



THE ADVOCACY DIVISION OF CONSUMER REPORTS

June 28, 2018

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

**Re: Reply Comments on 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,<sup>1</sup> the advocacy division of Consumer Reports, welcomes the opportunity to address several points made by commenters in response to the Federal Communication Commission's ("FCC" or "Commission") Public Notice relating to the Telephone Consumer Protection Act (TCPA).<sup>2</sup> We refer the Commission to the National Consumer Law Center's comments submitted on June 13, 2018,<sup>3</sup> which we joined along with forty other groups, and we reiterate the points made in our own comments filed on that date.<sup>4</sup> In addition, we generally agree with the points made in the reply comments submitted on June 28, 2018, by the National Consumer Law Center.<sup>5</sup>

In addition, approximately 36,000 individual consumers whom we alerted to these proceedings have reportedly posted their own comments, urging the FCC to issue the strongest possible protections against unwanted robocalls.<sup>6</sup> While several commenters characterized the robocall problem as primarily limited to scammers and fraudsters,<sup>7</sup> in fact, these consumers have made it clear that they want broad

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<sup>1</sup> 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.

<sup>2</sup> Fed. Comm'n's 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>.

<sup>3</sup> Comments of the National Consumer Law Center et al, CG Docket No. 02-278 and 18-152 (Jun. 13, 2018), <https://ecfsapi.fcc.gov/file/106131272217474/Comments%20on%20Interpretation%20of%20TCPA%20in%20Light%20of%20ACA%20International.pdf>.

<sup>4</sup> Comments of Consumers Union, CG Docket No. 02-278 and 18-152 (Jun. 13, 2018), *available at* <https://ecfsapi.fcc.gov/file/10614715908175/CU%20Comment%2018-152%2002-278%20061318.pdf>.

<sup>5</sup> Reply Comments of the National Consumer Law Center, CG Docket No. 02-278 and 18-152 (Jun. 28, 2018), <https://ecfsapi.fcc.gov/file/10628029912509/Final%20Reply%20Comments.pdf>.

<sup>6</sup> The FCC has indicated that it has received almost 300,000 individual comments to CG Docket No. 18-152 from all sources, but advises that that higher number includes an undetermined number of duplicate submissions.

<sup>7</sup> *See, e.g.* Comments of Professional Council for Consumer Engagement, CG Docket No. 02-278 and 18-152 (Jun. 13, 2018), [https://ecfsapi.fcc.gov/file/106130429322839/PACE%20TCPA%20Comment%20to%20FCC%20\(6-13-18\).pdf](https://ecfsapi.fcc.gov/file/106130429322839/PACE%20TCPA%20Comment%20to%20FCC%20(6-13-18).pdf); Comments

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protections regulating autodialed calls, and seek greater controls over the calls and messages entering their homes and reaching their personal cell phones.

We disagree with commenters who claim that the TCPA is outdated because it restricts automated communications to cell phones more than to home phones, and because many consumers now primarily rely on their cell phones for their voice communications.<sup>8</sup> The Consumer Mortgage Association, for example, wants protections to cell phones to be weakened because many consumers “no longer answer their landline phone.”<sup>9</sup> It is indeed true that many consumers have told us that they have either dropped their landline service, or have stopped answering their home phones because of so many unwanted calls. But this only highlights why it is so important to keep cell phones protected from unwanted robocalls. If they are not, cell phones may be overrun with these calls just as home phones are, and the quality of the service for which consumers pay will be compromised.

We are also particularly concerned that at least one commenter is asking the FCC to issue rules preventing consumers from rescinding consent for robocalls when the consent was obtained through a contract.<sup>10</sup> If the FCC were to do so, every business and organization would include a clause in their contracts restricting or even removing consumers’ ability to control robocalls, and the TCPA would be effectively useless. Consumers should always have the ability to opt-out of unwanted robocalls, including when the consent to call is obtained through a contract, so that they have the legitimate ability to exercise the privacy protections extended by the TCPA.

We also highlight the importance of maintaining strong protections against robocalls to reassigned numbers. For example, one commenter urged the Commission to exempt from the TCPA robocalls made to reassigned numbers in part because it would incentivize consumers to tell businesses that they changed their number.<sup>11</sup> However, it would be unduly burdensome for consumers to report that information to each business or organization that had collected their personal information, and leave them vulnerable to repeated robocalls if they fail to do so. Instead, we again recommend that the FCC move forward with its proposed reassigned number database, so that companies can more easily meet their legal burden to ensure that they have consent to robocall.

We reiterate that ensuring protections against unwanted robocalls made by federal contractors is of utmost importance, and urge the FCC to promptly re-issue rules implementing the 2015 Budget Act exemption for debt collection robocalls made on behalf of the federal government, and reconsider and withdraw the *Broadnet* decision. In response to comments questioning the FCC’s authority to issue rules limiting those debt collection robocalls,<sup>12</sup> we point to the explicit instructions of Section 301 of the Budget Act that, “Not later than 9 months after the date of enactment of this Act, the Federal Communications Commission, in consultation with the Department of the Treasury, shall prescribe regulations to implement the amendments made by this section.”<sup>13</sup>

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of Noble Systems, CG Docket No. 02-278 and 18-152 at 26 (Jun. 13, 2018), [https://ecfsapi.fcc.gov/file/1061323365377/Noble\\_System\\_Comments\\_FCC\\_DA18-493\\_FINAL.pdf](https://ecfsapi.fcc.gov/file/1061323365377/Noble_System_Comments_FCC_DA18-493_FINAL.pdf).

<sup>8</sup> Comments of Retail Industry Leaders Association, CG Docket No. 18-152 and 02-278 at 42 (Jun. 13, 2018), <https://ecfsapi.fcc.gov/file/10614232873363/RILA%20TCPA%20Comments.pdf>.

<sup>9</sup> Comments of Consumer Mortgage Coalition and Housing Policy Council, CG Docket No. 18-152 and 02-278 at 2 (Jun. 13, 2018), [https://ecfsapi.fcc.gov/file/1061447038803/CMC%20and%20HPC%20Letter%20to%20FCC%20on%20TCPA%20\(6-13-18\).pdf](https://ecfsapi.fcc.gov/file/1061447038803/CMC%20and%20HPC%20Letter%20to%20FCC%20on%20TCPA%20(6-13-18).pdf).

<sup>10</sup> See, e.g. Comments of Retail Industry Leaders Association, *supra* note 8, at 27.

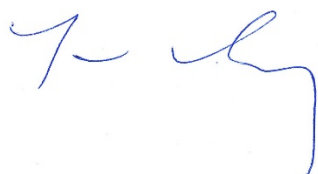
<sup>11</sup> Comments of CTIA, CG Docket No. 18-152 and 02-278 at 5 (Jun. 13, 2018), <https://ecfsapi.fcc.gov/file/10613371727956/180613%20CTIA%20-TCPA%20Refresh%20Remand%20Comments.pdf>.

<sup>12</sup> Comments of Student Loan Servicing Association et al., CG Docket No. 18-152 and 02-278 at iii (Jun. 13, 2018), <https://ecfsapi.fcc.gov/file/10614162695958/Coalition%20ACA%20Remand%20FCC%20Comments%20-%20Final.pdf>.

<sup>13</sup> 129 Stat. 588.

Thank you again for your consideration, and for your continued efforts to limit unwanted robocalls.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Maureen Mahoney', with a stylized, flowing script.

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