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United States Senate

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

WASHINGTON, DC 20510-6075

March 9, 2016

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

Dear Chairman Wheeler:

As Ranking Member of the Senate Committee on Banking, Housing, and Urban Affairs, I am concerned with a provision in the Bipartisan Budget Act of 2015 (Public Law 114-74) that will impact Americans with student loans and mortgages. Section 301 of the law permits automated telephone calls, also known as "robocalls," to collect debts owed to or guaranteed by the United States. This legislation further requires the Federal Communications Commission (FCC) to issue regulations to implement this provision by August 2, 2016. As you work to draft these regulations, I ask that you take steps to ensure that debt collectors do not mislead borrowers or engage in other misconduct.

The Telephone Consumer Protection Act of 1991 (TCPA) protects consumers from being harassed by telemarketers and other companies, particularly through the use of automated telephone equipment. The TCPA and the FCC's implementing regulations protect consumers in a number of important ways, including prohibiting calls before 8 AM or after 9 PM, creating a Do-Not-Call list so that consumers can ask not to be called, and requiring companies to identify who they are and where they can be reached.

The TCPA also includes protections for consumers in instances where they may be charged for the call, such as charges for cellular telephone calls, and requires express consent to initiate any telephone call to a residential telephone line using an artificial or prerecorded voice. However, section 301 exempts government debt collection calls from these protections and compromises the TCPA's consumer protections. Millions of Americans may be robocalled about their federal student loans, mortgages, business loans, or tax obligations. Additionally, this provision could potentially allow robocalls and texts to unrelated persons who have the reassigned cell phone numbers of the original borrowers, or to the borrowers' relatives and references.

The FCC must limit this consumer protection rollback through strong regulations. I request that you work in coordination with the Consumer Financial Protection Bureau (CFPB) to ensure that your approaches to supervising debt collectors and debt collection are consistent. Section 32102 of the FAST Act of 2015 (Public Law 114-94) amended Section 6306 of the Internal Revenue Code of 1986 to direct the IRS to enter into contracts with private collection contractors to collect inactive tax receivables. I ask that you work in coordination with the IRS and the CFPB

to draft rules and guidance for this program so that it maintains the consumer protections contained in the TCPA.

As of February 2016, over 47 million people could be impacted by section 301. This number does not include those people subject to the IRS' new authority to contract with debt collectors. This includes 42 million people with federal student loans and 5 million with Federal Housing Administration (FHA) loans, as well as others who may have small business loans through the Small Business Administration. Millions more could be affected by the addition of IRS collections; as of September 30, 2014, approximately 12.4 million individuals were subject to IRS collection activities.

Please consider including the following principles as you write rules to implement section 301:

- Calls that are made pursuant to section 301 should be permitted only if they meet requirements that you set forth in regulation.
- The caller should be required to verify that the called party is the borrower, including through policies and procedures, documentation, and periodic review.
- The person who is called should have the ability to request that the calls be stopped, and be notified of that ability.
- Calls to persons who are not the borrower should be eliminated.
- Servicers of government debt should not be permitted to make robocalls. This is particularly important in the student loan context, as we have seen repeated instances of servicing misconduct by federal student loan servicers.
- Debt that is no longer owned by the federal government should not qualify for the exemption.
- The number and duration of calls per month should be limited.
- Calls to reassigned numbers should be prohibited.
- Ensure that all callers are aware of their compliance obligations under the Fair Debt Collection Practices Act, including the time-of-day restrictions and the restrictions of 15 U.S.C. 1692b.

In your response, please detail how you plan to consider these recommendations in your rulemaking. While it is important to ensure that the federal government can effectively collect on debt it is owed, it is also important to ensure that the federal government is not itself an instrument to harass and mistreat individuals through robocalls. I ask that you implement sensible limits on federal debt collection and look forward to hearing from you.

Sincerely,

Sherrod Brown
Ranking Member