

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Advanced Methods to Target and) CG Docket No. 17-59
Eliminate Unlawful Robocalls)

Comments of
Consumers Union
Consumer Action
Consumer Federation of America
National Association of Consumer Advocates
National Consumer Law Center on behalf of its low-income clients
Public Citizen
Public Knowledge

June 30, 2017

Introduction

Consumers Union, Consumer Action, Consumer Federation of America, National Association of Consumer Advocates, National Consumer Law Center on behalf of its low-income clients, Public Citizen, and Public Knowledge appreciate the opportunity to comment on the proposed rules regarding Advanced Methods for Blocking Robocalls.¹ Consumers are overwhelmed with unwanted robocalls,² and we very much appreciate the Federal Communication Commission's (Commission or FCC) leadership in considering ways to help address this widespread problem.³ We support the Commission's proposal to clarify that all providers may block fraudulently spoofed calls⁴ under the following circumstances:

1. If the owner of a phone number, such as the Internal Revenue Service or a financial institution, asks the providers to block outbound calls purporting to be from that number, also known as "Do Not Originate," or
2. If the Caller ID is clearly fraudulently spoofed: if the spoofed number is invalid (such as less than 10 digits), if the number has not been assigned to a provider, or if the number has not been provided to a customer.⁵

These are great first steps. However, the Commission can and should do more. We urge the Commission to go further to limit spoofed calls and to facilitate the blocking of illegal robocalls.⁶ In particular, we urge the Commission to:

3. Explicitly permit and encourage the providers, where it can be done reliably and with the consumer's consent, to use additional tools, such as advanced analytics, to identify and block clearly illegal robocalls.
4. Clarify that providers should make available to consumers the option to block calls that fail to authenticate their Caller ID information.

¹ Advanced Methods to Target and Eliminate Unlawful Robocalls, Notice of Proposed Rulemaking, 82 Fed. Reg. 22625 (May 17, 2017), *available at* <https://www.federalregister.gov/documents/2017/05/17/2017-09463/advanced-methods-to-target-and-eliminate-unlawful-robocalls> [hereinafter NPRM].

² We define "robocalls" as unwanted autodialed or prerecorded calls, texts, or voicemails.

³ The Commission has already ruled that phone companies may offer consumers optional tools to block robocalls, and at former Chairman Wheeler's urging, a number of tech and telecom companies formed the Robocall Strike Force to work quickly toward developing and implementing robocall solutions. See, In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Declaratory Ruling and Order, FCC 15-72, CG Docket No. 02-278, ¶ 154 (Jul. 10, 2015), *available at* https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-72A1.pdf [hereinafter 2015 TCPA Declaratory Ruling and Order]; Tom Wheeler, Cutting Off Robocalls, FCC Blog (Jul. 22, 2016), <https://www.fcc.gov/news-events/blog/2016/07/22/cutting-robocalls>; AT&T, FCC Hosts First Robocall Strike Force Meeting, AT&T's Stephenson to Chair Industry-Led Group, AT&T Public Policy Blog (Aug. 19, 2016), <https://www.attpublicpolicy.com/fcc/fcc-hosts-first-robocall-strike-force-meeting-atts-stephenson-to-chair-industry-led-group/>.

⁴ Fed. Communications Comm'n, Spoofing and Caller ID (May 5, 2017), <https://www.fcc.gov/consumers/guides/spoofing-and-caller-id>. "Spoofing" refers to the practice of inputting incorrect or misleading Caller ID information. Scammers and unscrupulous telemarketers often spoof calls to trick a consumer into picking up the phone, or to avoid detection.

⁵ NPRM, *supra* note 1, at ¶ 3. We ask, however, that consumers are provided with the opportunity to consent to the blocking.

⁶ *Id.* at ¶ 19.

5. Continue to press providers to offer effective, optional, comprehensive, and free call-blocking tools to all of their customers to help block legal but unwanted robocalls, which they already have permission to do.⁷
6. Revise the definition of “illegal robocall” for the purposes of these rules so that it is clear that it includes autodialed or prerecorded text messages and voicemails.

Each of these recommendations is explained more fully below.

1. The Commission Should Explicitly Permit and Encourage Providers to Block Spoofed Calls at the Request of the Owner of the Spoofed Number.

We support the Commission’s proposal to codify the *2016 Guidance Public Notice* that confirms that providers “may block calls from a number if the subscriber to that telephone number requests such blocking in order to prevent its telephone number from being spoofed[,]” a practice known as “Do Not Originate” (DNO).⁸

Voice service providers urgently need to take action against unwanted and fraudulent robocalls, and DNO is one of several promising tools that they should implement to help address the problem.⁹ Testing of this practice by the Robocall Strike Force, the group of technology and telecommunications companies that was created at the request of former FCC Chairman Tom Wheeler to work toward effective robocall solutions, has already shown encouraging results.¹⁰ Law enforcement efforts in India¹¹ combined with the Strike Force’s Do Not Originate trials in fall 2016 contributed to a 90% decrease in the number of IRS scam calls during the last two months of the trials.¹² US Telecom’s recent report on additional Strike Force trials between fall 2016 and spring 2017 also highlights DNO’s potential.¹³ A trial involving a 1-800 number led to a drop in fraudulently spoofed calls from between 400,000 and 1 million calls per day to about 400 per day.¹⁴

Consumers are inundated with robocalls from scammers and shady telemarketers at all hours of the day. Unfortunately, law enforcement efforts cannot keep up with the flood of illegal calls and the robocall epidemic gets worse each year. There were more than three times as many

⁷ See ACT/The App Ass’n, Alliance for Telecomm. Indus. Solutions, CTIA, and USTelecom, *Ex Parte* Submission, Industry Robocall Strike Force Report, CG Docket No. 17-59, 17-18 (April 28, 2017), available at <https://www.ustelecom.org/sites/default/files/documents/Ex%20Parte-Strike-Force-Report-2017-04-28-FINAL.pdf> [hereinafter Industry Robocall Strike Force Report] for a list of call-blocking developments. While several phone companies have expanded their call-blocking offerings over the last year, most consumers lack access to free, effective call-blocking tools from their phone companies.

⁸ NPRM, *supra* note 1, at ¶ 6.

⁹ USTelecom, *Ex Parte* Submission, Do Not Originate (DNO) FCC Briefing 3 (Jun. 5, 2017), available at <http://www.ustelecom.org/sites/default/files/documents/USTelecom-DNO-Ex-Parte-2017-06-05-FINAL.pdf>. USTelecom notes, “DNO can be an effective tool for mitigating large and medium scale attacks.”

¹⁰ AT&T, *supra* note 3.

¹¹ USTelecom, *supra* note 9, at 8.

¹² ROBOCALL STRIKE FORCE, ROBOCALL STRIKE FORCE REPORT 33 (Oct. 26, 2016), available at <https://transition.fcc.gov/cgb/Robocall-Strike-Force-Final-Report.pdf>.

¹³ USTelecom, *supra* note 9, at 7.

¹⁴ *Id.* at 9.

complaints about Do Not Call violations in FY 2016 as there were in 2010.¹⁵ Robocalls are more than just a nuisance that invade our privacy at home and work. They can cost consumers real money when they are used by crooks to commit fraud, which is too often the case.

The FTC points to the falling costs of sending robocalls, particularly from overseas, as the reason for the surge in robocalls.¹⁶ Scammers can send millions of messages in a short amount of time at a low cost. Fraudulent telemarketers are also lured by the promise of easy money. *The New York Times* described an IRS scam call operation based at a call center in India whereby a successful scammer could make bonuses that were two or three times an average monthly salary.¹⁷ Because many of these calls are coming from overseas, the perpetrators are difficult to track down.¹⁸ Moreover, even when the calls come from the United States, it is still a challenge to locate the scammers, because calls may be routed through several different providers before they reach the end user.¹⁹ The FTC has noted that they have only been able to collect just under 9% percent of the \$1.36 billion levied for “DNC and Robocall” violations,²⁰ in part because by the time the scammers are located, they have spent all of their ill-gotten gains and it is next to impossible to recover the fines.²¹

Many of the most complained about and harmful robocalls are scams, such as Rachel from Card Services and the IRS scam. Consumers Union conservatively estimates that \$350 million was lost to phone scams in 2011, based on the most currently available federal data.²² The Internal Revenue Service estimates that \$54 million has been lost to the IRS scam alone,²³ and many of the victims are some of the most vulnerable consumers, such as the elderly²⁴ and recent immigrants.²⁵ Scams affect not only the victims but their families and loved ones, as well. Benjamin of Ogunquit, ME tell us how his elderly mother was relentlessly pursued by phone scammers:

¹⁵ FED. TRADE COMM’N, NATIONAL DO NOT CALL REGISTRY DATA BOOK FY 2016 4 (2016), *available at* https://www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2016/dnc_data_book_fy_2016_post.pdf.

¹⁶ Fed. Trade Comm’n, Consumer Information: Robocalls (accessed Jun. 28, 2017), <https://www.consumer.ftc.gov/features/feature-0025-robocalls>.

¹⁷ Ellen Barry, *India’s Call-Center Talents Put to a Criminal Use*, N.Y. TIMES (Jan. 3, 2017), *available at* <https://www.nytimes.com/2017/01/03/world/asia/india-call-centers-fraud-americans.html>.

¹⁸ *Ringling off the Hook: Examining the Proliferation of Unwanted Calls, Before the United States Senate Special Comm. on Aging*, 114th Cong. 12 (2015) (testimony of the Federal Trade Commission), http://www.aging.senate.gov/imo/media/doc/FTC_Greisman_6_10_15.pdf [hereinafter FTC Testimony].

¹⁹ *Id.* at 11.

²⁰ Fed. Trade Comm’n, FTC DNC and Robocall Enforcement (May 15, 2017) (on file with author).

²¹ FTC Testimony, *supra* note 18, at 3 n. 11.

²² FED. TRADE COMM’N, CONSUMER FRAUD IN THE UNITED STATES, 2011: THE THIRD FTC SURVEY 38-39 (2013), *available at* https://www.ftc.gov/sites/default/files/documents/reports/consumer-fraud-united-states-2011-third-ftc-survey/130419fraudsurvey_0.pdf. These estimates are based on FTC survey data from 2011; there were an estimated 3.5 million cases of telephone fraud (38) with a median loss of \$100 (39).

²³ Internal Revenue Service, Phone Scams Remain a Threat; Remain on the IRS “Dirty Dozen List” of Tax Scams for 2017 (Feb. 2, 2017), *available at* <https://www.irs.gov/uac/newsroom/phone-scams-remain-serious-threat-no-2-on-the-irs-dirty-dozen-list-of-tax-scams-for-2017>.

²⁴ Internal Revenue Service, IRS Reminds Seniors to Remain on Alert to Phone Scams During Tax Season, (Mar. 23, 2017), *available at* <https://www.irs.gov/uac/newsroom/irs-reminds-seniors-to-remain-on-alert-to-phone-scams-during-tax-season>.

²⁵ Barry, *supra* note 17.

My elderly mother was tormented by phone scammers for the last five or so years of her life, losing money, gaining confusion and disappointment, not understanding that she was being preyed upon by desperate salespeople who should not have been allowed into her life. I use the term “scammer” loosely, since a legit company selling \$85 pasta strainers (or \$300 a month face cream services, or payment plan coupon books) to my old mother is in my mind a scammer, a predator, and a thief. It is absolutely essential that citizens are able to block all telemarketing calls to the homes of seniors, who may not have the mental clarity to sort it out—call by call—on their own.

Governmental enforcement, while very useful, has proven inadequate to stop scammers.²⁶ In the wake of law enforcement actions that took down a massive IRS scam ring in India, a young telemarketer who participated in the scam, Jayesh Dubey, told the *New York Times*, “Even if you shut down 400 buildings in India, it will not stop.”²⁷

Clearly, technological solutions, like DNO, are necessary to help effectively address the problem. In addition to permitting providers to block fraudulently spoofed calls at the request of the legitimate owner of the spoofed number, the Commission should also encourage providers to implement these DNO technologies. Much responsibility rests with the providers to ensure that DNO works as well as possible. As USTelecom notes, “[B]road industry participation in DNO efforts” is crucial,²⁸ so that scammers do not simply enter the network through another provider.

While no tool is likely to be completely effective against robocalls, implementing a variety of sensible, effective technologies provides the best chance for addressing the robocall problem. One commenter to the record has pointed out that DNO may have diminished success over time, anticipating that scammers will start spoofing numbers that are not on the DNO list to evade the blocking,²⁹ a scenario that the Robocall Strike Force itself has acknowledged.³⁰ Furthermore, DNO is only applicable to a subset of illegal robocalls, and therefore will not be able to stop all of them. The Commission should explicitly permit providers to employ DNO, but they should also pursue additional advanced call-blocking techniques.

2. The Commission Should Explicitly Permit and Encourage Providers to Block Certain Types of Clearly Fraudulently Spoofed Calls, with the Consumer’s Consent.

The Commission proposes to finalize a rule explicitly permitting providers to block three different kinds of spoofed calls: 1) those spoofed with invalid numbers,³¹ 2) those spoofed with numbers that have not been assigned to a provider,³² or 3) those spoofed with numbers that have not been assigned to a customer.³³ Providers should be able to block these types of calls.

²⁶ FTC Testimony, *supra* note 18, at 8.

²⁷ *Id.*

²⁸ USTelecom, *supra* note 9, at 9.

²⁹ ZipDX, Comments on Notice of Proposed Rulemaking, CG Docket No. 17-59, 8 (Jun. 27, 2017), available at <https://ecfsapi.fcc.gov/file/10627304016463/ZipDX-17-59-NPRM-NOI-Comments.pdf>.

³⁰ ROBOCALL STRIKE FORCE REPORT, *supra* note 12, at 33.

³¹ NPRM, *supra* note 1, at ¶ 9.

³² *Id.* at ¶ 11.

³³ *Id.* at ¶ 13.

Moreover, the calls that are blocked according to these guidelines should be exempt from call completion rates.³⁴

Consumers do not expect that their phone service would be the means through which illegal and fraudulent scams enter their homes, and providers should not be obligated to deliver illegal messages that could cause consumers harm. Further, we recommend that phone companies be required to provide their customers with disclosures about the types of illegal call-identification and blocking measures that are being put into place, so that customers can decide whether to consent to blocking these types of calls.³⁵

We support the Commission's proposal to allow providers to block these specific types of spoofed calls in order to help reduce the number of fraudulent robocalls received by consumers, as long as consumers are given the appropriate notification and opportunity to consent. We also urge the Commission to ensure that there are industry-wide databases that providers can access to determine which numbers are not assigned to a provider or associated with a customer.

3. The Commission Should Explicitly Permit and Encourage the Providers, Where it Can Be Done Reliably, to Use Additional Tools, Such as Advanced Analytics, to Identify and Block Clearly Illegal Robocalls, with the Consumer's Consent.

The Commission should explicitly permit and encourage providers to use techniques, such as advanced analytics, to identify and block illegal robocalls.³⁶ AT&T has announced that it is already employing these methods where permitted by their business contracts—for example, blocking “multiple short duration calls to numbers on the National Do Not Call list.”³⁷ We encourage others to follow AT&T's example.

Not just an annoyance, robocalls can also pose safety concerns, including delaying consumers' ability to contact the authorities in an emergency. Martha, of Vail, AZ, wrote to us after receiving 100 calls in a single day. She was worried that the calls would interfere with her ability to call for help in an emergency. She writes:

We've gotten over 100 robocalls at our home today; this is the second time it's happened this week. In addition to being annoying, it presents a danger—the way the calls are coming in is that while our Panasonic phone is refusing one call, the next is lined up and waiting, so we can't get a dial tone out till the caller is through with the multiple attempts. (They've been coming in groups lasting about 30 minutes.)

There are no available cell phone signals where we live (tucked in mountains in southern Arizona); we have to drive 4 miles down the highway to get a signal. We have no way to call 911 should there be a fire or other emergency. And we live in a high-danger fire zone!

³⁴ *Id.* at ¶ 18.

³⁵ *Id.* at ¶ 17.

³⁶ NPRM, *supra* note 1, at ¶ 21.

³⁷ AT&T, More than 1 Billion Robocalls Blocked (Apr. 13, 2017), <https://finance.yahoo.com/news/more-1-billion-robocalls-blocked-100000124.html>.

We have even heard of hospitals being disrupted by robocalls. Jessica, of Naugatuck, CT works in an Intensive Care Unit that has seen the phones overrun with unwanted calls. Robocalls block important incoming calls and waste the time of essential staff:

I work at a community hospital in the Intensive Care Unit. There has been more than one recent occasion where the 5 (five) main lines in the department have lit up with robocalls at the same time for everything from home security, satellite TV, and car warranties with NO option to stop the calls and pressing any key does not present a human being either. This has prevented calls from doctors and families to come through as well as lab and radiology results. Also, they call the 14 patient rooms as well. Many times it's someone elderly or critically ill in the room with distraught families, they too have reported no person and get very upset.

Several consumers have told us that robocalls interfere with their ability to sleep during the day—a particular problem for those working the night shift. For example, Rick, a paramedic from Knoxville, TN wrote to Consumers Union:

I am a paramedic affiliated with several emergency agencies and primarily work night shift for a hospital aeromedical program. Because I must be available for emergency calls, along with having a 96 year old mother who might need me, I must leave my phone on at all times. Since I must sleep during the day, I registered with the Do Not Call program. I also made every effort to limit dissemination of my phone number in hopes my rest time would not be disturbed. The nature of my work is dangerous at best and being fatigued can quite literally have life and death consequences. . . . Over several months the number of telemarketing calls I received steadily increased despite pleas not to call (they would simply slam the phone down when I asked).

While consumers deserve help in blocking unwanted and illegal robocalls, the Commission can also take steps to help ensure that wanted calls are not blocked. It could manage a “whitelist” for specific types of emergency robocalls, which the carriers would maintain, to ensure that these calls do not get blocked.³⁸ There could also be a “challenge mechanism,” similar to one that Nomorobo uses, that invites the caller to dial a number to prove the call is not a robot,³⁹ to help legitimate callers bypass an accidental blocking. Like AT&T, providers should check numbers to be blocked to make sure that they are not “legitimate automated calls, such as school districts or others who send large volumes of recorded messages.”⁴⁰ Finally, consumers should be provided with disclosures that notify them of the call blocking practices and that legitimate calls may be accidentally blocked, so that consumers can decide whether to give consent for blocking specific categories of calls.

³⁸ NPRM, *supra* note 1, at ¶ 29.

³⁹ Nomorobo, What Does a Robocaller Hear When They Call a Nomorobo Protected Phone?, Soundcloud (accessed Jun. 27, 2017), <https://soundcloud.com/nomorobo/nomorobo-robocaller-captcha>.

⁴⁰ AT&T, *supra* note 37.

4. The Commission Should Clarify That Providers Should Provide Consumers the Optional Ability to Block Calls That Fail to Authenticate Their Caller ID Information.

Scammers often fraudulently spoof calls with the intent of deceiving consumers. To stop this practice, Consumers Union has supported the Repeated Objectionable Bothering of Consumers on Phones (ROBOCOP) Act, legislation requiring the providers to offer free, opt-out tools that confirm Caller ID and block calls that fail to confirm their ID.⁴¹ Similarly, the Commission should explicitly permit providers to give their customers this blocking capability.⁴² To enable those who have legitimate reasons to spoof their phone numbers, the Commission should develop an application process for a caller to be exempt from the requirements.⁴³ In addition, consumers should retain their right to suppress their own Caller ID for privacy reasons.⁴⁴

We also urge providers to move quickly toward implementing call authentication technology and blocking capability. While this technology is not yet fully developed, it is being tested, and AT&T has publicly pledged to be ready to introduce it by the end of this year.⁴⁵ Thirteen companies have agreed to participate in the testing.⁴⁶

Call authentication technology is a promising long-term solution to the problem of call spoofing, which has exacerbated the robocall problem. Scammers can avoid detection by using simple software to hide their Caller ID, making it even more difficult to block calls.⁴⁷ Spoofers can cycle through many different Caller ID numbers, forcing call-blocking services to update their blacklists multiple times a day in order to keep up with the scammers.⁴⁸ This practice also makes it more difficult for consumers to block numbers one by one, which is one of the few options that many traditional landline users have to block calls.⁴⁹

We agree with USTelecom, which notes that “DNO is no substitute for authentication.”⁵⁰ Call authentication will go a long way to improving the efficacy of call-blocking tools while also helping prevent the blocking of legitimate calls. The Commission should clarify that providers may block calls that fail to verify their Caller ID, with the consumer’s permission. Providers should move forward with employing these technologies as quickly as possible.

⁴¹ H.R. 4932, 114th Cong. § 4 (2016).

⁴² NPRM, *supra* note 1, at ¶ 24.

⁴³ H.R. 4932, *supra* note 41, at § 4.

⁴⁴ *Id.*

⁴⁵ AT&T, FCC Hosts Second Meeting of Robocall Strike Force, Industry Delivers Short and Long-Term Solutions, AT&T Public Policy Blog (Oct. 26, 2016), <https://www.attpublicpolicy.com/fcc/fcc-hosts-second-meeting-of-robocall-strike-force-industry-delivers-short-and-long-term-solutions/>.

⁴⁶ Jonjie Sena, It’s Time to Hang Up on Robocalls for Good, Neustar Blog (May 16, 2017), <https://www.neustar.biz/blog/hang-up-on-robocalls>.

⁴⁷ FTC Testimony, *supra* note 18, at 11.

⁴⁸ Nomorobo, Background Updates (accessed Jun. 28, 2017), <https://nomorobo.zendesk.com/hc/en-us/articles/115001498406-Background-Updates>.

⁴⁹ Carla Fried, *New Study Finds Some Phone Companies Offer Better Protections Than Others*, CONSUMER REPORTS (Oct. 26, 2016), <http://www.consumerreports.org/consumer-protection/the-best-service-providers-for-blocking-robocalls/>.

⁵⁰ USTelecom, *supra* note 9, at 3.

5. The Commission Should Continue to Press the Phone Companies to Provide Effective, Optional, Comprehensive, and Free Call-Blocking Tools to All of their Customers to Help Block Legal but Unwanted Robocalls, Which They Already Have Permission to Do.

While we support the Commission’s proposed rules, it should not preclude providers from taking immediate action on robocall-blocking. The Commission should encourage providers to offer optional, comprehensive and advanced call-blocking to their customers at no extra charge.

Over the past two years, Consumers Union has conducted an End Robocalls campaign, calling on major providers to offer free, advanced tools to consumers to block unwanted calls. Almost 750,000 consumers have joined this campaign.⁵¹ More than 50,000 consumers signed a petition to the FCC in 2015 to urge the Commission to affirm that providers can legally offer these tools.⁵²

The Commission ruled in July 2015 that the providers may offer their customers advanced call-blocking tools. The Commission “clarif[ied] that there is no legal barrier to stop carriers and providers of interconnected and one-way VoIP services from implementing call-blocking technology and offering consumers the choice, through an informed opt-in process, to use such technology to block individual calls or categories of incoming calls that may be part of a mass unsolicited calling event.”⁵³ Then, in July 2016, former Chairman Wheeler directly asked several major providers and gateway providers to offer free, advanced robocall-blocking tools to their customers.⁵⁴ In response, more than thirty telecommunications and technology companies formed the Robocall Strike Force to work toward technological solutions to the robocall problem.⁵⁵ In April, the Strike Force released a report on their progress.⁵⁶

Nevertheless, existing laws—such as the Telephone Consumer Protection Act (TCPA)⁵⁷ and the Telemarketing Sales Rule (TSR)⁵⁸—still allow many types of unwanted, irritating calls. Restrictions on robocalls to home phones are particularly weak. Debt collection, political, and informational prerecorded or autodialed calls are legal to home phones without the consumer’s permission, even for those listed in the Do Not Call registry, as are sales calls featuring a live operator if there is some kind of established business relationship (unless the consumer asks to be placed on the caller’s company-specific do-not-call list).⁵⁹

⁵¹ Consumers Union, End Robocalls, <https://consumersunion.org/end-robocalls/>.

⁵² Consumers Union, Comments to the Fed. Communications Comm’n, CG Docket No. 02-278 (Jan. 23, 2015), available at http://consumersunion.org/wp-content/uploads/2015/01/Robocalls_Letter_FCC_0115.pdf.

⁵³ 2015 TCPA Declaratory Ruling and Order, *supra* note 3, at ¶ 154.

⁵⁴ Wheeler, *supra* note 3.

⁵⁵ ROBOCALL STRIKE FORCE REPORT, *supra* note 12, at 2.

⁵⁶ See, Industry Robocall Strike Force Report, *supra* note 7.

⁵⁷ 47 U.S.C. § 227.

⁵⁸ 16 CFR 310.

⁵⁹ Fed. Trade Comm’n, Consumer Information: National Do Not Call Registry (Mar. 2015), <https://www.consumer.ftc.gov/articles/0108-national-do-not-call-registry>; Fed. Communications Comm’n, Stop Unwanted Calls, Texts, and Faxes (Jun. 21, 2017), <https://www.fcc.gov/consumers/guides/stop-unwanted-calls-texts-and-faxes#call-blocking-resources>.

Cell phones are increasingly losing their protected status, and more and more consumers are receiving robocalls on their mobile devices. An exemption from the TCPA for robocalls to collect federally-backed debt, like student loan and tax loans⁶⁰—an estimated 61 million people⁶¹—has already been the excuse by some debt collectors to make millions of unwanted debt collection robocalls, even though the Commission’s regulations governing such calls are not yet in effect.⁶²

In addition, the Commission’s recent Broadnet decision⁶³ to carve out an exemption for robocalls made by federal contractors could open the door to millions more robocalls, with no right to request that they stop.⁶⁴ The Commission has issued important rules that limit the number of robocalls made by debt collectors on behalf of the federal government.⁶⁵ But these rules only relate to debt collection robocalls. Unless the Broadnet decision is reversed, consumers will have no legal protection from other calls from federal contractors.

Debt collection robocalls, which are typically legal under the TCPA to home phones without the consumer’s permission, make up a significant portion of unwanted calls. YouMail, which provides a robocall-blocking service, estimates that debt collectors made up 17 of the 20 top robocallers in May 2017.⁶⁶ Consumers Union has received numerous complaints from consumers about these calls. For example, John of Jacksonville, FL says:

I’ve been out of work for 3 years now, and my student loans defaulted in 2014, even after forbearance, etc. I’m 53 so returning to the workforce has been difficult to say the least.

...

I was called by at least 25 different numbers hundreds of times, at all times of the day & night, as well as any day of the week. This went on for at least a year, and my friends, family & even my disabled, retired Army father were harassed. There were at least 15 different area codes as well, not counting the 800/888 calls.

⁶⁰ 129 Stat. 584.

⁶¹ Nat’l Consumer Law Ctr. et al, Comments on Notice of Proposed Rulemaking, CG Docket No. 02-278, 7 (Jun. 6, 2016), *available at* https://www.nclc.org/images/pdf/energy_utility_telecom/robocalls/comments-on-budget-regs-robo.pdf.

⁶² Nat’l Consumer Law Ctr., Consumer Groups Urge FCC to Initiate Enforcement Action Against Navient for Violations of the TCPA (Jun. 14, 2017), *available at* <https://www.nclc.org/media-center/nclc-leads-groups-urging-fcc-enforcement-tcpa.html>.

⁶³ In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Declaratory Ruling, FCC 16-72, CG Docket No. 02-278 (Jul. 5, 2016), *available at* https://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0706/FCC-16-72A1.pdf.

⁶⁴ Nat’l Consumer Law Ctr. et al., Petition for Reconsideration of Declaratory Ruling and Request for Stay Pending Reconsideration, CG Docket No. 02-278, 2-3 (Jul. 26, 2016), *available at* <https://ecfsapi.fcc.gov/file/10726059270343/NCLC%20Petition%20for%20Reconsideration%20of%20Broadnet.pdf>
Consumer groups have filed a Petition for Reconsideration of the Broadnet decision, which is pending before the FCC.

⁶⁵ In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order, FCC 16-99, CG Docket No. 02-278, 2 (Aug. 11, 2016), *available at* <https://ecfsapi.fcc.gov/file/08111407302175/FCC-16-99A1.pdf>.

⁶⁶ YouMail, YouMail Robocall Index, Top 20 Robocallers Nationwide in May 2017 (by volume), <https://robocallindex.com/>.

Unwanted calls to cell phones can be costly for the estimated 75 million consumers with limited-minute cell phone plans.⁶⁷ For example, Louise of San Antonio, TX says, “Please stop the robocallers and the debt collectors from calling cell phones. There are many like me that are on a very limited budget barely able to have a cell phone with limited time allotted.”⁶⁸

It is difficult to stop debt collection calls without technological intervention. Debt collection complaints are the most common type of complaint that the Consumer Financial Protection Bureau (CFPB) receives,⁶⁹ and 41% of debt collection complaints to the CFPB involve debt that does not belong to the consumer.⁷⁰ But the debt collectors continue to call regularly even after they have been told that the debt is incorrect. The Commission should continue to press the phone companies to offer their customers free, effective, and comprehensive tools to block unwanted robocalls without delay.

6. The Commission Should Revise the Proposed Definition of “Illegal Robocall” So That It Is Clear That It Includes Autodialed or Prerecorded Text Messages and Voicemails.

To help ensure that consumers have as much protection from unwanted robocalls as possible, we urge the Commission to adopt an appropriately inclusive definition of “illegal robocall.” The FCC’s proposed definition, which is based on the recommendation of the Robocall Strike Force, is a good start, but we suggest making these few additional clarifying refinements (shown in bold), so that it reads as follows:

“A call (including any voice message or text message) that violates any law, including the requirements of the Telephone Consumer Protection Act (TCPA),⁷¹ the related Commission regulations implementing the Act, or the Telemarketing Sales Rule (TSR),⁷² or that is made for the purpose of defrauding a consumer, as prohibited under a variety of federal and state laws and regulations, including the federal Truth in Caller ID Act.”⁷³

Consumers need protection from new types of technologies that may not involve the ringing of the phone. For example, robotexts are almost as irritating and harmful as autodialed or prerecorded calls, and options to block these messages are not as sophisticated as those that currently exist for phone calls to smartphones. The Commission has ruled that robotexts fall under the robocalls rules,⁷⁴ and should thus clarify now that illegal robotexts likewise fall under the definition of illegal robocalls.

⁶⁷ CTIA, Prepaid Connections Make Up 23.4 Percent of Wireless Market (Dec. 2013), <https://www.ctia.org/industry-data/facts-and-infographics-details/fact-and-infographics/prepaid-connections-make-up-23-4-percent-of-wireless-market>.

⁶⁸ Comment on Notice of Proposed Rulemaking, CG Docket No. 02-278 (May 31, 2016), *available at* <https://www.fcc.gov/ecfs/filing/60001979405>.

⁶⁹ CONSUMER FIN. PROTECTION BUREAU, CONSUMER RESPONSE ANNUAL REPORT, JANUARY 1-DECEMBER 31 2016, 7 (2017), *available at* https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201703_cfpb_Consumer-Response-Annual-Report-2016.PDF.

⁷⁰ *Id.* at 16.

⁷¹ 47 U.S.C. § 227.

⁷² 16 CFR 310.

⁷³ NPRM, *supra* note 1, at ¶ 5.

⁷⁴ 2015 TCPA Declaratory Ruling and Order, *supra* note 3, at ¶ 107.

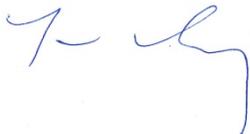
This expanded definition can also accommodate changes in telemarketing technology, such as so-called “ringless voicemail.” Various consumer organizations have filed a response⁷⁵ with the Commission opposing the petition by All About the Message,⁷⁶ a ringless voicemail purveyor, to be granted an exemption from the TCPA and a retroactive waiver for these messages—a petition that has since been withdrawn.⁷⁷ Nevertheless, the definition should be written so as to accommodate this unpopular technology—more than 9,000 consumers have submitted comments to the Commission opposing All About the Message’s request—should it be established that these messages violate the law. It’s particularly important that consumers have legal protections against these messages, as consumers currently have no way to block them. They can fill up voicemail inboxes, preventing important messages from getting through, and can be costly, as checking the messages uses minutes in a cell phone plan.⁷⁸

Telemarketers, debt collectors, and others use a variety of technologies to send unwanted messages to consumers’ phones, and these technologies continue to change and develop. The FCC should adopt a definition of “illegal robocalls” in this rulemaking to accommodate these developments.

Conclusion

We thank you for initiating this proceeding to help enable phone companies to stop certain clearly-illegal calls, and we urge you to take this opportunity to promote giving consumers the strongest possible protections and blocking capabilities against unwanted robocalls.

Respectfully submitted,



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⁷⁵ Nat’l Consumer Law Ctr. et al., Comments Opposing the Petition for Declaratory Ruling and Waiver, CG Docket No. 02-278 (May 18, 2017), *available at* <https://www.nclc.org/images/pdf/robocalls/rvm-comments-oppose-fcc.pdf>.

⁷⁶ All About the Message, Petition for Declaratory Ruling, CG Docket No. 02-278 (Mar. 31, 2017), *available at* <https://ecfsapi.fcc.gov/file/104010829816078/Petition%20for%20Declaratory%20Ruling%20of%20All%20About%20the%20Message%20LLC.pdf>.

⁷⁷ Hackleman, Olive, & Judd, P.A., Letter Re: Petition for Declaratory Ruling of All About the Message, LLC, CG Docket No. 02-278 (Jun. 20, 2017), <https://ecfsapi.fcc.gov/file/1062101171891/2017-06-20%20Letter%20to%20Ms.%20Dortch.pdf>.

⁷⁸ Nat’l Consumer Law Ctr. et al., *supra* note 75, at 4.

Descriptions of the Organizations Joining this Filing

Consumers Union is the public policy and mobilization division of Consumer Reports. Consumers Union works for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves, focusing on the areas of telecommunications, health care, food and product safety, energy, and financial services, among others. Consumer Reports is the world's largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit organization rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 8 million subscribers to its magazine, website, and other publications.

Consumer Action has been a champion of underrepresented consumers since 1971. A national, nonprofit 501(c)(3) organization, Consumer Action focuses on financial education that empowers low to moderate income and limited English-speaking consumers to financially prosper. It also advocates for consumers in the media and before lawmakers and regulators to advance consumer rights and promote industry-wide change particularly in the fields of credit, banking, housing, privacy, insurance and utilities. www.consumer-action.org

The Consumer Federation of America is an association of more than 250 nonprofit consumer groups that was established in 1968 to advance the consumer interest through research, advocacy and education.

The National Association of Consumer Advocates (NACA) is a nonprofit association of consumer advocates and attorney members who have represented hundreds of thousands of consumers victimized by fraudulent, abusive and predatory business practices. NACA is actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means.

National Consumer Law Center (NCLC) is a non-profit corporation founded in 1969 to assist legal services, consumer law attorneys, consumer advocates and public policy makers in using the powerful and complex tools of consumer law for just and fair treatment for all in the economic marketplace. NCLC has expertise in protecting low-income customer access to telecommunications, energy and water services in proceedings at the FCC and state utility commissions and publishes Access to Utility Service (5th edition, 2011) as well as NCLC's Guide to the Rights of Utility Consumers and Guide to Surviving Debt.

Public Citizen is a national nonprofit organization with more than 400,000 members and supporters. We represent consumer interests through lobbying, litigation, administrative advocacy, research, and public education on a broad range of issues including consumer rights in the marketplace, product safety, financial regulation, safe and affordable health care, campaign finance reform and government ethics, fair trade, climate change, and corporate and government accountability.

Public Knowledge is a nonprofit policy and public interest organization that promotes competition and consumer protection on technology, telecommunications, and intellectual property issues.