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ONE HUNDRED FOURTEENTH CONGRESS

Congress of the United States

House of Representatives

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September 1, 2016

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Upton:

We write to request that the Subcommittee on Communications and Technology and the Subcommittee on Commerce, Manufacturing, and Trade hold a joint hearing to update and rewrite the Telephone Consumer Protection Act of 1991 (TCPA) for the 21st century.[1]

When Congress passed the TCPA 25 years ago, the smallest cell phones were the size of bricks and barely fit the definition of mobile. At that time, people still relied almost exclusively on their landlines—only 7.5 million cellphones were in use in the entire country. A few years after that, cellphone service cost an average of 47 cents per minute.[2] In contrast, today we have more cellphone connections than people,[3] and nearly half of Americans are using them as a replacement to the once essential landlines.[4] Even the way landline phones function is changing

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[1] Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243 (hereinafter TCPA).

[2] Federal Communications Commission, *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, Fifteenth Report*, 26 FCC Rcd 9664, Table 20 (2011).

[3] CTIA, *Annual Wireless Industry Survey* (www.ctia.org/your-wireless-life/how-wireless-works/annual-wireless-industry-survey (accessed Sept. 30, 2015).

[4] Centers for Disease Control and Prevention, *National Health Interview Survey Early Release Program, Early Release of Selected Estimates Based on Data from the January–March 2015 National Health Interview Survey* (Sept. 2015) (www.cdc.gov/nchs/data/nhis/earlyrelease/earlyrelease201509.pdf).

drastically. Old copper lines are giving way to high-speed fiber-optic lines with Voice over Internet Protocol in over half of residential landline connections.[5]

Congress acted to serve consumers in 1991 when it first passed the TCPA, finding that action was necessary to help the "many consumers [who were] outraged over the proliferation of intrusive, nuisance calls to their homes from telemarketers."[6] And while the TCPA has been effective for more than two decades, it unfortunately seems that the TCPA is beginning to show its age. Other attempts to improve consumer protections since first passage of the TCPA, such as the Do Not Call Implementation Act of 2003, have proven less than sufficient to stem consumer frustration.[7]

Technology is allowing telemarketers to circumvent existing rules, and while the Federal Communications Commission (FCC) and the Federal Trade Commission (FTC) have been doing what they can under the existing laws, consumer complaints are nonetheless on the rise. The FCC now receives more TCPA complaints than any other type of complaint—more than 170,000 in 2015 alone. This number is in stark contrast to the 37,702 complaints the FCC received in 2004, the year that the Do Not Call list was implemented.[8] Similarly, in Fiscal Year 2015, more than 222 million consumers were active on the FTC's Do Not Call Registry. The FTC received more than three million related complaints just last year.

The public has clearly spoken, and it is time for Congress to explore whether there is more we can do to protect consumers from these unwanted intrusions and examine whether the laws should be updated for the 21st century. Several issues already seem ripe for consideration:

1. The TCPA draws a distinction between wireless and landline phones. Given the degree of wireless substitution, we should consider whether the law should be technology neutral.

2. The TCPA defines a prohibited autodialer as "equipment which has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator; and to dial such numbers."[9] The FCC has acknowledged that the answer to this basic question of what constitutes an autodialer is unclear. Given the vague definition, we should consider whether a smartphone is now an autodialer.

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[5] Federal Communications Commission, *Local Telephone Competition: Status as of December 31, 2014* (Oct. 2014) (apps.fcc.gov/edocs_public/attachmatch/DOC-329975A1.pdf).

[6] *See* TCPA at § 2(6).

[7] 15 U.S.C. § 6101 *et. seq.*

[8] *See FCC Quarterly Consumer Complaint Reports for Calendar Year 2004.*

[9] *See* 47 U.S.C. § 227(a)(1).

3. The FCC has told us that it could use new tools to prosecute illegal robocallers. Restrictions on its ability to enforce the law allow violators to simply change their name to avoid prosecution.[10] We should consider whether the statutory fines imposed by Congress nearly twenty-five years ago are still sufficient to serve our intent.

4. Similarly, the FTC brings enforcement actions against companies and telemarketers for violations of Do Not Call, abandoned call, and robocall violations. These calls violate consumers' privacy and often lead to fraud, frequently targeting people of color, elderly consumers, military personnel, and financially vulnerable consumers.[11] We should consider whether such calls that result in fraud should be subject to higher penalties.

5. Despite a bipartisan coalition from this Committee cautioning the FCC against creating new loopholes that would increase unwanted calls, the FCC decided that some robocallers, calling a cellphone, should be exempted from the TCPA's consumer consent requirement. We should consider strengthening the TCPA to close these new loopholes.

6. During an FCC oversight hearing before the Communications and Technology Subcommittee, FCC Chairman Tom Wheeler testified that, under the TCPA, tele-town halls were prohibited—and always had been. Subcommittee Chairman Walden specifically noted that now may be the time to look into this issue. We agree. We should consider whether such a strict interpretation of the TCPA could undermine Congress's ability to hear from constituents.

7. The FTC has continually maintained that lifting the common carrier exemption would help reduce unwanted calls. Protection of consumers from unwanted telemarketing and robocalls may be improved by with increased enforcement. This hearing would be an opportunity to consider whether two agencies with enforcement authority would better protect consumers.

These issues are only a few of those outstanding concerning this aging law. As a committee, we should always put consumers first. Our members have sent letters and our staffs have been briefed, but still consumers remain plagued by robocalls. FCC commissioners also support congressional action in this area.[12] We believe it is time to hold a hearing on how best to protect today's consumer from unwanted commercial robocalls.

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[10] 47 U.S.C. § 503(b)(5).

[11] Federal Trade Commission, *Keynote Address by Commissioner Julie Brill at 2015 TPRC – 43rd Research Conference on Communications, Information, and Internet Policy* (Sept. 26, 2015).

[12] House Committee on Energy and Commerce, Subcommittee on Communications and Technology, *Hearing on Oversight of the Federal Communications Commission*, 114th Cong. (Mar. 22, 2016).

Sincerely,

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Ranking Member

Anna G. Eshoo
Ranking Member
Subcommittee on Communications
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Jan Schakowsky
Ranking Member
Subcommittee on Commerce,
Manufacturing, and Trade