

Congress of the United States
Washington, DC 20515

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CGB
Consumers
Telemarketing
TCPA

June 11, 2015

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

The Honorable Edith Ramirez
Chairwoman
Federal Trade Commission
600 Pennsylvania Ave, NW
Washington, DC 20580

Dear Chairman Wheeler and Chairwoman Ramirez:

We appreciate the long-standing efforts of your agencies to oversee the implementation and enforcement of the Telephone Consumer Protection Act of 1991 (TCPA) and the Do Not Call Registry. These provisions are intended to protect consumers from the unwanted intrusion of telemarketing calls, including "robocalls." These efforts have been successful over the years in curbing disruptions to consumers, but despite these successes, we are nonetheless concerned that the rules in place today have not kept pace with technology.

The way that Americans communicate has changed drastically since 1991—today, 44 percent of American homes have only a wireless phone,¹ an option that likely was never anticipated in 1991, when the overall penetration rate of wireless was only 2.9%. As a result, some of the protections created by TCPA clearly need to be modernized to reconcile the law with the modern communications landscape.

This is evident through the data surrounding TCPA complaints and litigation. On the consumer protection side, TCPA complaints continue to top the charts at the FCC with over 200,000 consumer complaints filed in 2014.² The FTC data is similarly alarming, with over 1.7 million robocall complaints over the prior fiscal year.³ For businesses, particularly small businesses, a lack of clarity in the rules has led to unintentional violations, which has created the opportunity for often-abusive litigation, with the number of TCPA class action suits growing 560 percent from 2010 to 2014.⁴

¹ Wireless substitution: Early release of estimates from the National Health Interview Survey, January–June 2014. Blumberg SJ, Luke JV. National Center for Health Statistics. December 2014. Available from: <http://www.cdc.gov/nchs/nhis.htm>.

² See FCC Quarterly Consumer Complaint Reports for calendar year 2014 at: www.fcc.gov/encyclopedia/quarterly-reports-consumer-inquiries-and-complaints

³ See FY2014 FTC Do Not Call Registry Data Book at: www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2014/dncdatabookfy2014.pdf.

⁴ Debt Collection Litigation & CFPB Complaint Statistics, December 2014 & Year in Review, WebRecon LLC (Jan. 22, 2015), available at <http://dev.webrecon.com/debt-collection-litigation-cfpb-complaint-statistics-december-2014-and-year-in-review/>.

According to reports, later this month the FCC is set to consider several reforms to the TCPA, including whether to take up recommendations from the FTC and state attorneys general to allow consumers to use new technological solutions to block unwanted calls. While this is a promising step, we have concerns that these proposals may not in fact reduce the number of unwanted calls. The FCC is considering new exemptions that could weaken the effectiveness of the current prohibitions on unwanted calls and the current statutory limits on fines and damages may not sufficiently deter bad actors, regardless of the rules. We therefore urge the FCC to consider the impact on consumers when contemplating the creation of new exemptions to its rules.

In addition to protecting consumers from unwanted calls, we urge the FCC to implement real reforms that provide greater clarity and guidance for businesses seeking to contact their customers for legitimate reasons. Currently, there are multiple petitions pending seeking clarification on the contours of the law. While the fact sheet released by the FCC indicates the Commission intends to address some of these issues, we have concerns that this item may not provide sufficient guidance and would leave businesses still unsure how to comply with an outdated law in a time of modern technology. This leaves businesses with the unenviable choice of scrapping modern technology or running the risk of litigation. Both of these outcomes unnecessarily raise costs for consumers and should be addressed in the Commission's item.

We share a bipartisan commitment to protecting consumers and creating certainty for legitimate business activity. The TCPA serves an important purpose, and the FCC has the opportunity to ensure that it is implemented and enforced in an effective and appropriate way. We urge the Commission as it updates its rules to include strong consumer protections and clear guidance for those seeking to conduct their business within the contours of the law. We also ask both the FCC and FTC to provide staff with a briefing on the challenges that agencies face enforcing this law. We need to ensure that Congress' intent to reduce the number of unwanted calls is realized.

Sincerely,



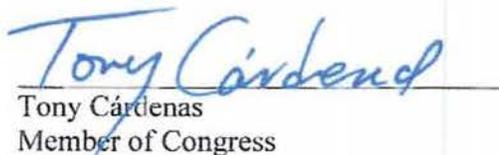
Gus Bilirakis
Member of Congress



Jerry McNerney
Member of Congress



Leonard Lance
Member of Congress



Tony Cárdenas
Member of Congress



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 15, 2015

The Honorable Gus Bilirakis
U.S. House of Representatives
2313 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Bilirakis:

Thank you for your letter regarding pending petitions for declaratory ruling on the applicability of the Telephone Consumer Protection Act (TCPA) and the Commission's related rules. In your letter, you state that some protections created by TCPA need to be modernized to reconcile the law with the modern communications landscape and urge the Commission to implement reforms that provide greater clarity and guidance for callers. In addition, you raise concerns that some new exceptions under consideration could weaken the effectiveness of the current prohibitions on unwanted calls. I agree with both sets of observations, and the item adopted at the Commission's June Open Meeting reflects the careful balance that you detail in your letter.

Let me assure you that the Commission is committed to the TCPA's goal of protecting consumers from unwanted calls and texts. We know consumers value their privacy, regardless of whether unwanted efforts to reach them target their home landlines or wireless phones. The TCPA makes clear that consumers can choose which calls they want and do not want. That is why I led the Commission to crack down on robocalls, spam texts, and telemarketing calls, which are the number one source of consumer complaints at the FCC. We took action to resolve more than 20 petitions by providing, as you suggest, much needed clarity on number of TCPA issues to business and other callers. Our actions send one clear message: consumers have the right to control the calls and texts they receive.

In your letter, you raise concerns businesses and other callers are adversely affected because we have not updated the TCPA to reflect modern calling and consumer expectations. To the contrary, our actions provide the clarifications that responsible businesses need to maintain lawful use of robocalling equipment. Indeed, we interpret the TCPA in a common-sense way that benefits both callers and consumers. This includes providing limited exceptions that clear the way for time-sensitive calls about consumer healthcare and bank accounts so that consumers can get the information as quickly as possible. With important conditions on the number of calls and opt-out ability, we prove that both consumers and businesses can win under the TCPA.

With this decision, the Commission empowered consumers in a number of ways. For the first time, the Commission clarified that there is no legal reason carriers should not offer their customers popular robocall-blocking solutions so that consumers can use market-based

approaches to stop unwanted calls. We also make it clear that it should be easy for consumers to say “no more” even when they’ve given their consent in the past.

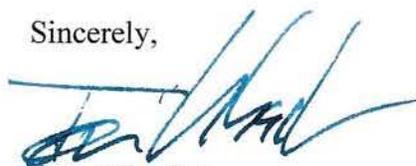
We also closed a number of loopholes. For example, we clarified the definition of “autodialers” to include any technology with the potential to dial random or sequential numbers. Our action is true to Congress’s intent when passing the law and would ensure that robocallers cannot skirt consent requirements through changes in technology design. We also closed the “reassigned number” loophole, making clear that consumers who inherit a phone number will not be subject to a barrage of unwanted robocalls consented to by the previous subscriber to the number.

You also expressed concern that some new exceptions could weaken the effectiveness of the current prohibitions on unwanted calls. As noted above, while we will allow some very limited and specific exceptions, such as time-sensitive alerts to customers regarding possible fraud and suspicious activity involving consumer bank accounts, it is important to note that these narrow exemptions *do not* include practices like debt collection and marketing, and consumers will have the right to opt-out of such calls.

The Commission’s decisions on these issues were based on an extensive record in response to the petitions, including numerous informative meetings with trade associations, small business owners, state attorneys general, consumer groups, and other interested parties. Please be assured that we have carefully considered the input of all stakeholders, including callers and consumers alike.

I appreciate your interest in this matter. Please let me know if I can be of any further assistance.

Sincerely,



Tom Wheeler



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 15, 2015

The Honorable Tony Cárdenas
U.S. House of Representatives
1508 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Cárdenas:

Thank you for your letter regarding pending petitions for declaratory ruling on the applicability of the Telephone Consumer Protection Act (TCPA) and the Commission's related rules. In your letter, you state that some protections created by TCPA need to be modernized to reconcile the law with the modern communications landscape and urge the Commission to implement reforms that provide greater clarity and guidance for callers. In addition, you raise concerns that some new exceptions under consideration could weaken the effectiveness of the current prohibitions on unwanted calls. I agree with both sets of observations, and the item adopted at the Commission's June Open Meeting reflects the careful balance that you detail in your letter.

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In your letter, you raise concerns businesses and other callers are adversely affected because we have not updated the TCPA to reflect modern calling and consumer expectations. To the contrary, our actions provide the clarifications that responsible businesses need to maintain lawful use of robocalling equipment. Indeed, we interpret the TCPA in a common-sense way that benefits both callers and consumers. This includes providing limited exceptions that clear the way for time-sensitive calls about consumer healthcare and bank accounts so that consumers can get the information as quickly as possible. With important conditions on the number of calls and opt-out ability, we prove that both consumers and businesses can win under the TCPA.

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Sincerely,



Tom Wheeler



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 15, 2015

The Honorable Leonard Lance
U.S. House of Representatives
133 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Lance:

Thank you for your letter regarding pending petitions for declaratory ruling on the applicability of the Telephone Consumer Protection Act (TCPA) and the Commission's related rules. In your letter, you state that some protections created by TCPA need to be modernized to reconcile the law with the modern communications landscape and urge the Commission to implement reforms that provide greater clarity and guidance for callers. In addition, you raise concerns that some new exceptions under consideration could weaken the effectiveness of the current prohibitions on unwanted calls. I agree with both sets of observations, and the item adopted at the Commission's June Open Meeting reflects the careful balance that you detail in your letter.

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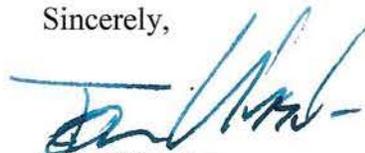
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Sincerely,



Tom Wheeler



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 15, 2015

The Honorable Jerry McNerney
U.S. House of Representatives
1210 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman McNerney:

Thank you for your letter regarding pending petitions for declaratory ruling on the applicability of the Telephone Consumer Protection Act (TCPA) and the Commission's related rules. In your letter, you state that some protections created by TCPA need to be modernized to reconcile the law with the modern communications landscape and urge the Commission to implement reforms that provide greater clarity and guidance for callers. In addition, you raise concerns that some new exceptions under consideration could weaken the effectiveness of the current prohibitions on unwanted calls. I agree with both sets of observations, and the item adopted at the Commission's June Open Meeting reflects the careful balance that you detail in your letter.

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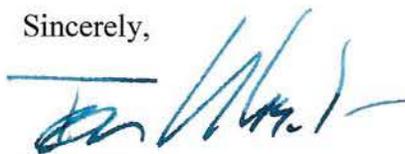
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I appreciate your interest in this matter. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wheeler", written over a horizontal line.

Tom Wheeler