FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

November 19, 2014

The Honorable Charles E. Schumer
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Schumer,

Thank you for sharing with me your concerns about the hacking of small business phone systems that has occurred in New York and elsewhere. As we discussed, hackers are breaking into businesses' phone systems and running up very large bills by fraudulently calling numbers assessing premium or international charges. I agree that there should be some kind of recourse for consumers and small businesses. Like you, I am deeply concerned about the ramifications of these practices. I welcome the opportunity to work with you and other stakeholders to combat the problem.

Existing Commission rules offer some protections against unauthorized charges, though significant gaps remain. For example, local exchange carriers must offer subscribers the ability to block access to 900 numbers, and our rules prohibit carriers from billing for pay-per-call services that the carrier knows, or reasonably should know, were provided in violation of federal law. On the other hand, the Commission's rules do not require carriers to allow subscribers to block outbound international calls, the numbering rules generally do not apply to VoIP providers, and even the restriction on making 900 calls requires subscribers affirmatively to request this protection. Moreover, carriers are not required to watch for or warn subscribers of suspicious calling patterns or unusually high call volumes.

The Commission presently is reviewing a formal complaint that Foreman Seeley Fountain Architecture, the Georgia business highlighted in the New York Times article you referenced, filed on September 12, 2014. The complaint is against Time Warner Telecom, seeking reimbursement of $166,000 in charges that were billed for one weekend's worth of calling. In formal complaint proceedings like this, the Commission serves as an adjudicator of the case, like a court, rather than as an advocate for the consumer. The Commission will issue a ruling at the conclusion of the presentation of the facts by both parties.

Beyond this specific complaint proceeding, I believe there are simple, straight-forward steps industry could take quickly that would be effective in combatting the problem. For example, industry could readily implement the credit card fraud model that you highlight in your letter. Likewise, industry – on its own or working with the Commission – could identify telltale indicators of fraudulent activity and commit to notifying customers when abnormal calling patterns are detected before the provider charges the customer for the calls.

I would suggest that you and I work together to challenge industry to develop such plans by a date certain. If industry fails to develop and implement such plans, the Commission should act to implement the necessary protections. Such protections might include requiring carriers and VoIP providers to:

- shift financial responsibility for unauthorized calls to industry, rather than customers, akin to what occurs today with unauthorized credit card use;
- block international calling upon customer request;
- allow customers to identify maximum call volumes or charges over a specified period(s) of time to limit the impact of hacking;
- utilize fraud detection systems and make the providers liable for any unauthorized calls that evade such systems; and
- send periodic notices about how customers can minimize the risk of telephone fraud.

In addition, I have asked Commission staff to determine whether, under existing Commission rules, there is an opportunity for a provider to block payment to or recoup payment from the entity to which the terminating number is assigned when fraud is alleged. This includes whether the originating provider can or should take steps to confirm the authenticity of the abnormal charges before any payments are made or settled. This approach could significantly increase industry incentives to detect and prevent unauthorized calling.

Although I believe the Commission has sufficient authority to address the problems caused by telephone hacking through rulemaking, the most powerful method would be legislation that makes clear that providers are responsible for costs associated with unauthorized calls. That would certainly give providers the incentive to take steps to ensure that only authorized calls are being made. I look forward to working with you on such an effort.

Thank you again for reaching out to me directly on this important issue. I look forward to working closely with you as we move forward to address this problem.

Sincerely,

Tom Wheeler