Reconsideration of the decision.²⁴ As we noted in our own comments in support of reconsideration,²⁵ the ruling was excessively broad, leaving consumers vulnerable to millions more robocalls without a way to stop them. As then-Commissioner Pai noted in his partial dissent to the decision, “[T]he express language of the TCPA confirms that Congress intended federal contractors to be persons under the law.”²⁶ We agree, and ask the FCC to withdraw the decision and clarify that federal contractors are not exempt from the TCPA. For these same reasons, the TCPA exemption for federal contractors should not be extended to state and local government contractors, either.

The FCC should issue strong rules limiting debt collection robocalls made to consumers on behalf of the federal government.

Consumers were deeply disappointed when a provision was placed in the Budget Act of 2015 that exempted from the TCPA robocalls made to collect debt on behalf of the federal government, such as federal student debt and tax debt.²⁷ This exempted not only robocalls made to the persons who owed the debt, but to their friends, employers, and references. In just a few short days, Consumers Union helped direct over 80,000 messages to Congress in support of the HANGUP Act,²⁸ a bill that would remove that exception from the TCPA—making it one of Consumers Union’s highest-performing actions ever.

In enacting the Budget Act provision, Congress directed the FCC to issue rules to implement that provision, and Consumers Union also helped submit approximately 20,000 comments and signatures

²² Consumer Group Comments, *supra* note 6, at 35-40.

²³ See, *Broadnet Ruling*, *supra* note 9, at ¶ 10-11.

²⁴ National Consumer Law Center et al., Petition for Reconsideration and Request for Stay Pending Reconsideration, CG Docket No. 02-278 (Jul. 26, 2016), <https://ecfsapi.fcc.gov/file/10726059270343/NCLC%20Petition%20for%20Reconsideration%20of%20Broadnet.pdf>.

²⁵ Comments of Consumers Union, CG Docket No. 02-278 (Aug. 31, 2016), <https://ecfsapi.fcc.gov/file/10901066314023/Consumers%20Union%20Comments%20in%20Support%20of%20Reconsideration.pdf>.

²⁶ Statement of Commissioner Ajit Pai, Approving in Part and Dissenting in Part, Declaratory Ruling, CG Docket No. 02-278 1 (July 5, 2016), available at <https://ecfsapi.fcc.gov/file/0705087947130/FCC-16-72A3.pdf>.

²⁷ 129 Stat. 588.

²⁸ S. 2235, 114th Cong. (2015).

from consumers in support of strong rules that would place important limits on the exemption. The FCC finalized rules in August of 2016;²⁹ but in 2017, the FCC withdrew the rules from the Office of Management and Budget.³⁰

We strongly objected to the Budget Act provision, and we support the HANGUP Act, which would rightfully remove it and would also walk back the *Broadnet* decision.³¹ However, in the meantime, consumers should have protections to ensure that there are appropriate limits on these calls, as Congress intended. We urge the FCC to re-issue, or even further strengthen, the finalized rules so there will be a strict limit on the number of robocalls allowed without permission, and so consumers will have the right to opt-out of receiving them.³² This is particularly important because consumers tell us they receive debt collection robocalls intended for someone else, and need legal protections to help ensure that they can stop them.

We thank the Commission again for soliciting input on these important questions regarding consumer privacy.

Respectfully submitted,



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²⁹ In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act, CG Docket No. 02-278, Report and Order (Aug. 11, 2016), <https://docs.fcc.gov/public/attachments/FCC-16-99A1.pdf>.

³⁰ Notice of Office of Management and Budget Action (Jan. 27, 2017), <https://www.reginfo.gov/public/do/DownloadNOA?requestID=279993>.

³¹ S. 564 (2017).

³² Consumer Group Comments, *supra* note 6, at 50-62.