

October 27, 2011

The Honorable Fred Upton  
Chairman  
House Committee on Energy and  
Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

The Honorable Henry Waxman  
Ranking Minority Member  
House Committee on Energy and  
Commerce  
2322A Rayburn House Office Building  
Washington, DC 20515

Re: H.R. 3035 (Terry), Mobile Informational Call Act of 2011 (oppose)

Dear Chairman Upton and Ranking Minority Member Waxman:

The undersigned consumer, civil rights, poverty and privacy organizations write to express our strong opposition to H.R. 3035, the Mobile Informational Call Act of 2011. The bill purports to make common sense updates to the Telephone Consumer Protection Act (TCPA) to ensure that consumers know about data breaches, fraud alerts, flight and service appointment cancellations, drug recalls and late payments. But the bill is a wolf in sheep's clothing.

**The real purpose of H.R. 3035 is to open up *everyone's* cell phones, land lines, and business phone numbers, without their consent, to a flood of commercial, marketing and debt collection calls (to not only the debtor but everyone else).** The bill would effectively gut the TCPA, a widely popular statute that protects Americans from the proliferation of intrusive, nuisance calls from telemarketers and others whose use of technology "may be abusive or harassment."<sup>1</sup> In 1991 Congress found that unwanted automated calls were a "nuisance and an invasion of privacy, regardless of the type of call" and that banning such calls was "the only effective means of protecting telephone consumers from this nuisance and privacy invasion."<sup>2</sup>

**Automated predictive dialers would be exempt from the TCPA, permitting repetitive "phantom" calls to cell phones, doctor's offices, hospital rooms and pagers.** Predictive dialers use a computer to call telephones based on predictions of when someone will answer and when a human caller will be available. They are the source of calls that begin with a long pause and of calls with no one on the other end (if the prediction of the human caller's availability is wrong.) Since the purpose of predictive dialers is to get someone to answer, computers often call a number repeatedly throughout the day. The TCPA currently prohibits the use of automatic telephone dialing systems to make calls, with certain exceptions, to (1) any emergency telephone line (including 911, hospitals, medical offices, health care facilities, poison control centers, fire protection or law enforcement agencies), (2)

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<sup>1</sup> 47 U.S.C. § 227 note.

<sup>2</sup> Pub. L. No. 102-243, §§ 2(10-13), (Dec. 20, 1991), *codified at* 47 U.S.C. § 227.

guest or patient room of hospital, health care facility, elderly home, (3) pagers or (4) cell phones. H.R. 3035 would revise the definition of “automatic telephone dialing system” so that modern predictive dialers, which do not use random or sequential number generators, would be outside of the TCPA’s protections. Calls could even be made for solicitation purposes unless the telephone number is a residential one on the Do Not Call list.

**Businesses could make prerecorded robo-calls to anyone’s personal or business cell phone for any commercial purpose that is not a solicitation, including debt collection, surveys, “how did you like your recent shopping experience,” and “we’ve enhanced our service” – even if you are on the Do-Not-Call list.** TCPA currently prohibits robo-calls to cell phones unless the consumer has provided prior express consent. H.R. 3035 would add a new exception permitting robo-calls to cell phones for any commercial call that is not a solicitation. The possibilities are endless. The Do Not Call list protects people only from telemarketing calls, not these other calls. Debt collection calls would be made to the cell phones of friends, family, neighbors, employers, or strangers with similar names or numbers. Families struggling in the current economy will be hounded on their cell phones, even if they have a landline that the collector could call, and even if the call uses up precious cell phone minutes or incurs per-minute charges for those with prepay phones. Commercial calls for debt collection or other commercial purposes could be made even if the consumer never gave out his or her cell phone number—the business could call if it found the consumer’s cell phone number on Google or by purchasing a list from entities that collect that information.

**The bill redefines “prior express consent” to make that requirement meaningless.** The TCPA’s restrictions on robo-calls have an exemption for calls made with the consumer’s “prior express consent.” The bill would define that phrase to find “prior express consent” any time a person provides a telephone number “as a means of contact” at time of purchase or “any other point.” Thus, even if the telephone number was provided for a limited, one-time purpose, the business or consumer would be deemed to have consented to robo-calls into the future.

**Consumers can already receive cell phone calls (and landline calls) for emergency or informational purposes.** The TCPA has existing exceptions from its prohibitions for emergency calls and for calls made with the consumer’s prior express consent. Any consumer who wants to get cell phone or landline calls about public service announcements, flight cancellations, or anything else is welcome to give their consent. But consumers often prefer to receive such information other ways, such as through email. The purpose of H.R. 3035 is to permit calls to cell phones without the consumer’s consent.

**Nuisance calls and collection calls on cell phones endanger public safety.** Unlike land lines, people carry cell phones with them. They have them while driving and operating machinery. Many people use their cell phones primarily for emergency purposes and rush to answer them when they ring. Opening the floodgates to robo-calls to cell phones endangers public safety. Driving while distracted is always dangerous, but is especially so if the driver

becomes agitated by fears that their child is in trouble or by a debt collector calling to harass them.

H.R. 3035 is not only unnecessary, it will effectively gut the Telephone Consumer Protection Act's essential protections against invasion of privacy, nuisance and harassing calls. We urge you to withdraw the bill. For further information please contact Delicia Reynolds at the National Association of Consumer Advocates, 202-452-1989, extension 103, [Delicia@naca.net](mailto:Delicia@naca.net) or Margot Saunders at the National Consumer Law Center, 202-452-6252, extension 104, [msaunders@nclc.org](mailto:msaunders@nclc.org).

Sincerely,

Americans for Financial Reform

Center for Media and Democracy.

Citizens for Civil Discourse (The National Political Do Not Contact Registry)

Consumer Action

Consumer Federation of America

Consumer Watchdog

National Association of Consumer Advocates

National Consumer Law Center (on behalf of its low income clients)

Privacy Activism

Privacy Rights Now Coalition

U.S. Public Interest Research Group

cc: Members of the House Committee on Energy and Commerce