

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM

April 25, 2018

To: Subcommittee on Digital Commerce and Consumer Protection Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Hearing on “Do Not Call: Combating Robocalls and Caller ID Spoofing”

On Friday, April 27, at 9:00 a.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Digital Commerce and Consumer Protection will hold a hearing titled “Do Not Call: Combating Robocalls and Caller ID Spoofing.”

I. BACKGROUND

Prerecorded calls, or “robocalls,” have increased substantially in recent years. An estimated 18 billion unwanted calls were placed in the United States in 2017, which was a 76 percent increase over the previous year.¹ Unwanted calls are the leading category of consumer complaints at both the Federal Trade Commission (FTC) and the Federal Communications Commission (FCC).² Illegal robocalls are a serious consumer protection problem because they

¹ *As Robocalls Skyrocket, Is the Government Doing Enough to Stop Them?*, CBS News (Mar. 23, 2018).

² *Phoning It In: Unwanted Calls Are No. 1 Complaint with FTC*, Wall Street Journal (Sept. 8, 2017); Federal Communications Commission, *Stop Unwanted Calls and Texts* (www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts#call-blocking-resources) (accessed Mar. 19, 2018).

frequently involve the sale of fraudulent goods and services.³ In 2016, roughly 22.1 million Americans lost a total of \$9.5 billion in robocall scams, with an average loss per person of \$430.⁴

Voice over Internet Protocol (VoIP) and improved automated dialing technologies have enabled callers to make high volumes of prerecorded calls from anywhere in the world at fractions of a cent per call.⁵ Spoofing technology has also made it easier for telemarketers to fake caller ID information and engage in “neighborhood spoofing” in which callers use fake numbers that mimic the same area code and exchange as the called party.⁶

Efforts are being made to reduce the number of unwanted robocalls with some limited success. For example, landline users can install call-blocking devices on their phones, and both landline and VoIP users may have access to blocking services from their carrier or internet provider.⁷ Certain mobile phones have built-in features to restrict calls and some wireless carriers offer call-screening services.⁸ Many third-party apps are also available free or at low cost to stop robocalls or send them directly to voicemail.⁹

II. FEDERAL LAWS GOVERNING ROBOCALLS

The principal federal agencies with authority over robocalls are the FTC and the FCC. Under the Telemarketing and Consumer Fraud and Abuse Prevention Act, the FTC regulates telemarketing calls through the Telemarketing Sales Rule (TSR). The TSR bans telemarketing calls to phone numbers listed on the National Do Not Call Registry and all prerecorded telemarketing calls without the recipient’s prior written consent.¹⁰ The TSR does not apply to calls initiated by non-profit organizations or to purely informational robocalls from commercial

³ Federal Trade Commission, *FTC Testifies before U.S. Senate Special Committee on Aging on the Continuing Fight to Combat Illegal Robocalls* (Oct. 4, 2017) (press release).

⁴ *Robocall Scams are Costing us Billions –and Millennials are A Prime Target*, NBC News (Apr. 20, 2017).

⁵ Federal Trade Commission, *Biennial Report to Congress Under the Do Not Call Registry Fee Extension Act of 2007* (Dec. 2007); *Video Statement of Acting FTC Chairman Maureen Ohlhausen*, FCC-FTC Joint Policy Forum on Illegal Robocalls (www.fcc.gov/fcc-ftc-robocalls-forum) (Mar. 23, 2018).

⁶ Federal Trade Commission, *Biennial Report to Congress Under the Do Not Call Registry Fee Extension Act of 2007* (Dec. 2007).

⁷ Federal Trade Commission, *Consumer Information: Blocking Unwanted Calls* (www.consumer.ftc.gov/articles/0548-blocking-unwanted-calls) (accessed Mar. 28, 2018).

⁸ See note 1.

⁹ *Id.*

¹⁰ 16 C.F.R. § 310; *FTC Issues Final Telemarketing Sales Rule Amendments Regarding Prerecorded Calls* (Aug. 19, 2008) (press release); Federal Trade Commission, *Complying with the Telemarketing Sales Rule* (www.ftc.gov/tips-advice/business-center/guidance/complying-telemarketing-sales-rule) (accessed Mar. 28, 2018).

entities, such as flight cancellation messages. The rule also provides some other narrow exemptions, such as calls that are purely informational or certain healthcare-related calls.

Since the law's passage, the FTC has brought more than 100 lawsuits against more than 600 companies and individuals for Do Not Call violations.¹¹ However, the FTC can have a difficult time locating the sender of these fraudulent calls because of caller ID spoofing and calls originating overseas.¹²

The FCC's authority over robocalls is set out in the Telephone Consumer Protection Act (TCPA). For landline residential numbers, the TCPA prohibits prerecorded telemarketing calls without prior written consent. For calls to wireless phones, the statutory ban on robocalls is not limited to telemarketing and more broadly prohibits any non-emergency calls using an autodialer or prerecorded message without prior consent, which must be in writing if the call involves telemarketing or advertising. The FCC also enforces the Truth in Caller ID Act of 2009, which makes spoofing "with the intent to defraud, cause harm, or wrongly obtain anything of value" illegal.¹³

III. AGENCY INITIATIVES

The FTC held four public challenges to spur private sector development of technologies to stop robocalls, with the "NomoRobo" app winning the first challenge in 2012.¹⁴ The FTC now provides telecommunications companies and other industry partners with detailed daily reports on robocalls from its consumer complaint database to enhance the efficacy of industry call-blocking services.¹⁵ On April 23, 2018, the FTC and FCC hosted a joint technology expo for consumers, featuring new devices and apps to block unwanted calls.¹⁶

The FCC, in July 2017, initiated a Notice of Inquiry seeking comment on methods to authenticate calls in order to reduce caller ID spoofing.¹⁷ In November 2017, the FCC clarified that carriers are allowed to block certain categories of "presumptively illegal calls" before they

¹¹ Federal Trade Commission, *Consumer Information: Robocalls* (www.consumer.ftc.gov/features/feature-0025-robocalls) (accessed Mar. 28, 2018).

¹² Federal Trade Commission, *Prepared Statement before the United States Special Committee on Aging on "Still Ringing off the Hook: An Update on Efforts to Combat Robocalls"* (Oct. 4, 2017).

¹³ 47 U.S.C. § 227.

¹⁴ See note 7.

¹⁵ *Id.*

¹⁶ Federal Communications Commission, *Stop Illegal Robocalls Expo* (Mar. 7, 2018) (press release).

¹⁷ Federal Communications Commission, *Call Authentication Trust Anchor*, Notice of Inquiry, 32 FCC Rcd 5988 (2017).

reach consumers' phones such as those that start with area codes that do not exist.¹⁸ In April 2018, the FCC issued a proposed rulemaking to address how to reduce unwanted calls, including robocalls, to consumers with reassigned phone numbers.¹⁹

IV. WITNESSES

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¹⁸ 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).

¹⁹ Federal Communications Commission, *Second Further Notice of Proposed Rulemaking*, CG Dkt. No. 17-59 (Mar. 22, 2017).