



MEMORANDUM

June 21, 2019

To: Subcommittee on Communications and Technology Members and Staff

Fr: Committee on Energy and Commerce Staff

Re: Markup of H.R. 3375, the Stopping Bad Robocalls Act

On **Tuesday, June 25, 2019, at 2:00 p.m. in the John D. Dingell Room, 2123 of the Rayburn House Office Building**, the Subcommittee on Communications and Technology will hold a markup of H.R. 3375, the Stopping Bad Robocalls Act.

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 in which 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 for 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 has 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, however, its last interpretation was struck down in court in May 2018.¹⁰ Currently, CGB is considering how to clarify the Commission’s interpretation of the term ‘autodialer’ in light of the court’s decision.

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 Federal Communications Commission, *Report on Robocalls*, at ¶ 4-6 (Feb. 2019).

⁶ See *id.* at fn. 13.

⁷ *Morristown Residents Alerted to New Scam*, TAP into Morristown (Apr. 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 Shortly thereafter, the Ninth Circuit also found that provision violated the First Amendment.¹⁶

C. Spoofing Basics

According to CGB, many illegal robocalls are also “spoofed” calls.¹⁷ Spoofing occurs when a caller manipulates their caller ID information so it does not match their actual number.¹⁸ 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.¹⁹ However, spoofing for legitimate, non-fraudulent purposes is permitted under the law.²⁰ 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.²¹

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 Duguid v. Facebook Inc.*, (9th Cir. June 13, 2019).

¹⁷ *See* note 1 at ¶ 5.

¹⁸ *See* note 1 at fn. 4.

¹⁹ 47 U.S.C. §227 (e)(1).

²⁰ *Id.*

²¹ 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).

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

The FCC initiated a Notice of Inquiry 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 Earlier this month, the FCC adopted a declaratory ruling to allow carriers to offer robocall blocking services to their customers on a default basis.²⁵

According to reports, since 2015, the FCC has fined telemarketers \$208 million under the TCPA, but has only collected \$6,790 of that amount.²⁶

II. H.R. 3375, TO AMEND THE COMMUNICATIONS ACT OF 1934 TO CLARIFY THE PROHIBITIONS ON MAKING ROBOCALLS, AND FOR OTHER PURPOSES

Rep. Pallone (D-NJ), Rep. Walden (R-OR), Rep. Doyle (D-PA), and Rep. Latta (R-OH) introduced H.R. 3375, known as the “Stopping Bad Robocalls Act” on June 20, 2019.

Section 2 of the bill would require the FCC to complete a rulemaking within six months to put consumers first. Specifically, the FCC would be required to revise its rules under the Telephone Consumer Protection Act to: Protect consumers and their privacy, ensure that robocalls are only made with consent, ensure that consumers can withdraw consent, prevent circumvention or evasion of the law, ensure robocallers are keeping records to prove they have the consent of the people they are calling, and help ensure robocallers are following the law.

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).

²⁵ Federal Communications Commission, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Declaratory Ruling and Third Further Notice of Proposed Rulemaking, CG Docket No. 17-59 (rel. June 7, 2019).

²⁶ *The FCC Has Fined Robocallers \$208 Million. It's Collect \$ 6,790*, Wall Street Journal (Mar. 28, 2019).

Section 3 would require the FCC to implement consumer protections on the FCC's exempted classes of robocalls. These consumer protections must specifically include limits on: the classes of parties that may make such calls, the classes of parties that may be called, and the number of calls allowed under the exemption.

Section 4 would require the FCC to issue a report to Congress to ensure the FCC is quickly implementing the reassigned number database it agreed to implement in December. This section also clarifies that when a consumer gets a new phone number, robocallers cannot keep calling to look for the person that had that phone number before.

Section 5 would extend the statute of limitations by up to four years in some cases, to give the FCC and law enforcement agencies enough time to prosecute illegal robocallers.

Section 6 would require the FCC to issue an annual report to Congress on illegal robocallers detailing its enforcement activities so Congress can make sure the robocalling problem is being addressed. The report also requires the FCC to provide Congress with proposals for decreasing the number of robocalls through additional legislation.

Section 7 would require all carriers, over time, to implement a new technology to make sure that caller-ID information is appropriately authenticated with no additional line item charge for consumers on their bill. Specifically, this section requires the FCC to recognize the burdens and barriers to adopting this technology across the country and to address those barriers. Implementation of these measures will help to ensure that rural parts of the country with older technology are not left behind. To the extent some carriers need additional time to implement this technology, the FCC will need to find alternative methodologies for authenticating calls.

Section 8 would ensure that robocall blocking services offered on a default basis are provided with no additional line item charge on their bill and that consumer and callers have transparency as to when a number has been blocked and effective redress.