



POLICY & ACTION FROM CONSUMER REPORTS

August 11, 2016

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

**Re: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991
[CG Docket No. 02-278; FCC 16-879]**

Dear Ms. Dortch:

Consumers Union, the policy and mobilization arm of Consumer Reports,¹ appreciates the opportunity to comment on the National Consumer Law Center's (NCLC) request for stay² of the FCC's *Broadnet Declaratory Ruling*,³ pending reconsideration. Consumers Union, along with 50 other consumer advocacy and legal aid groups, joined NCLC's filing. On behalf of the 600,000 consumers who have joined our End Robocalls campaign,⁴ we respectfully request that you grant this stay in order to protect consumers from new unwanted robocalls.

Broadnet ruled that federal contractors are not considered "persons" under the Telephone Consumer Protection Act (TCPA) when they are acting as agents of the federal government.⁵ We believe that ruling should be withdrawn and reversed, because otherwise it will lead to an increase in unwanted calls to consumers from federal government contractors. These calls are costly for many consumers, and compromise their privacy.

The TCPA restricts telemarketing and informational robocalls made to cell phones without the consumer's prior consent.⁶ It also places additional limits on robocalls, for example by restricting robocalls to emergency rooms and other places with a particular interest in keeping their lines protected from inessential calls.⁷ TCPA rules also provide other important protections for call recipients, such as limiting the times of day when telemarketers can contact residential lines,⁸ and requiring telemarketing robocalls featuring pre-recorded messages to provide

¹ Consumers Union is the public policy and 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, and financial services, among others. Consumer Reports is the world's largest independent product-testing organization. Using its more than 50 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 8 million subscribers to its magazine, website, and other publications.
² Nat'l Consumer Law Ctr. et al., Petition for Reconsideration of Declaratory Ruling and Request for Stay Pending Reconsideration, CG Docket No. 02-278, (July 26, 2016), <https://ecfsapi.fcc.gov/file/10726059270343/NCLC%20Petition%20for%20Reconsideration%20of%20Broadnet.pdf>

³ In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Petitions for Declaratory Ruling by Broadnet Teleservices LLC, National Employment Network Association, RTI International, Declaratory Ruling, FCC 16-72, CG Docket No. 02-278 (July 5, 2016) [hereinafter BROADNET RULING], http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0706/FCC-16-72A1.pdf.

⁴ See Consumers Union, EndRobocalls.org, <https://consumersunion.org/end-robocalls/>.

⁵ BROADNET RULING, supra note 3, at 5.

⁶ 47 U.S.C. § 227(b)(1)(A)(iii) (2016).

⁷ 47 U.S.C. § 227(b)(1)(A)(i).

⁸ 47 C.F.R. § 64.1200(c)(1) (2016).

notification to consumers of their right to opt out of calls and offer instructions to do so.⁹ The *Broadnet* ruling could create a broad exemption from these important protections, leading to a dramatic increase in robocalls, and leaving consumers no recourse to stop them.

Consumers have made it clear that they would like to limit the calls and robocalls they receive, particularly to their cell phones. Consumers Union directed almost 20,000 comments and signatures to the FCC docket on the proposed rules for federal debt collection robocalls to cell phones in June 2016, asking the FCC to place limits on robocallers.¹⁰ In March 2015, Consumers Union delivered almost 130,000 petition signatures to the FCC against loosening restrictions on robocalls to cell phones.¹¹ Over 600,000 consumers have joined our End Robocalls campaign to push for technological solutions to the unwanted robocall problem. And complaints about robocall violations of the National Do Not Call registry have more than doubled from 2010 to 2015.¹² Clearly, many consumers value restrictions on robocalls.

One such consumer, Kathy of Escondido, California, describes in a comment to the FCC how robocallers have taken control of her phone service, even though she has an unlisted number:

What has happened to our phone access is hard to understand. Phones are no longer ours--they belong to whomever gets your number and chooses to use it. Thanks to computers, whether you answer or not, the computer on the other end can keep calling back and back and back again. It is now at the level of abuse. We receive a minimum of 5-10 robocalls a day to our once "unlisted number." Now the calls have increased on my cell phone. It used to be one a month. Yesterday I had 3 messages left from a local number so I returned the call believing someone was urgently trying to reach me. It was a robocall survey!! I immediately hung up and within 30 minutes, the same number was in my call list again! This is abuse!

These calls also interrupt important time at work. Christopher of North Las Vegas, Nevada, writes:

I'm mostly out in the field completing inspections of people's homes or businesses usually in the middle with lawyers, home owners or other experts. I have to answer the phone (usually too busy to see who is calling) when it rings, even with the limited time I am given to complete my work, in case of emergency or the office calling. Complete waste of time to have to answer the phone and when on the other end is a salesperson or survey.

Finally, consumers report that these calls can be costly. For example, consumers with limited minute cell phone plans – an estimated 75 million people¹³ – may be charged for robocalls, or

⁹ 47 C.F.R. § 64.1200 (a)(7)(i)(B).

¹⁰ Consumers Union, Comment Letter on Proposed Rule Implementing Section 301 of the Bipartisan Budget Act 2, CG Docket No. 02-278 (June 6, 2016), <https://ecfsapi.fcc.gov/file/60002097418.pdf>.

¹¹ Consumers Union, Press Release, Consumers to FCC: No Robocalls to Cellphones, (March 25, 2015) <http://consumersunion.org/news/consumers-to-fcc-no-robocalls-to-cellphones/>.

¹² FED. TRADE COMM'N, NAT'L DO NOT CALL REGISTRY DATA BOOK FOR FISCAL YEAR 2010 5 (2010), *available at* <https://www.ftc.gov/sites/default/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2010/101206dncdatabook.pdf> (indicating 697,755 complaints about "Recorded Message" calls); FED. TRADE COMM'N, NAT'L DO NOT CALL REGISTRY DATA BOOK FOR FISCAL YEAR 2015 5 (2015), *available at* <https://www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2015/dncdatabookfy2015.pdf> (indicating 2,125,974 complaints about "Recorded Message" calls).

¹³ Nat'l Consumer Law Ctr. et al., Comment Letter on Proposed Rule Implementing Section 301 of the Bipartisan Budget Act 6, CG Docket No. 02-278 (June 6, 2016), <https://ecfsapi.fcc.gov/file/60002097480.pdf>.

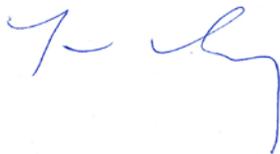
may find them using up precious minutes in their phone plans. Kathryn of Sandy Ridge, North Carolina, explains:

My cell phone is mine. I should not have to pay to receive unwanted calls! I have a prepaid plan where I pay \$1.95 each day I make or receive a call plus a per minute charge. I HATE robocalls, as well as all telemarketing, survey, political and fundraising calls, regardless of which phone they come in on.

Oftentimes, consumers on limited-minute cell phone plans are those least likely to be able to afford additional expenditures on phone calls. Catharine of Duncan, South Carolina, writes: “I have a prepaid cell phone. I have this because I am on Social Security and can't afford a regular cell phone. These calls cost me minutes that I need for my doctor appointments or emergency calls. I can't afford to pay for these nonsense calls.”

Consumers Union appreciates the efforts that the FCC has taken to protect consumers from unwanted robocalls, through, for example, rulemaking and enforcement actions. As Chairman Wheeler noted recently, “The Commission is committed to protecting consumers from unwanted calls and giving them more control over the calls and texts they receive.”¹⁴ We believe that issuing a stay of this ruling will extend to consumers important protections against a surge of unwanted robocalls, and respectfully request that you grant this stay.

Respectfully submitted,



Maureen Mahoney
Policy Analyst
Consumers Union

¹⁴ Tom Wheeler, “Cutting off Robocalls,” FCC BLOG (July 22, 2016), <https://www.fcc.gov/news-events/blog/2016/07/22/cutting-robocalls>.