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United States Senate
COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

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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 robo-called 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



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

April 5, 2016

The Honorable Sherrod Brown
United States Senate
713 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Brown:

Thank you for your letter expressing concern about Section 301 of the Bipartisan Budget Act of 2015, which amends the codified Telephone Consumer Protection Act (TCPA). Your important views will be included in the record of the related proceeding and considered as part of the FCC's review.

I share your interest in maintaining strong consumer protections against unwanted calls while remaining faithful to Congress's mandate. Section 301 creates an exception to the TCPA's prior express consent requirement for automated calls to cellular or residential telephones, if such calls are solely for the purpose of collecting debts owed to or guaranteed by the United States government. That provision also requires the Commission to issue implementing regulations within nine months of enactment of the Bipartisan Budget Act, giving the Commission until August 2nd of this year to adopt new rules.

You have raised several issues for consideration by the Commission, including: whether callers should be required to stop calling as soon as any called party makes such a request; whether covered calls should be allowed only to the debtor and not others; whether limits should be placed on calls made by servicers of government debt; what limits should be placed on calls concerning debt no longer owed by the federal government; whether there should be limits on the number and duration of automated calls made without consent, an issue raised specifically by Section 301; and what limits should be placed on covered calls to telephone numbers reassigned from a debtor to another person.

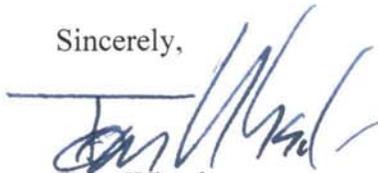
I fully agree that these are key issues for the Commission to consider in this context. Last month, I circulated a draft Notice of Proposed Rulemaking (NPRM) that seeks comment on these and other issues and presents proposals that are consistent with Section 301 while shielding consumers from unwanted robocalls.

The draft NPRM seeks comment on clear, pro-consumer restrictions on the type and number of calls a federal creditor may place to recover a debt, even when those calls go unanswered. The draft NPRM also makes clear that the new rules will not open a door for telemarketing calls. The Commission remains steadfast in its defense of protections against unwanted calls. Congress specified that exempted calls must be "solely" to collect a federal debt, and we will ensure they do not go beyond that boundary.

I also note that you urge us to work closely with the Consumer Financial Protection Bureau (CFPB) to coordinate the two agencies' approaches to limits on the number of permissible debt collection calls. Commission staff worked closely with the CFPB staff in drafting the NPRM and developing the aforementioned proposals and also consulted with the Department of Treasury, Department of Education, and other federal stakeholders. We will also, as you have suggested, coordinate with the Internal Revenue Service (IRS) to ensure that we maintain the TCPA's consumer protections as the IRS implements new collection methods.

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

Sincerely,



Tom Wheeler