



MEMORANDUM

April 26, 2019

To: Subcommittee on Communications and Technology Members and Staff
Fr: Committee on Energy and Commerce Staff
Re: Legislative Hearing on “Legislating to Stop the Onslaught of Annoying Robocalls”

On Tuesday, April 30, 2019, at 10 a.m. in the John D. Dingell Room, 2123 of the Rayburn House Office Building, the Subcommittee on Communications and Technology will hold a legislative hearing entitled “Legislating to Stop the Onslaught of Annoying Robocalls.”

I. BACKGROUND

A. The Growing Number of Unwanted Calls

According to many statistics, Americans are receiving more unwanted calls than ever before. For example, the Federal Communications Commission (FCC) received 232,000 consumer complaints of unwanted calls in 2018, a more than 34 percent increase since 2015.¹ YouMail estimates that there were nearly 48 billion robocalls in 2018, up over 64 percent since 2016.² First Orion even predicts that this year 44.6 percent of all calls to mobile phones will be scam calls.³

In fact, the problem has become so pervasive, the FCC’s Consumer and Governmental Affairs Bureau (CGB) recently noted that “[c]urrently, the only certain way to determine whether a call is wanted or unwanted is to answer it or let it go to voicemail, and hope the caller leaves a message.”⁴

¹ See Federal Communications Commission, *Report on Robocalls*, at ¶ 9 (Feb. 2019).

² See YouMail, *Historical Robocalls by Time* (www.robocallindex.com/history/time) (accessed Apr. 24, 2019).

³ First Orion, *Nearly 50% of U.S. Mobile Traffic Will Be Scam Calls by 2019* (www.firstorion.com/nearly-50-of-u-s-mobile-traffic-will-be-scam-calls-by-2019/) (accessed Apr. 24, 2019).

⁴ See note 1 at ¶ 15.

According to CGB, individuals make robocalls for many purposes, including telemarketing, committing fraud, but also to provide useful information such as school closings and prescription or medical appointment reminders.⁵ Government agencies indicate the prevalence of fraudulent calls are where callers impersonate the Internal Revenue Service, the local utility company, or foreign governments.⁶ Other agencies report “One Ring Phone Scams” where scammers make repeated calls to the same number in an attempt to induce the consumer to call the number back potentially resulting in hefty charges to the consumer.⁷

B. Robocall Basics

While there is no statutory definition of a “robocall,” the FCC has referred to robocalls as including calls made either with an automatic telephone dialing system (autodialer) or calls made with a prerecorded or artificial voice.⁸ Congress defined the term autodialer to mean “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 Over the years, the FCC has interpreted and clarified this definition, and CGB currently is considering how to clarify the term autodialer in light of the FCC’s previous interpretation being struck down in court.¹⁰

As part of the Telephone Consumer Protection Act of 1991 (TCPA), Congress prohibited any person from making a call to a cell phone using (1) an autodialer or (2) an artificial or prerecorded voice.¹¹ Congress included, however, exemptions for calls made “for emergency purposes” or calls made with the “prior express consent of the called party.”¹² The Supreme

⁵ *See id.* at ¶¶ 4-6.

⁶ *See id.* at fn. 13.

⁷ *Morristown Residents Alerted to New Scam*, TAP into Morristown (April 9, 2019) (www.tapinto.net/towns/morristown/articles/morristown-residents-alerted-to-new-scam).

⁸ Federal Communications Commission, *ACA International Petition for Rulemaking*, Declaratory Ruling and Order, CG Docket No. 02-278, at fn. 1, (rel. July 10, 2015) (2015 Declaratory Ruling and Order).

⁹ 47 U.S.C. § 227 (a)(1).

¹⁰ *See* Federal Communications Commission, *Consumer and Governmental Affairs Bureau Seeks Comment on Interpretation Of The Telephone Consumer Protection Act in Light Of The D.C. Circuit’s ACA International Decision*, Public Notice, CG Docket No. 18-152 (rel. May 14, 2018).

¹¹ 47 U.S.C. § 227(b)(1)(A)(iii)

¹² 47 U.S.C. § 227 (b)(1)(A).

Court has found that “[t]he United States and its agencies, it is undisputed, are not subject to the TCPA’s prohibitions.”¹³

In 2015, Congress, added another exemption for calls “made solely to collect a debt owed to or guaranteed by the United States” from the TCPA so that these debt collectors did not have to get consumers’ consent before calling.¹⁴ However, the Fourth Circuit Court of Appeals recently found that exemption to be an unconstitutional violation of the First Amendment.¹⁵

C. Spoofing Basics

According to CGB, many illegal robocalls are also “spoofed” calls.¹⁶ Spoofing occurs when a caller manipulates their caller ID information so it does not match their actual number.¹⁷ Generally, Congress prohibited the knowing transmission of misleading or inaccurate Caller ID information “with the intent to defraud, cause harm, or wrongfully obtain anything of value” as part of the Truth in Caller ID Act.¹⁸ However, spoofing for legitimate, non-fraudulent, purposes is permitted under the law.¹⁹ Indeed, according to the FCC, domestic violence shelters, and other entities, often need to mask their caller ID information and have important reasons for doing so.²⁰

D. Recent FCC Efforts to Stop Robocalls and Illegally Spoofed Calls

According to reports, since 2015, the FCC has fined telemarketers \$208 million under the TCPA, but has only collected \$6,790 of that amount.²¹ The FCC initiated a Notice of Inquiry

¹³ *Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663, 672(2016).

¹⁴ Bipartisan Budget Act of 2015, Pub. L. No. 114-74, § 301(a) (2015).

¹⁵ *See American Association of Political Consultants, Inc, et. al, v. FCC* (4th Cir. Apr. 24, 2019).

¹⁶ *See* note 1 at ¶ 5.

¹⁷ *See* note 1 at fn. 4.

¹⁸ 47 U.S.C. §227 (e)(1).

¹⁹ *Id.*

²⁰ Federal Communication Commission, *Rule and Regulation Implementing the Truth in Caller ID Act of 2009*, Report and Order, WC Docket No. 11-39 (rel. June 22, 2011).

²¹ *The FCC Has Fined Robocallers \$208 Million. It’s Collect \$ 6,790*, Wall Street Journal (Mar. 28, 2019).

seeking comment on methods to authenticate calls to reduce caller ID spoofing in July 2017.²² The FCC has clarified that carriers are allowed to block certain categories of “presumptively illegal calls” before they reach consumers’ phones, such as those that start with area codes that do not exist.²³ The FCC also has adopted an order to implement a reassigned number database.²⁴

II. LEGISLATION

A. H.R. 946, the “Stopping Bad Robocalls Act”

Rep. Pallone (D-NJ), reintroduced H.R. 946, the Stopping Bad Robocalls Act on February 4, 2019, after originally introducing the bill in the 115th Congress.

The Stopping Bad Robocalls Act would:

- (1) Update the TCPA’s autodialer definition to ensure robocallers cannot evade the protections in the law to make robocalls without consumers’ consent. The bill also amends the law to reinforce that text messages are covered as well as calls;
- (2) Require additional consumer protections to limit the calls consumers receive because of certain FCC created exemptions to the TCPA;
- (3) Require the FCC to create a reassigned number database so consumers do not receive robocalls intended for the person that was previously assigned the consumer’s phone number;
- (4) Extend the statute of limitations for the FCC to take action against robocallers and illegal spoofers to up to four years and allow the FCC to immediately go after bad actors, rather than requiring the FCC to wait for a second offense;
- (5) Require the FCC, after consultation with the Federal Trade Commission, to submit annual reports to Congress detailing the FCC’s progress in stopping robocalls, including recommendations for how to reduce nuisance calls by at least 50 percent year-over-year; and

²² Federal Communications Commission, *Call Authentication Trust Anchor*, Notice of Inquiry, 32 FCC Rcd 5988 (2017).

²³ Federal Communications Commission, *Consumer and Governmental Affairs Bureau Clarification on Blocking Unwanted Robocalls*, Public Notice, 31 FCC Rcd 10961 (2016); Federal Communications Commission, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Report and Order and Further Notice of Proposed Rulemaking, CG Dkt. No. 15-59, FCC17-151 (Nov. 17, 2017).

²⁴ Federal Communications Commission, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Second Report and Order, GN Docket No. 17059 (rel. Dec. 13, 2018).

(6) Require that, within a year, the FCC prescribe consumer protections to require telephone service providers to authenticate the source of calls, so they don't include misleading caller ID information with some exceptions. Calls that have not been authenticated would not be completed unless subscribers chose to unblock such calls, and telephone service providers could not charge subscribers extra just for this service.

B. H.R. 1421, the "HANGUP Act"

Rep. Eshoo (D-CA) reintroduced H.R. 1421, the "Help Americans Never Get Unwanted Phone calls (HANGUP) Act of 2019" or the "HANGUP Act" on February 28, 2019, after first introducing the legislation in the 114th Congress. The HANGUP Act would rescind Section 301 of the Bipartisan Budget Act of 2015 exempting calls "made solely to collect a debt owed to or guaranteed by the United States" from the TCPA so that these debt collectors did not have to get consent from consumers before calling. Notably, the Fourth Circuit Court of Appeals recently found the exemption created by Section 301 to be unconstitutional.

C. H.R. 2355, the "ROBO Calls and Texts Act"

Rep. Eshoo (D-CA) introduced H.R. 2355, the "Regulatory Oversight Barring Obnoxious (ROBO) Calls and Texts Act" on April 25, 2019. The ROBO Calls and Texts Act would require the FCC to establish a Robocalls Division within the Enforcement Bureau that specifically addresses the issue of robocalls. That division would be charged with: (1) ensuring consumer protection and compliance with federal laws relating to public safety and robocalls; (2) serving as a line of communication between the federal government and the communications industry to coordinate efforts to combat robocalls; (3) actively managing robocall consumer complaints; and (4) serving as a line of communication between the FCC and other related federal agencies regarding the issue of robocalls, among other things.

The bill would also require the FCC to implement regulations to compel carriers to adopt technological standards to prevent robocalls and periodically update those regulations. Under the bill, a portion of the FCC's staff would also be dedicated to researching ways to address robocalls. Finally, the bill requires the FCC to develop general educational resources to inform consumers of the risks associated with robocalls.

D. H.R. 721, the "Spam Calls Task Force Act of 2019"

Rep. Crist (D-FL) introduced H.R. 721, the "Spam Calls Task Force Act of 2019" on January 23, 2019. The Spam Calls Task Force Act requires the Attorney General, in consultation with the FCC, to convene an interagency working group to study the enforcement of the TCPA. Among other things, the task force shall: (1) determine how federal law and budgetary constraints inhibit enforcement of the TCPA; (2) identify existing and additional policies and programs to increase coordinating between to federal department and agencies and the states for enforcing and preventing violations of the TCPA; and (3) identify existing and potential international policies and programs to improve coordination between countries in enforcing the TCPA and similar laws. The bill also requires the task force to consider how several policies could improve the enforcement of the TCPA.

E. Discussion Draft, the “STOP Robocalls Act”

Rep. Latta (R-OH) has released a discussion draft of a bill, the “Support Tools to Obliterate Pesky (STOP) Robocalls Act”. The STOP Robocalls Act would: (1) allow carriers to provide robocall blocking technology to consumers on an opt-out basis; (2) require the FCC to issue rules for interconnected voice over internet protocol (VoIP) providers or one way interconnected VoIP providers to require greater call record retention obligations, among other things; and (3) require the FCC to issue rules to streamline the ways in which private entities share information relating to robocalling or spoofing with the FCC.

F. H.R. 2298, the “ROBOCOP Act”

Rep. Speier (D-CA) introduced H.R. 2298, the “Repeated Objectionable Bothering of Consumers on Phones (ROBOCOP) Act” or the “ROBOCOP Act” on April 12, 2019, after first introducing the legislation in the 114th Congress. The ROBOCOP Act requires carriers, for no additional charge, to enable technology that: (1) verifies the accuracy of caller ID information; (2) generally blocks calls or text messages that do not have verified caller ID information; and (3) blocks calls or text messages that originate, or probably originate, from an autodialer, unless the consumer has consented or the call is coming from a public safety entity.

The bill would also provide for an appeal process whereby the FCC could address instances where calls or texts messages are misidentified as originating from auto dialers, among other things. The bill further gives the FCC the authority to “whitelist” some callers if they offer an “essential service.”

The ROBOCOP Act establishes a private right of action to enjoin or recover damages for violations of the new call blocking requirements in the bill. States may also bring civil actions for a pattern or practice of a failure to provide the call blocking required by the bill. The bill further makes it unlawful for persons to intentionally interfere with call blocking technology with the intent to cause harm. Finally, the bill requires the FCC to produce several studies regarding how to further the aims of the legislation.

G. H.R. 1575, the “Robocall Enforcement Enhancement Act of 2019”

Rep. Van Drew (D-NJ) introduced H.R. 1575, the “Robocall Enforcement Enhancement Act of 2019” on March 6, 2019. The Robocall Enforcement Enhancement Act would: (1) increase the statute of limitations for illegal spoofing to three years; (2) increase the time the FCC has to impose a forfeiture, after it issues a notice of apparent liability, to three years for illegal robocalls; and (3) allows the FCC to impose a forfeiture against illegal robocallers without first issuing a citation.

III. WITNESSES

The following witnesses have been invited to testify:

Mr. Aaron Foss

Founder
Nomorobo

Mr. Dave Summitt

Chief Information Security Officer
H. Lee Moffitt Cancer Center & Research Institute
Fellow for the Institute for Critical Infrastructure Technology

Ms. Margot Saunders

Senior Counsel
National Consumer Law Center

Mr. Patrick Halley

Senior Vice President, Advocacy and Regulatory Affairs
USTelecom – The Broadband Association