

June 6, 2016

Marlene H. Dortch

Secretary

Federal Communications Commission

445 12th Street, SW

Washington, DC 20554

**Re: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 [CG Docket No. 02-278; FCC 16-57]**

Dear Ms. Dortch,

Consumers Union, the policy and advocacy arm of Consumer Reports,[[1]](#footnote-1) appreciates the opportunity to comment on the Commission’s proposed rules to implement Section 301 of the 2015 budget bill. This provision creates an unfortunate loophole in the protections of the Telephone Consumer Protection Act (TCPA), opening the door to a slew of robocalls—autodialed and/or prerecorded calls—made without the consumer’s prior permission to collect federally-owned or guaranteed debt.

Consumers have been harmed and harassed by unwanted debt collection robocalls, and we support your proposal to place appropriately strict limits on their use. We also recommend a few changes to strengthen the final rule, as discussed below.

The growing number of complaints, to Consumers Union and to federal agencies, about unwanted calls is illuminating of the magnitude of the problem. Senator Claire McCaskill (D-MO) referred to unwanted calls in a recent hearing as “the biggest consumer problem in the country.”[[2]](#footnote-2) The Federal Trade Commission (FTC) has seen a surge of complaints about Do Not Call violations—over 3.5 million total in FY 2015,[[3]](#footnote-3) including over 2 million about prerecorded calls.[[4]](#footnote-4) Almost 2 million of the total complaints were from companies that the recipient had already asked to stop calling.[[5]](#footnote-5) Meanwhile, over 600,000 consumers have joined Consumers Union’s End Robocalls campaign, which we created in response to an unprecedented number of complaints from consumers. The campaign—our fastest-growing one—is urging the major phone companies to offer free tools to all of their customers to block unwanted calls.[[6]](#footnote-6)

Consumers are uniquely sensitive to debt collection calls and calls to their cell phones. This past fall, over 85,000 consumers quickly mobilized and asked their Senators to support the HANGUP Act,[[7]](#footnote-7) the proposed legislation to close the debt collection loophole created by Congress. Perhaps consumers are so frustrated in part because debt collectors may be among the most prolific robocallers. According to YouMail, a company that offers a robocall-blocking service, in April 2016 debt collectors made up almost all of the top 20 suspected robocallers. One robocaller alone was thought to be responsible for an estimated 14 million student loan collection calls that month.[[8]](#footnote-8) With Consumers Union’s help, consumers have submitted about 15,000 individual comments on the FCC’s proposed rule to the docket. Attached to this comment is a document with an additional 4,800 signatures submitted to Consumers Union in a separate petition, asking the FCC to stop robocalls to cell phones.[[9]](#footnote-9) These submissions make it abundantly clear that consumers want fewer robocalls.

As FCC Chairman Tom Wheeler noted last year, “[T]he consumer should be in control” of the calls they receive.[[10]](#footnote-10) Others have also objected to opening the floodgates to robocalls. Although debt collection interests have argued that loosening the rules to allow unsolicited robocalls to cell phones is in the consumer’s best interest, to help them stay on top of their accounts,[[11]](#footnote-11) servicers do not need robocalling to contact consumers. They can easily get in touch with consumers in several other, lawful ways: by picking up the telephone and making a call, by emailing, or by sending a letter. In the alternative, the company can simply get the consumer’s prior permission to robocall.

Moreover, robocalls do not effectively collect debt. According to the Congressional Budget Office, the new robocalling loophole will make at most $500,000 per year over the next ten years for the federal government—hardly worth loosening important consumer protections against robocalls.[[12]](#footnote-12)

Robocalls can be quite costly to the consumer—another reason why it’s important that consumers can limit the calls they receive. In a comment to the docket, R. Diana, of Florence, AZ, wrote:

“I live on a fixed income, so I must limit my cell minutes to a bare minimum. I've already had a couple of instances where debt collectors were calling for someone else unknown to me. It was like pulling teeth to get them to back off & quit calling me daily, it wastes my minutes that I need for my own personal business. When the calls cost me money for someone totally unknown to my life, that becomes a financial hardship on someone who did nothing wrong.”

Debt collection robocalls also affect the consumers who are called in error or out of negligence, many of whom find that the only way to avoid these calls is to change their phone number. Maria, of Schenectady, NY, wrote in a comment to the docket:

“About twelve years ago, I began to receive threatening letters and telephone calls from various debt collectors saying that I owed hundreds of thousands of dollars. I knew that I had no debts and had no idea how to stop the harassing calls I was getting daily. . . . I discovered that they were looking for a woman with my first and last name but different middle initial who lived on the other side of my state. . . . They knew I wasn't the person who owed them money, but that didn't stop them from sending me threatening letters and calling me daily at all hours. In my experience, debt collectors don't need more permissions and allowances, they need to be effectively regulated. The only thing that made the constant contact with debt collectors end for me was moving to another state.”

Charles of Orlando, FL, noted in his comment to the FCC:

“Many many debt collectors robocall already and do not update records or research if they have the correct number. We have had to change numbers 3 times, then ultimately scrapped our landline, due to hundreds of debt collection calls for other people; often the same people and companies over and over.”

Consumers have also shared with us the harm that results from robocall harassment. Timothy, of Danbury, WI, has experienced these relentless calls while he and his mother struggled to care for his dying father:

“[B]ack in June 2012 the calls from Sallie Mae started coming in it started out with about 5 phone calls a day to my cell phone. . . . It’s madness what these companies put the consumer and their families through, it has to stop, like the 20 phone calls a day that me and my mother were getting while we were both taking care of my dying father, we needed our phones open for emergency services and Sallie Mae diminished this ability, and they didn't care that they made my dying father’s last days on earth miserable either or that they made it harder for him to breathe by increasing his anxiety.”

Clearly, it’s in consumers’ best interest to have control over the calls they receive. The FCC’s proposed rules will help consumers maintain this control. Consumers Union supports the following proposed protections, which are addressed in more detail by the National Consumer Law Center’s (NCLC) comments:

1. Robocalls will be allowed only to those who owe the debt, not to their family or acquaintances;
2. The rule will apply to both text messages and cell phone calls;
3. Callers will be required to inform consumers that they have a right to ask that the calls stop, and callers must comply with those requests;
4. Calls will be allowed only between 8 a.m. and 9 p.m.;
5. Calls will be allowed only to collect debts currently owed to or guaranteed by the United States; and
6. Only one “wrong number” call will be permitted, for example to a reassigned number.

We also recommend, along with NCLC, that the following changes should be made to improve the final rule:

7. We recommend that only three calls per servicer or collector per month be permitted, instead of three calls per loan. This will help prevent a consumer with multiple student loans, for example, from receiving up to 30 robocalls per month on his or her cell phone.

8. We propose that servicers may call if either the debt is delinquent or if the consumer is delinquent in responding to a notice for entering into a payment plan or forbearance program.

Finally, we ask the FCC to place these directives in the text of the new rule itself. Specifically, we endorse the language for the rule being suggested by NCLC in its comments, which we have joined. Adopting this language into the rule itself will make clear what is required of robocallers under the final rule and help ensure that industry, advocates and the public can easily access this important information. Many consumers are not aware of their legal protections against robocalls, and are at their wit’s end trying to determine how they can be stopped. Specifying all substantive requirements directly in the regulatory text will facilitate compliance and help consumers stop unwanted calls.

Thank you for your help in protecting consumers from unwanted, harmful debt collection robocalls.

Respectfully submitted,



Maureen Mahoney

Policy Analyst

Consumers Union

1. Consumers Union is the public policy and advocacy 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. [↑](#footnote-ref-1)
2. *The Telephone Consumer Protection Act at 25: Effects on Consumers and Business, Hearing Before the S. Comm. on Sci., Commerce, and Transp.*, 114th Cong. (2016) (statement of Senator Claire McCaskill, approximately 1:18:30), *available at* <http://www.commerce.senate.gov/public/index.cfm/hearings?ID=7FDEF85E-BF1F-475C-BE3F-1E011EA5A909>. [↑](#footnote-ref-2)
3. Fed. Trade Comm’n, National Do Not Call Registry Data Book FY 2015 4 (2015), *available at* <https://www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2015/dncdatabookfy2015.pdf>. [↑](#footnote-ref-3)
4. *Id.* at 5. [↑](#footnote-ref-4)
5. *Id.* [↑](#footnote-ref-5)
6. *See* Consumers Union, EndRobocalls.org, <https://consumersunion.org/end-robocalls/>. [↑](#footnote-ref-6)
7. S. 2235, 114th Cong. (2015). [↑](#footnote-ref-7)
8. YouMail, YouMail Robocall Index April 2016, Calls by the Most Active Robocallers in April, <https://www.youmail.com/phone-lookup/robocall-index/2016/april>. [↑](#footnote-ref-8)
9. *See* Care2 Petitions, URGENT: Tell the FCC - No Robocalls to Cell Phones! <http://www.thepetitionsite.com/takeaction/313/610/928/>. [↑](#footnote-ref-9)
10. Video: Fed. Commc’ns Comm’n, June 2015 Open Commission Meeting, June 18, 2015, <https://www.fcc.gov/events/open-commission-meeting-june-2015> (statement starting at approximately 160:07). [↑](#footnote-ref-10)
11. Letter, from Debra Chromy, President, Education Finance Council et al. to Rep. Fred Upton, Chairman, and Rep. Frank Pallone, Ranking Member, House Committee on Energy and Commerce (Mar. 7, 2016), *available at* <https://consumermediallc.files.wordpress.com/2016/03/efc-ncher-slsa-letter.pdf>. [↑](#footnote-ref-11)
12. Chris Morran, *Government’s Own Budget Analysis Shows that Allowing Debt Collection Robocalls is Pointless*, Consumerist*,* Oct. 28, 2015, <https://consumerist.com/2015/10/28/governments-own-budget-analysis-shows-that-allowing-debt-collection-robocalls-is-pointless/>. [↑](#footnote-ref-12)