

# United States Senate

WASHINGTON, DC 20510

June 26, 2018

The Honorable Ajit Pai  
Chairman  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

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Dear Chairman Pai:

We write in response to the Federal Communications Commission's (FCC) Public Notice, seeking comment on the interpretation of the Telephone Consumer Protection Act (TCPA) in light of a recent decision by the D.C. Circuit Court of Appeals. As you continue with this proceeding, we urge you to ensure that key robocall and robotext protections under the TCPA remain in effect.

Recently, the D.C. Circuit Court of Appeals struck down portions of a 2015 Federal Communications Commission (FCC) Omnibus Declaratory Ruling and Order limiting the definition of automatic telephone dialing systems (auto dialers), which are technologies that can be used to rapidly call and text large groups of consumers. The ruling also vacated rules discouraging callers from making more than one unwanted call or text to a reassigned number. While the Court maintained the right to revoke consent, the Court's ruling could be interpreted to suggest that callers could limit consumers' method to revoke consent to receive robocalls and robotexts through provisions buried in contracts or service agreements. This interpretation would upend the meaning and the goals of the TCPA.

In an era when the onslaught of unwanted and abusive robocalls is on the rise, we are concerned that the absence of core protections would result in even more invasive calls and texts. Without swift and robust action by the FCC to ensure these sensible protections are in place, consumers may lose the right to both provide and revoke consent, subjecting them to a deluge of unwanted calls and texts. We respectfully request that you adopt the following important consumer safeguards:

- Comprehensive Auto Dialer System Definition – When Congress passed the TCPA in 1991, one goal was clear: whether at home or on their mobile phones, consumers should not be subject to intrusive and unsolicited robocalls and robotexts. While technology has changed, that key goal has not. Therefore, we urge you to establish a comprehensive definition of the term auto dialer, and use the FCC's exemption authority to carve out ordinary devices like smartphones that are not being ordinarily used to auto dial consumer en masse. Doing so ensures calling parties using automated dialing equipment to make calls or texts en masse must first obtain affirmative consent from consumers. Further, the FCC should uphold Congress' intent to cover all callers using auto dialers, not exclusively those using artificial-voice or prerecorded messages.
- Reassigned Number Protections – Periodically, consumers receive unwanted robocalls and robotexts because the previous holder of the phone number, not the current holder,

provided consent. Calls and texts to reassigned numbers are both a nuisance and a clear violation of the TCPA. We encourage you to maintain aggressive protections restricting unwanted calls and texts to reassigned numbers. To do so, the FCC should reaffirm that the term 'called party' means the actual party that is called, not the intended recipient of the call. The FCC should also ensure that callers continue to face liabilities for these illegal calls and texts in any future TCPA order or rulemaking.


- Revocation of Consent – Consent is the cornerstone of the TCPA, for it affirms that consumers have the right to avoid and stop receiving unwanted calls and texts. This fundamental right is not suspended upon initially providing consent. Rather, consumers should always have a reasonable means to revoke consent at any time should they no longer wish to receive robocalls and robotexts. We respectfully request that you reiterate that consumers always have the right to revoke consent, regardless of any contractual clauses that may be included in user agreements. We also request that you require callers to notify consumers of their right to revoke consent.

It is the FCC's obligation to use its existing authority to reestablish robust, enforceable protections to enhance the precious zone of privacy created by the law. We urge you to fulfill your statutory obligations to establish these important protections.

Thank you for your attention to this important matter. If you have any questions, please have a member of your staff contact Daniel Greene of Senator Markey's office at 202-224-2742.

Sincerely,

  
Edward J. Markey  
United States Senator

  
Robert Menendez  
United States Senator

  
Kirsten Gillibrand  
United States Senator

  
Elizabeth Warren  
United States Senator

  
Ron Wyden  
United States Senator

  
Catherine Cortez Masto  
United States Senator





Tina Smith  
United States Senator



Sheldon Whitehouse  
United States Senator



Tammy Baldwin  
United States Senator



Richard Blumenthal  
United States Senator



Bernard Sanders  
United States Senator



Margaret Wood Hassan  
United States Senator



Jack Reed  
United States Senator



Amy Klobuchar  
United States Senator



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

August 7, 2018

The Honorable Amy Klobuchar  
United States Senate  
302 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Klobuchar:

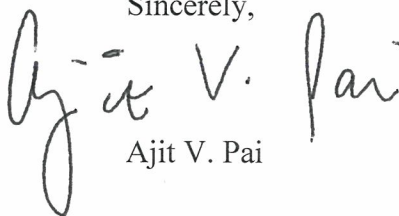
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I look forward to working with my colleagues on addressing these issues while continuing our many other efforts to combat illegal robocalls. Please let me know if I can be of any further assistance.

Sincerely,



Ajit V. Pai





FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

August 7, 2018

The Honorable Bernard Sanders  
United States Senate  
332 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Senator Sanders:

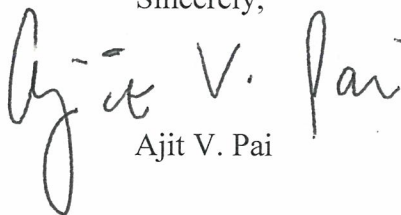
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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

August 7, 2018

The Honorable Catherine Cortez Masto  
United States Senate  
B40A Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Senator Cortez Masto:

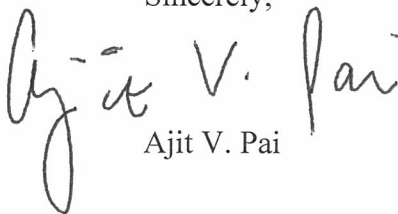
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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

August 7, 2018

The Honorable Edward J. Markey  
United States Senate  
255 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Senator Markey:

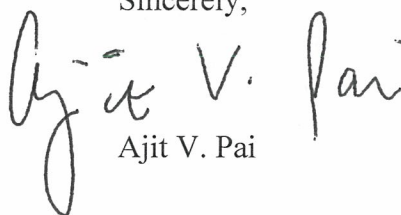
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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

August 7, 2018

The Honorable Elizabeth Warren  
United States Senate  
317 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Warren:

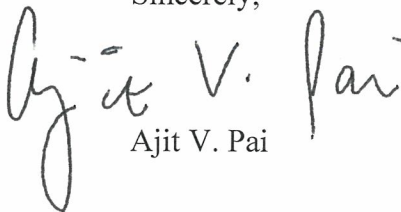
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Ajit V. Pai





FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

August 7, 2018

The Honorable Jack Reed  
United States Senate  
728 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Reed:

Thank you for your letter regarding the Telephone Consumer Protection Act. Unwanted robocalls are consumers' top complaint to the FCC, and we have accordingly made combating illegal robocalls our top consumer priority. We have aggressively enforced the TCPA as well as the Truth in Caller ID Act—leveling over \$200 million in proposed fines against illegal robocallers. We have authorized carriers to stop certain robocalls at the source while we pursue creation of a reassigned numbers database and a robust call-authentication framework. And we have been working with our colleagues at the Federal Trade Commission as well, hosting a policy forum in March and a tech expo in April.

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WASHINGTON

OFFICE OF  
THE CHAIRMAN

August 7, 2018

The Honorable Kirsten Gillibrand  
United States Senate  
478 Russell Senate Office Building  
Washington, D.C. 20510

Dear Senator Gillibrand:

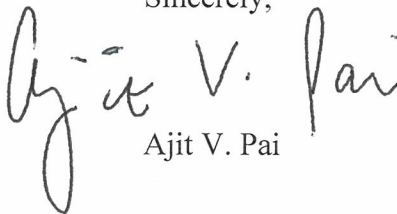
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WASHINGTON

OFFICE OF  
THE CHAIRMAN

August 7, 2018

The Honorable Maggie Hassan  
United States Senate  
B85 Russell Senate Office Building  
Washington, D.C. 20510

Dear Senator Hassan:

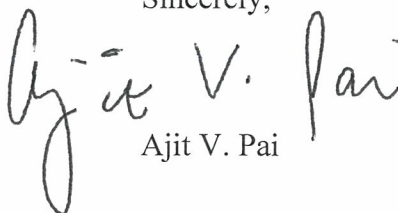
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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
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August 7, 2018

The Honorable Richard Blumenthal  
United States Senate  
706 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Blumenthal:

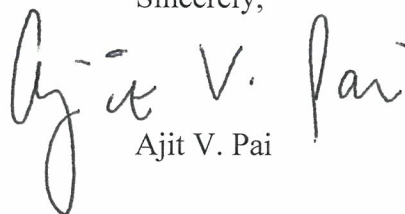
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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

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August 7, 2018

The Honorable Robert Menendez  
United States Senate  
528 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Menendez:

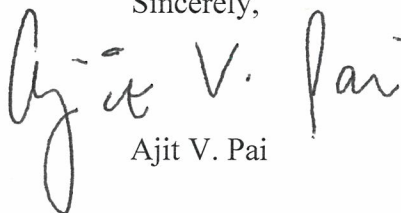
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August 7, 2018

The Honorable Ron Wyden  
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221 Dirksen Senate Office Building  
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Dear Senator Wyden:

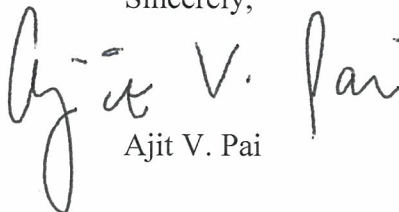
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Washington, D.C. 20510

Dear Senator Whitehouse:

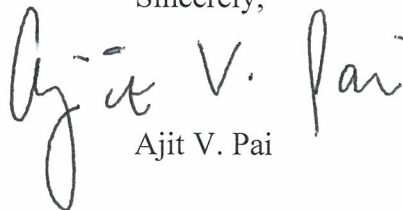
Thank you for your letter regarding the Telephone Consumer Protection Act. Unwanted robocalls are consumers' top complaint to the FCC, and we have accordingly made combating illegal robocalls our top consumer priority. We have aggressively enforced the TCPA as well as the Truth in Caller ID Act—leveling over \$200 million in proposed fines against illegal robocallers. We have authorized carriers to stop certain robocalls at the source while we pursue creation of a reassigned numbers database and a robust call-authentication framework. And we have been working with our colleagues at the Federal Trade Commission as well, hosting a policy forum in March and a tech expo in April.

In your letter, you urge the Commission to take quick action to clarify important issues under the TCPA. I agree that, in light of the decision of the U.S. Court of Appeals for the District of Columbia in *ACA International v. FCC*—which struck down much of the agency's 2015 *TCPA Declaratory Ruling and Order*—it is time for the Commission to establish robust consumer protections in line with federal law. As I predicted in my dissent, the last Administration's order has left both American consumers and American businesses worse off. This cannot possibly be what Congress intended.

The Commission is now poised to examine and reconsider these issues. On May 14, 2018, the Commission sought comment on the definition of an "automatic telephone dialing system," the treatment of calls to reassigned wireless numbers, and the scope of a consumer's right to revoke prior express consent to receive robocalls. We also sought renewed comment on reconsidering the *Broadnet* decision and the 2016 *Federal Debt Collection Rules*, as well as the interplay between the *Broadnet* decision and the Budget Act amendments. The comment and reply period closed on June 28, 2018, and Commission staff is now reviewing the record. We will be sure to include your comments in the record of the proceeding and take them into account as we move forward.

I look forward to working with my colleagues on addressing these issues while continuing our many other efforts to combat illegal robocalls. Please let me know if I can be of any further assistance.

Sincerely,

  
Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

August 7, 2018

The Honorable Tammy Baldwin  
United States Senate  
717 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Baldwin:

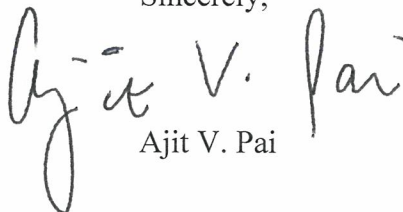
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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

August 7, 2018

The Honorable Tina Smith  
United States Senate  
309 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Smith:

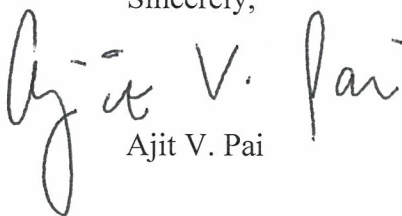
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