

November 16, 2016

The Honorable John Thune, Chairman
The Honorable Bill Nelson, Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate
Washington, D.C. 20510

Dear Chairman Thune and Ranking Member Nelson:

The undersigned non-profit organizations, representing millions of consumers, support your interest in improving protections against unwanted robocalls – the top consumer complaint to the Federal Communications Commission (FCC), and the source of over 2 million complaints to the Federal Trade Commission (FTC) in 2015.

We agree that more tools need to be brought to bear, starting with the ROBOCOP Act, legislation introduced by Representative Jackie Speier (D-CA) (H.R. 4932) and Senator Charles Schumer (D-NY) (S. 3026). This legislation would provide important new incentives for carriers to provide consumers with call-blocking technologies and to help eradicate caller-ID spoofing, which we believe is critical to addressing the runaway robocall problem.

At the same time, we also urge the Committee to take utmost care not to permit changes to the Telephone Consumer Protection Act (TCPA) that would undermine the effectiveness of this fundamental law and open the door to further telemarketing abuse. For example, altering the definition of “autodialer” would create dangerous gaps in coverage; the current definition is important for reaching all telemarketing technologies used today. Similarly, altering the definition of “consent” would eliminate important incentives for callers to take practical steps, using available technologies, to ensure that they do have the consent of the party being called.

We are also concerned that another proposed change to the TCPA, put forward by Senator Steve Daines (R-MT) during Committee consideration of S. 2644, the FCC Reauthorization Act – described as designed to strengthen incentives for a company to help prevent TCPA violations by its contractors – would unfortunately end up having the opposite effect. The proposal would exempt a company from liability under the TCPA for violations by its contractors so long as its contract requires contractors to “retain an objective, independent third party monitoring service” and provide periodic compliance reports. Notably, no standard applies; the mere inclusion of these requirements in a contract would be enough to trigger the exemption. A company could even continue to benefit significantly from TCPA violations it knew were being routinely committed by contractors on its behalf.

One apparent impetus for the Daines proposal is the case brought against DISH Network by the federal government and states, for 55 million illegal telemarketing calls by its retailers – many to consumers on the National Do Not Call Registry, some of whom had directly complained to DISH. The retailers were being paid by DISH based on sign-up volume; and the evidence at trial demonstrated that DISH knew many of the retailers were using telemarketing to boost sales, and that DISH was aware of consumer complaints and enforcement actions indicating violations of TCPA and other telemarketing laws.

The court ruled that long-established federal common-law rules of agency applied to the determination of DISH's relationship with the retailers, and that those rules indicated DISH should be held legally responsible for the retailers' calls. We believe that is a sound ruling, and creates appropriate incentives for a large company, like DISH, to monitor the telemarketing practices of those with whom it entrusts the marketing and servicing of its brand.

We do appreciate the interest being expressed by some in the business community in helping strengthen compliance incentives. It is important, however, that utmost care be taken to ensure that any changes would *build on* the incentives created by current law, not undermine them. This is unfortunately not the case for the Daines proposal in its current form.

We look forward to working with you, Senator Daines, and other members of the Committee to strengthen the protections provided to consumers against unwanted, disruptive, and at times harassing, even fraudulent, robocalls. Please contact Margot Saunders at msaunders@nclc.org or Maureen Mahoney at mmahoney@consumer.org for more information.

Sincerely,

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

Cc: Members, Senate Committee on Commerce, Science, and Transportation