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SUBCOMMITTEE ON
ENVIRONMENT AND THE ECONOMY

14-112

January 27, 2014

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

Dear Chairman Wheeler,

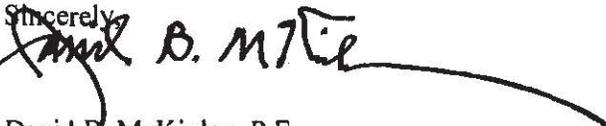
On June 17, 2013 the United States Court for the District of Maryland ruled that a consumer could sue a caller for violation of the Telephone Consumer Protection Act (TCPA) for calls received on his Voice over Internet Protocol (VoIP) (*Lynn v. Monarch Recovery Management, Inc.*). The implication of this ruling is that no call can be placed with an automatic telephone dialing system (ATDS) due to the impossibility of knowing how the consumer is charged for the call.

This is concerning as it could jeopardize the loss of hundreds of jobs in West Virginia and thousands more throughout the country. Businesses which use automated dialers could be subject to liability, including catastrophic class action liability. While there are lists of wireless numbers, there is no such database of VoIP numbers or other numbers for which the called party is charged. It is not readily apparent from the number if the called party is charged for each incoming call. This court decision, combined with the TCPA language, functionally bans ATDS calls entirely, which is not the goal of the statute or the regulation.

Therefore, I request that your Agency issues clarification that the TCPA restriction is not violated if the caller using an ATDS contacts a number and there is no indication that it is a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.

Should you have any questions or concerns, please do not hesitate to contact me or Cory Toth of my staff at (202) 225-4172, or by email at cory.toth@mail.house.gov.

Sincerely,



David B. McKinley, P.E.
Member of Congress

Cc: The Honorable Mignon Clyburn, Commissioner, Federal Communications Commission
The Honorable Jessica Rosenworcel, Commissioner, Federal Communications Commission
The Honorable Ajit Pai, Commissioner, Federal Communications Commission
The Honorable Michael O'Rielly, Commissioner, Federal Communications Commission



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

April 4, 2014

The Honorable David B. McKinley
U.S. House of Representatives
412 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman McKinley:

Thank you for your letter expressing concern about the effect of a decision by the U.S. District Court in Maryland in *Lynn v. Monarch Recovery Management* that a consumer may sue under the Telephone Consumer Protection Act (TCPA) for calls placed using an autodialer to a Voice over Internet Protocol (VoIP) number.

As you may know, the TCPA and the Commission's implementing rules protect consumers and others from non-emergency calls made with an autodialer or the use of an artificial or prerecorded voice. The recipient's prior express consent is required for such calls made to wireless phones, emergency phones (such as 911 lines), and services for which the called party is charged for the call, among others. Separately, the TCPA and the Commission's rules prohibit prerecorded telemarketing calls to residential lines without the recipient's prior express consent. As of October 16, 2013, the recipient's consent must be written if the autodialed or prerecorded call is for telemarketing purposes.

While a number of parties have asked the Commission about the TCPA's applicability to new technologies, currently, no petition is before the Commission regarding whether it covers calls to VoIP subscribers as presented in the *Lynn* case. Should that change, the Commission would seek public comment and take all views into consideration, including your letter.

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

Sincerely,

Tom Wheeler