



**Written Testimony of Delara Derakhshani
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**Before the
United States Senate
Special Committee on Aging**

**Hearing On:
“Ringling Off the Hook: Examining the Proliferation of Unwanted Calls”**

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Consumers Union, the policy and advocacy arm of Consumer Reports,¹ appreciates the opportunity to provide the consumer perspective on the topic of unwanted calls – including telemarketing calls and “robocalls” made with prerecorded messages or auto-dialers that have the ability to reach thousands of consumers at once. Consumers Union has a long history of supporting efforts to reduce unwanted calls, and we were strong supporters of the Do Not Call Registry when it went into effect more than ten years ago. At that time, the list provided much-needed relief from unwanted calls from legitimate telemarketing entities. Unfortunately, changes in technology over the past few years have made it very cheap and easy for scammers to evade the list and make mass robocalls while hiding their identities in the process. More can be done to help consumers end unwanted calls, and we hope that this hearing further spurs all parties to more quickly adopt solutions that empower users and give them more control over the calls they receive.

Consumers Continue to Receive a Deluge of Unwanted Calls

As part of our advocacy efforts at Consumers Union, we have had the opportunity to hear first-hand from consumers receiving unwanted phone calls. Recently, we launched a website, EndRobocalls.Org, where consumers can sign petitions, share their stories, and remain up-to-date about the efforts to combat unwanted calls. The response from consumers has been staggering: we have received over 30,000 stories from consumers about their experiences with unwanted calls. More than 400,000 consumers have signed our petitions to regulators and companies asking them to do more to prevent robocalls.

The take-away is clear: unwanted calls continue to inundate consumers, and consumers need more control over the calls that reach them. Of the petition signatures we received, more than 300,000 were directed to phone companies asking them to roll out technology that provides a simple way to block unwanted calls. Currently, many of the call-blocking technologies available are limited in their effectiveness and come at a price.² As they have told us in their own words, consumers should not have to pay to stop calls that do not want to receive in the first place and more can be done by companies to ensure that consumers have free call-blocking tools.

An additional 130,000 consumers have told us that they do not want to receive additional unsolicited robocalls on their cell phones. In their opinion, calls should be allowed only in the case of an emergency or if consumers have clearly given their express permission. Unfortunately, consumers continue to receive unwanted calls to both wireless numbers and

¹ Consumer Reports is the world’s largest independent product-testing organization with a mission to work for a fair, just, and safe marketplace. In addition to our testing and national survey capabilities, we rate thousands of products and services for our more than 8 million subscribers annually.

² Although solutions vary across technologies and carriers, consumers continue to be charged for call blocking technologies that are limited. For example, Verizon Wireless offers a limited free call-blocking service – but that service is limited to five phone numbers at a time and the blocks expire after 90 days. However, a customer can subscribe to a paid service that offers permanent blocking for up to 20 numbers for an additional \$5 a month. *See* <http://www.verizonwireless.com/support/block-numbers/>. AT&T also offers a limited free call blocking service for its subscribers. Subscribers can block up to 30 numbers for free for the first 30 days, and then are automatically enrolled into a program where they are billed \$4.99 a month to block phone numbers on a single line. *See* <https://smartlimits.att.com/#/>.

residential lines and express a great deal of frustration that there seems to be no way to stop them.

Importantly, these unwanted calls and robocalls go beyond mere annoyances. Many of the stories we received involve scammers who pitch fraudulent offers to unsuspecting customers. Phone scams have resulted in financial losses of an estimated \$350 million per year.³ Many of these scams are specifically targeted towards the elderly, negatively impacting their quality of life, tying up their only line of communication during emergencies,⁴ and even subjecting them to scare tactics and threats.

Some of the most prevalent scams afflicting consumers are the “Microsoft scam,” in which the caller pretends to be a tech support professional seeking to fix a supposed computer virus and then gains access over the victim’s computer,⁵ pre-recorded calls from “Rachel from Cardholder Services,” with promises to lower credit card rates in exchange for upfront fees,⁶ and the IRS scam, in which scammers use caller ID spoofing technologies to impersonate the IRS and demand immediate payment for supposedly unpaid taxes.⁷ The “free medical alert device” scam, targeted at the elderly, tells the call recipient that a family member or friend bought them a medical alert device that requires a one-time fee. Those who fall for the scam are tricked into giving away sensitive personal information, including credit card information.

Scams like these can be convincing, and developments in technology have made it easier for scammers to appear legitimate to even the most well-informed and savvy consumer. Perhaps even more disturbing, however, are the schemes that take advantage of seniors with memory problems, illnesses, or disabilities. One consumer wrote to us that she is a caregiver for her mother, who has Alzheimer’s disease. “Robocalls are disconcerting for my mother: they call her by her first name, sounding like a long-time friend,” she explained. “If they have gotten her to order something, and we complain, the response can vary from rude, to, in one case, actual threats. I work hard to minimize her phone contact, and I have learned to hang up if no one speaks in first couple of seconds. Telling them that she is ill makes it worse: they see her as an easy target!”⁸

Technologies Have Made it Easier For Bad Actors to Thwart the Do Not Call Registry

Many consumers have asked us why they continue to receive unwanted calls if they are on the National Do Not Call list. As we have explained previously in *Consumer Reports*, the Do

³ FCC’S Proposal to Crack Down on Robocalls is a Good Move, CONSUMERREPORTS.ORG (May 29, 2015), <http://www.consumerreports.org/cro/news/2015/05/fcc-crackdown-robocalls/index.htm>.

⁴ As one consumer aptly put it, having a phone “is our primary emergency connection which should never be able to be usurped.” This comment is on file with Consumers Union.

⁵ See Consumer Information: Tech Support Scams, Federal Trade Commission, <http://www.consumer.ftc.gov/articles/0346-tech-support-scams>.

⁶ See Jon Brodtkin, Rachel Robocaller Victims to Get \$1.7 Million in Refunds, ARS TECHNICA (May 20, 2015), <http://arstechnica.com/tech-policy/2015/05/rachel-robocaller-victims-to-get-1-7-million-in-refunds/> (noting that consumers will be receiving refunds from companies involved in the Rachel Cardholder Services scam).

⁷ See Michael Zakkour, I.R.S. Tax Phone Scam Claims More Victims Than Ever as 2015 Tax Day Arrives, FORBES (Apr. 14, 2015), <http://www.forbes.com/sites/michaelzakkour/2015/04/14/i-r-s-tax-phone-scam-claims-more-victims-than-ever-as-2015-tax-day-arrives/>.

⁸ This story is on file with Consumers Union and is available upon request.

Not Call registry helps minimize legitimate calls from companies, but technological developments have made it easier for bad actors and scammers to thwart the existing protections in place.⁹ While telemarketers are required by law to check the National Do Not Call list and are prohibited from contacting any numbers on the list, many illegitimate actors do not bother to check the registry and intentionally disregard the law.¹⁰

Changes in technology over the past few years have made it simple and inexpensive for scammers to make mass robocalls and hide their tracks in the process.¹¹ Part of the reason for this is the increased use of auto-dialers, which can send out thousands of pre-recorded calls per minute. Another is the prevalence of spoofing technologies that make a callback number appear differently on a caller ID – and make it much easier for fraudulent robocallers to evade detection.

Auto-dialers can send out thousands of pre-recorded calls per minute. In the past, auto-dialer technology generally meant equipment that is able to generate random numbers or sequentially dial thousands of numbers at once. Today, software and online platforms make it possible for anyone to upload phone numbers to Internet-based systems and make millions of calls and texts at once.¹² Although these Internet-based messaging and call systems can be used for legitimate purposes, just about anyone can use these tools to make mass calls and texts of any type, including those that Congress originally intended to limit.

Furthermore, many callers are using increasingly sophisticated tools such as customer databases, skip tracing technologies, lead generators, and caller ID to harvest cell phone numbers in the efforts to reach as many consumers as possible. Consumers have told us that they are concerned about the use of their information to facilitate additional robocalls and view it as a violation of their privacy. As one consumer explained, “my issue is with how these callers get their information. I used to believe it was just random dialing, but for many of the calls I answered, the callers know my name. Companies we do business with are selling our personal information, including phone numbers (both my cell and home phone are on the DNC) without our consent. I consider this a major invasion of my privacy.”¹³

Indeed, the Federal Trade Commission (“FTC”) recently highlighted the example of one bad actors who exposed and shared consumers’ personal information without their knowledge or consent. In that case, two debt collectors had posted sensitive consumer information online

⁹ See Catherine Fredman, How Robocalls Scam the Do Not Call List, CONSUMERREPORTS.ORG (Apr. 6, 2015), <http://www.consumerreports.org/cro/news/2015/04/how-robocalls-scam-the-do-not-call-list/index.htm>.

¹⁰ Robocall Action Plan, Federal Trade Commission, <http://www.consumer.ftc.gov/articles/0367-robocoall-action-plan>.

¹¹ See Prepared Statement of the Federal Trade Commission Before the United States Senate Special Committee on Aging on “Hanging Up on Phone Scams: Progress and Potential Solutions to this Scourge,” available at <http://www.aging.senate.gov/download/?id=9ea4062e-ebc8-47d3-9469-d88ae6b687f8> (explaining the difficulties associated with tracking VoIP calls that traverse complex routes across many networks).

¹² Some of these systems are becoming increasingly sophisticated in their ability to reach consumers. For example, one company explains that while mass notification systems are generally “designed to communicate a message of broad application to a large population,” it can tailor specific messages to millions at once and even send messages out based on recipients’ real-time location. See http://images.email.blackboard.com/web/blackboardinc/%7Be015de20-2797-4f43-a894-3d1eb3d847d1%7D_infographic_the_connected_enterprise.pdf.

¹³ This story is on file with Consumers Union and is available upon request.

“without encryption, appropriate redaction, or any other protection,” meaning that any visitor to the website could access the personal information.¹⁴ According to the FTC, this not only “violated the consumers’ privacy, [but] put them at risk of identity theft and exposed them to unwanted communications from unscrupulous debt collectors [who] try to extract payments from consumers when they do not have authority to collect the debts.”¹⁵

In addition to online platforms that facilitate mass-calling and messages, spoofing technologies enable callers to hide behind fake caller ID numbers, making it harder to track down who is responsible for these calls. By displaying a callback number differently on a caller ID, spoofers and scammers can appear as though they are a legitimate entity and trick consumers into providing sensitive information. It is simple for nearly anyone to sign up for these services. Caller ID spoofing services are widely available online for a small fee and fraudulent actors merely have to enter a name and number they want to pretend to call from – the call recipient’s bank or credit card company, for example.

The effects of spoofing can be harmful to all consumers who depend on these technologies, including the elderly. Many consumers have reported believing a call to be legitimate because the caller ID system displayed a number from either the same area code or a legitimate entity such as a local police department. In the case of the IRS scam discussed above, callers have spoofed numbers with Washington, D.C.’s 202-area code, making the scam calls appear all the more convincing.

Legitimate Companies Can Do More to Help With the Problem of Unwanted Calls

Many of the consumers we have heard from are surprised to find themselves subject to robocalls from legitimate businesses. Companies are required to maintain their own company-specific Do Not Call lists and must honor consumers’ requests to be placed on these lists. Furthermore, before placing automatic calls to wireless phones, they must obtain the prior express consent of the consumer. For the most part, legitimate companies are doing a good job of following these rules. However, there have been instances in which companies were fined for failing to get consent to call or honor consumers’ requests not to be called. Just last year, one wireless company was ordered to pay \$7.5 million for failing to obey consumers’ wishes that they be placed on the company’s internal do not call list.¹⁶ In another example, one consumer received multiple pre-recorded collections calls from a company despite not being a customer of that company. In that case, the company had the wrong number and would not stop calling the consumer despite the fact he stayed on the line to explain the situation to a real person.

¹⁴ See Press Release, Federal Trade Commission, FTC Alleges Debt Brokers Illegally Exposed Personal Information of Tens of Thousands of Consumers on the Internet, <https://www.ftc.gov/news-events/press-releases/2014/11/ftc-alleges-debt-brokers-illegally-exposed-personal-information>.

¹⁵ See Press Release, Federal Trade Commission, FTC Alleges Debt Brokers Illegally Exposed Personal Information of Tens of Thousands of Consumers on the Internet, <https://www.ftc.gov/news-events/press-releases/2014/11/ftc-alleges-debt-brokers-illegally-exposed-personal-information>.

¹⁶ See Press Release, Federal Communications Commission, Sprint to Pay Record \$7.5 Million to Resolve Do-Not-Call Investigation, (May 19, 2014) available at <https://www.fcc.gov/document/sprint-pay-record-75m-resolve-do-not-call-investigation>.

Many companies have argued that there should be safe harbors in place to protect legitimate, well-intentioned companies that accidentally make calls to consumers who do not wish to be contacted. Some have proposed that callers be free of liability from the FCC's rules against robocalling until the caller has actual knowledge that it is calling a wrong number. We are concerned that such an interpretation would remove companies' incentives to design safeguards and procedures to ensure that they are reaching the correct party from whom they obtained appropriate consent, and that it would dissuade companies from making proper updates within a reasonable amount of time. As a basic principle, if a consumer asks not to be contacted, a company should adhere to that request as promptly as possible.

Consumers Union has recognized in its comments to the FCC publicly that there are some instances in which it is appropriate for consumers to receive messages without first giving consent. A number of petitioners, from healthcare providers, to energy utilities, to financial institutions have enumerated a list of the types of calls that should be exempt from the FCC's rules completely. We are pleased that reports indicate that any calls that the FCC chooses to exempt from its rules will be strictly limited to a very narrow set of purposes and will exclude calls that purport to be informational or helpful to the consumer but that actually amount to debt collection or advertising efforts. This is especially true given that many of the consumers we have heard from continue to receive calls that callers claim are useful but that consumers actually do not want to receive. As one consumer told us: "It is a rare day that I don't get a call from someone offering to 'help' with my credit card. Even though 'nothing is wrong' with my current account."¹⁷

We urge companies to take all of the necessary steps to ensure that they are dialing the correct recipient and that the call reaches only the individual who gave consent to be called. Companies should ensure that they have in place practices that they are adhering to the wishes of consumers and provide additional tools to empower consumers.

Phone Companies Should Provide Consumers With More Free Tools to Block Calls

Consumers Union has played an important role in the efforts to educate consumers about the various scams made possible by unwanted telemarketing and robocalls, but we believe that more can be done to stop these calls. We have encouraged our readers to hang up immediately if they receive a robocall and have explained that, in the case of fraudulent calls, pressing a number can lead to additional calls and signal to the scammer that the number is live and actually belongs to a consumer. We have also educated consumers about the dangers of phishing efforts to get victims to reveal information about themselves, and have urged consumers never to give up sensitive personal information over the phone. At the same time, we have continued to encourage consumers to sign up for the Do Not Call Registry, as it does provide some relief from calls from legitimate, compliance-minded businesses. Consumers Union has also informed consumers of existing options, such as call-blocking devices, services, and apps that may help reduce the number of unwanted calls.

¹⁷ This story is on file with Consumers Union and is available upon request.

Unfortunately, consumer education is not sufficient to stop the problem of unwanted calls. It is becoming increasingly difficult for consumers to distinguish between legitimate and illegitimate calls. This is especially true for vulnerable populations such as the elderly. Currently, the burden is on them to navigate all of the increasingly complex options and technologies available to them, and more can be done by phone companies to protect these consumers from fraudulent calls.

Although the technology exists to prevent unwanted robocalls from reaching consumers, many consumers have limited options available to them. This is true despite the fact that consumers themselves have indicated that they welcome call-blocking technologies. Earlier this year, Consumers Union filed comments with the Federal Communications Commission (“FCC”) arguing that a carrier’s decision to provide consumer-directed call-blocking technologies would not run afoul of existing laws, a position that is shared by the Federal Trade Commission. Our filing was supplemented with more than 50,000 comments from consumers urging the FCC to let phone companies provide consumers with call-blocking technologies.¹⁸

We are encouraged to hear reports that the FCC is poised to side with consumers on this issue to clarify that there are no legal prohibitions on the types of call-blocking technologies that consumers have demanded that phone companies provide.¹⁹ Telephone companies have long argued that implementing call-blocking technologies could amount to a violation of the FCC’s rules and providers’ duty to connect calls.²⁰ However, as Consumers Union pointed out in public comments to the FCC, these types of call-blocking technologies should be allowed because they are consumer-directed and provide more control to consumers, including the option to block certain calls or categories of calls. We are in favor of technologies that give consumers additional choice and control over the calls that they receive and believe that such decisions should ultimately rest with the consumer. Consumers should be able to choose to send callers to voicemail, answer or block a call, hang up, or identify certain callers or categories of callers to be blocked. We believe that providing such tools that give consumers more control over calls is exactly the type of relief that consumers would welcome.

Conclusion

More than ten years after the development of the National Do Not Call list, consumers continue to be flooded by a wave of unsolicited calls generated by increasingly sophisticated technologies. Robocalls, in particular, continue to be a problem for consumers on all platforms. Moving forward, we want systems that can give all consumers access to free blocking services. So that consumers can be protected against fraudulent practices, regardless of the type of technology they choose to employ. We recognize that there have been many ongoing efforts on

¹⁸ Letter from Delara Derakhshani to Marlene Dortch, Federal Communications Commission, CG Docket No. 02-278, available at https://consumersunion.org/wp-content/uploads/2015/01/Robocalls_Letter_FCC_0115.pdf.

¹⁹ Fact Sheet: Wheeler Proposal to Protect and Empower Consumers Against Unwanted Robocalls, Texts to Wireless Phones, Federal Communications Commission, <https://www.fcc.gov/document/fact-sheet-consumer-protection-proposal>.

²⁰ For example, US Telecom has argued before this very committee that the current legal framework in place prohibits carriers from blocking calls on a wide scale and that the Commission has repeatedly interpreted Section 201(b) of the Communications Act to bar call-blocking as an unjust and unreasonable practice. See <http://www.mccaskill.senate.gov/imo/media/doc/robocalldetailedresponsetosenmccaskill.pdf>.

the part of industry to come up with solutions in the future and that not all callers are illegitimate. But we also cannot ignore the fact that consumers are receiving calls that they do not want, that currently available technologies do not adequately address the problem, and that it is becoming increasingly difficult for consumers – especially particularly vulnerable consumers like the elderly – to distinguish fraudulent calls from regular ones. Consumers have been plagued by unwanted calls for years and cannot afford to wait any longer for a solution to the problem. We encourage all parties to move forward expeditiously to empower consumers to have more control over the calls they receive.