

# Consumers Union<sup>®</sup>

THE ADVOCACY DIVISION OF  
CONSUMER REPORTS

Statement of

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Digital Commerce and Consumer Protection Subcommittee

On

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

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Chairman Latta, Ranking Member Pallone, and members of the Subcommittee, thank you for the opportunity to speak today. I work for Consumers Union, the advocacy division of Consumer Reports.<sup>1</sup> Since 2015, in response to the complaints of thousands of consumers who cited robocalls—unwanted, autodialed calls—as their top consumer concern, Consumers Union has conducted our End Robocalls campaign, which calls on the major phone companies to offer free, effective tools to all of their customers to block these calls.<sup>2</sup> Nearly three-quarters of a million people have signed our petition to the phone companies to provide these tools. These consumers have told us that they are overwhelmed by the harmful, abusive, and irritating robocalls that intrude on their privacy, take their money, and allow scams to enter their homes.

We appreciate the progress that phone companies, the Federal Communications Commission (FCC), and the Federal Trade Commission (FTC) have made thus far in addressing robocalls. For example, AT&T and T-Mobile have begun to offer free robocall-blocking tools.<sup>3</sup> In addition, the FCC has approved new rules that give phone companies the leeway to immediately block certain categories of clearly illegally spoofed calls in their networks: calls spoofed with an invalid number, calls spoofed with an unallocated or unassigned number, or at the request of the owner of the spoofed number.<sup>4</sup> The FCC has also opened an inquiry into developing technology that can confirm the validity of caller ID information.<sup>5</sup> And the FTC has initiated a series of contests to encourage developers to create and innovate anti-robocall technology.<sup>6</sup>

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<sup>1</sup> Consumers Union is the 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 60 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.

<sup>2</sup> Tim Marvin, No More Complaining. Let’s End Robocalls! ConsumersUnion.org (Feb. 17, 2015), <http://consumersunion.org/campaign-updates/no-more-complaining-lets-end-robocalls/>.

<sup>3</sup> AT&T Mobile Security & Call Protect (last visited April 24, 2018), <https://www.att.com/features/securityapps.html>; T-Mobile, Call Protection Solutions (last visited April 24, 2018), <https://explore.t-mobile.com/callprotection>.

<sup>4</sup> In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls, Report and Order and Further Notice of Proposed Rulemaking, CG Docket No. 17-59 (Rel. Nov. 17, 2017), *available at* [https://ecfsapi.fcc.gov/file/111717758568/FCC-17-151A1\\_Rcd.pdf](https://ecfsapi.fcc.gov/file/111717758568/FCC-17-151A1_Rcd.pdf).

<sup>5</sup> Fed. Comm’n Comm’n, Call Authentication Trust Anchor, Notice of Inquiry (July 14, 2017) at ¶14, *available at* <https://ecfsapi.fcc.gov/file/07141096201120/FCC-17-89A1.pdf>. The FCC has also proposed a reassigned number database, to help cut down on the number of “wrong number” robocalls. In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls, Second Further Notice of Proposed Rulemaking (March 23, 2018), <https://ecfsapi.fcc.gov/file/032399073325/FCC-18-31A1.pdf>. It has also announced new enforcement efforts. Fed. Comm’n Comm’n, Robocall Scammer Faces \$120 Million Proposed Fine for Massive Caller ID Spoofing Operation (June 22, 2017), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-345470A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-345470A1.pdf).

<sup>6</sup> *Still Ringing off the Hook: An Update on Efforts to Combat Robocalls, Before the United States Senate Special Comm. on Aging*, 114th Cong. at 13-15 (2017) (testimony of the Federal Trade Commission), [https://www.ftc.gov/system/files/documents/public\\_statements/1256863/p034412\\_commission\\_testimony\\_re\\_robocalls\\_senate\\_10-4-17.pdf](https://www.ftc.gov/system/files/documents/public_statements/1256863/p034412_commission_testimony_re_robocalls_senate_10-4-17.pdf). [hereinafter “Still Ringing Off the Hook”].

But more action is needed to fully address the robocall problem. The blocking under the FCC's new rules will not reach the vast majority of robocalls. For example, it will not address the problem of "neighbor spoofed" calls, in which the caller ID is spoofed with a number in the recipient's own area code and exchange, or other calls that are spoofed with numbers that are in circulation. Moreover, scammers will likely simply stop spoofing numbers that they know are more likely to be blocked. Essential legal protections against robocalls under the Telephone Consumer Protection Act (TCPA) and FCC rules remain under attack and at risk. And enforcement efforts have not been enough to stop illegal robocalling.

We support the following additional reforms:

- **Require anti-spoofing, call-blocking technology:** The FCC should require providers to offer technology to identify and block spoofed and unwanted calls. Unblocking requests should be evaluated by a required set of criteria to ensure that consumers' wishes are honored. Congress can assist by supporting the ROBOCOP Act,<sup>7</sup> which would require the FCC to develop rules implementing this technology.
- **Ensure that consumers have strong legal protections against unwanted robocalls:** The DC Circuit Court of Appeals recently struck down portions of the FCC's 2015 rules, covering the definition of an autodialer and the safe harbor for robocalls made to reassigned numbers. The FCC will likely open a proceeding to explore open issues related to the definition of an autodialer. We urge the FCC to implement strong rules that maintain important protections against unwanted robocalls.<sup>8</sup>
- **Increase protections against unwanted debt collection calls:** Congress should pass the HANGUP Act,<sup>9</sup> to remove the exemption in the Telephone Consumer Protection Act (TCPA) for federal debt collection robocalls, and overturn the FCC's Broadnet ruling that effectively exempts robocalls made by federal contractors.<sup>10</sup> We also urge the FCC to implement strong rules limiting federal debt collection calls.
- **Empower the FTC to counter illegal calls:** Congress should strengthen the FTC's ability to stop abusive robocalling by allocating greater resources for enforcement and the

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<sup>7</sup> S. 2705, H.R. 5573 (2018)

<sup>8</sup> *Abusive Robocalls and How We Can Stop Them, Before the Senate Committee on Commerce, Science, and Transportation*, 115<sup>th</sup> Cong. (2018)(testimony of Margot Freeman Saunders), available at <https://consumerfed.org/wp-content/uploads/2018/04/testimony-on-problem-of-unwanted-robocalls.pdf> [hereinafter Saunders testimony].

<sup>9</sup> S. 564 (2017).

<sup>10</sup> In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Petitions for Declaratory Ruling by Broadnet Teleservices LLC, National Employment Network Association, RTI International, Declaratory Ruling, FCC 16-72, CG Docket No. 02-278 (July 5, 2016), available at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2016/db0706/FCC-16-72A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0706/FCC-16-72A1.pdf).

development of anti-robocall technology. It should also remove the common carrier exemption in the FTC Act so that the FTC can directly call on phone service providers to be part of the solution.

We also generally support the recommendations made by the National Consumer Law Center in their testimony before the Senate Commerce, Science, and Technology Committee on April 18, 2018.<sup>11</sup> Below, I will describe how robocalls continue to plague consumers, and expand on each of the recommendations listed above.

### **Unwanted robocalls continue to harass consumers.**

Robocalls have reached epidemic proportions. Since 2006, the number of complaints about violations of the Do Not Call list has exploded.<sup>12</sup> Consumers filed at least seven million complaints about violations of the Do Not Call list in fiscal year 2017, over twice as many complaints as in 2014.<sup>13</sup> This is reflected in FCC complaint data, in which unwanted calls reliably rank as one of the top consumer complaints.<sup>14</sup>

Not only have complaints to the FTC increased, but the volume of robocalls is on the rise as well. Aaron Foss of Nomorobo estimated in 2015 that over a third of all calls are unwanted robocalls.<sup>15</sup> Last month, three billion robocalls were placed to consumers in the United States—fifteen percent higher than in February 2018, and overall, the highest number since the call-blocking company YouMail began tracking that data in 2015.<sup>16</sup> According to YouMail, as of February 2018, the most common type of robocalls (32%) are payment reminders, followed closely by alerts and other reminders (28%). Another 16% are from telemarketers in general. Roughly a quarter of all robocalls—24%—are scam calls.<sup>17</sup>

Unwanted calls are an assault on consumer privacy, and undermine the quality of the phone service for which consumers pay dearly. For example, sometimes, these robocalling

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<sup>11</sup> Saunders testimony, *supra* note 8.

<sup>12</sup> *National Do Not Call Registry Data Book FY 2016*, FED. TRADE COMM’N at 4 (Dec. 2016), [https://www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2016/dnc\\_data\\_book\\_fy\\_2016\\_post.pdf](https://www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2016/dnc_data_book_fy_2016_post.pdf).

<sup>13</sup> *National Do Not Call Registry Data Book FY 2017*, FED. TRADE COMM’N at 6 (Dec. 2017), [https://www.ftc.gov/sites/default/files/filefield\\_paths/dnc\\_data\\_book\\_fy2017.pdf](https://www.ftc.gov/sites/default/files/filefield_paths/dnc_data_book_fy2017.pdf).

<sup>14</sup> Fed. Comm’ns Comm’n, Consumer Complaint Center, Unwanted Calls (last visited April 14, 2018), <https://consumercomplaints.fcc.gov/hc/en-us/articles/115002234203-Unwanted-Calls>

<sup>15</sup> *Rage Against Robocalls*, CONSUMER REPORTS (July 28, 2015), <https://www.consumerreports.org/cro/magazine/2015/07/rage-against-robocalls/index.htm>.

<sup>16</sup> *National Robocall Volumes Jump 15% in March to Topple Monthly Records*, YOUMAIL (April 10, 2018), <https://www.prnewswire.com/news-releases/national-robocall-volumes-jump-15-in-march-to-topple-monthly-records-300627110.html>.

<sup>17</sup> *YouMail Releases Detailed Breakdown of U.S. Robocalls in February*, YOUMAIL (March 21, 2018), <https://www.prnewswire.com/news-releases/youmail-releases-detailed-breakdown-of-us-robocalls-in-february-300616969.html>.

campaigns relentlessly target certain consumers. One consumer told us that she received an estimated one hundred calls in a single day, which blocked incoming and outgoing calls for significant periods throughout the day. Others have told us that unwanted incoming robocalls have delayed them from calling a medical professional.

Moreover, robocalls cost consumers money. Vulnerable consumers such as the elderly may be unduly susceptible to telemarketing pitches for products that they do not want or need. Scam calls like Rachel from Card Services, in which the caller promises to lower interest rates for a flat fee,<sup>18</sup> or the IRS scam, in which the caller threatens arrest if the recipient does not supply immediate payment for a bogus tax debt,<sup>19</sup> also seek to fraudulently separate consumers from their money. These and other telemarketing scams cost consumers an estimated \$350 million in 2011, according to the most recent government data.<sup>20</sup> Robocalls cost consumers in other ways, too. Consumers with prepaid or limited-minute calling plans may end up paying for robocalls. And often, consumers have to pay for call-blocking devices or services, which further push the costs of robocalls onto consumers.

### **Existing robocall protections are not sufficient.**

Enforcement, while important, has been inadequate to address the robocall problem. About a quarter of these calls are coming from scammers, sometimes located overseas, and difficult to track down.<sup>21</sup> These callers intend to commit fraud, and they will completely ignore the Do Not Call registry. They take advantage of low rates for calls on Internet-based platforms, and use autodialers to engage in random and sequential dialing that can send out millions of calls in a short amount of time.<sup>22</sup> They also engage in call spoofing, in which they input misleading information in the Caller ID, to circumvent blocks and trick consumers into picking up the phone, further challenging enforcement efforts.<sup>23</sup> The financial incentives for calling are so great that as soon as one robocall scam outfit is shut down, others quickly pop up in their place.

Enforcement has also been insufficient to protect against unwanted robocalls from otherwise legitimate actors. While the TCPA's private right of action serves as an important

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<sup>18</sup> Andrew Johnson, *The FTC Gets Rachel the Robocaller...Again*, FED. TRADE COMM'N (June 14, 2016), <https://www.consumer.ftc.gov/blog/2016/06/ftc-gets-rachel-robocaller-again>.

<sup>19</sup> Amy Hebert, *Scammers Continuing to Pose as IRS Agents*, FED. TRADE COMM'N (May 29, 2014), <https://www.consumer.ftc.gov/blog/2014/05/scammers-continuing-pose-irs-agents>.

<sup>20</sup> Keith B. Anderson, Staff Report of the Bureau of Economics, Fed. Trade Comm'n, *Consumer Fraud in the United States, 2011: The Third FTC Survey* (April 2013), [https://www.ftc.gov/sites/default/files/documents/reports/consumer-fraud-united-states-2011-third-ftc-survey/130419fraudsurvey\\_0.pdf](https://www.ftc.gov/sites/default/files/documents/reports/consumer-fraud-united-states-2011-third-ftc-survey/130419fraudsurvey_0.pdf). There were an estimated 3.5 million telemarketing fraud cases in 2011 (p. 38). The median loss per case was \$100 (p. 39). Therefore, an estimated \$350 million was lost to telemarketing fraud in 2011.

<sup>21</sup> Still Ringing off the Hook, *supra* note 6, at 7. For a description of the different categories of robocalls received by consumers, see YouMail, *supra* note 17.

<sup>22</sup> *Id.* at 11-12.

<sup>23</sup> *Id.* at 8.

deterrent to unwanted calls,<sup>24</sup> and the FTC, for example, has properly engaged in major enforcement actions against companies such as Dish Network for illegal robocalls made by their contractors to consumers on the Do Not Call registry,<sup>25</sup> many consumers still receive unwanted calls, potentially in violation of the law. For example, national consumer groups have called on the FCC to take action against Navient for debt collection robocalls made without consumers' consent.<sup>26</sup>

Consumers also need tools to protect themselves from calls that may be legal but are nonetheless unwanted. Most non-emergency autodialed calls to cell phones are illegal, unless the caller has the consumer's consent.<sup>27</sup> However, exemptions threaten to chip away at these protections. For example, an exemption was slipped into the Budget Act of 2015 for debt collection calls made on behalf of the federal government, which could lead to more unwanted calls to cell phones, even to consumers who do not owe any debt.<sup>28</sup> And consumers do not have as many legal protections for their home phones, even if the consumer is on the Do Not Call registry. For example, political, charity, and debt collection calls are exempt from the Do Not Call list,<sup>29</sup> and are legal to home phones even without the consumer's consent as long as the call does not feature a pre-recorded message.<sup>30</sup>

### **Providers must be required to offer anti-spoofing and call-blocking technology.**

Consumers need effective relief from this onslaught of robocalling. Several phone companies have begun to offer call-blocking tools to at least some of their customers, but most consumers still lack access to these tools. Traditional landline users, in particular, lack effective options to block unwanted robocalls. Furthermore, caller ID spoofing poses a challenge to blacklist-based call-blocking. The FCC should require companies to move quickly to provide technology that identifies and blocks spoofed and unwanted calls.

Robocall-blocking technology can be offered immediately to serve as an important line of defense against unwanted calls. Advanced call-blocking technology has been available for years. It has been offered in Canada, for both traditional landline and Voice over Internet Protocol

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<sup>24</sup> 47 U.S.C. § 227(a)(3).

<sup>25</sup> *FTC and DOJ Case Results in Historic Decision Awarding \$280 Million in Civil Penalties Against Dish Network and Strong Injunctive Relief for Do Not Call Violations*, FED. TRADE COMM'N (Jun. 6, 2017), <https://www.ftc.gov/news-events/press-releases/2017/06/ftc-doj-case-results-historic-decision-awarding-280-million-civil>.

<sup>26</sup> Letter from National Consumer Law Center et al. to Michael Carowitz, Chief of the Enforcement Bureau, FCC (June 12, 2017), <https://www.nclc.org/images/pdf/robocalls/enforcement-letter-tcpa-fcc.pdf>. [hereinafter NCLC Letter]

<sup>27</sup> 47 U.S.C. § 227(b)(1)(A)(iii).

<sup>28</sup> Bipartisan Budget Act of 2015, Pub. L. No. 114-74, 129 Stat. 588 [hereinafter "Budget Act"].

<sup>29</sup> *National Do Not Call Registry*, FED. TRADE COMM'N (March 2015), <https://www.consumer.ftc.gov/articles/0108-national-do-not-call-registry>.

<sup>30</sup> 47 U.S.C. § 227 (b)(1)(B).

(VoIP) phones, since 2007, for free.<sup>31</sup> The Canadian technology is said to be adaptable to United States networks.<sup>32</sup> Another call-blocking technology became widely available as a third-party service for VoIP phones in the U.S. in 2013.<sup>33</sup> And app technology has proliferated. Robocall-blocking apps had long been available for Android phones, and an iOS update in 2015 allowed third-party apps to block calls on iPhones.<sup>34</sup> These technologies typically use information reported to them by consumers and other sources to block calls identified as spam or scam calls.<sup>35</sup>

Consumers Union has long called for the phone companies to provide free robocall-blocking tools to consumers, bolstered by an FCC decision in July 2015 that clarified that phone companies can offer optional, advanced robocall-blocking tools to their customers without violating their responsibilities to connect calls placed to them.<sup>36</sup> Progress accelerated in 2016, when then-FCC Chairman Wheeler called on the top phone companies and gateway providers to offer robocall-blocking tools to consumers and to move forward with caller ID authentication technology to address spoofing.<sup>37</sup> In response, the major phone companies joined the Robocall Strike Force, the industry-led group conducted under the auspices of the FCC, which worked toward those goals, as well as consumer education and a traceback initiative to more easily track down robocalls through multiple carriers to their sources.<sup>38</sup>

Still, most consumers still do not have effective robocall-blocking tools. The FCC should require the phone companies to offer robocall-blocking technology to all of their customers. AT&T and T-Mobile began offering free robocall-blocking tools to at least some of their customers, and Verizon and Sprint have rolled out paid products for smartphones.<sup>39</sup> But

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<sup>31</sup> *Robocalls: All the Rage, An FTC Summit*, FED. TRADE COMM'N at 219 (Oct. 18, 2012), [https://www.ftc.gov/sites/default/files/documents/public\\_events/robocalls-all-rageftcsummit/robocallsummittranscript.pdf](https://www.ftc.gov/sites/default/files/documents/public_events/robocalls-all-rageftcsummit/robocallsummittranscript.pdf).

<sup>32</sup> Brad Fisher, Senior Vice President of Marketing and Product, Primus Canada, cited in Maureen Mahoney, *Dialing Back: How Phone Companies Can End Unwanted Robocalls*, CONSUMERS UNION at 7 (Nov. 2015), <http://consumersunion.org/wp-content/uploads/2015/02/Dialing-Back-Complete-Report-11.16.2015.pdf>. [hereinafter “Dialing Back”].

<sup>33</sup> Still Ringing Off the Hook, *supra* note 6, at 13.

<sup>34</sup> Glenn Fleischman, *New Call-Blocking Apps in iOS 10 Can Stop Spammers and Scammers Before They Reach You*, MACWORLD (Sept. 16, 2016), <https://www.macworld.com/article/3119736/ios/new-call-blocking-apps-in-ios-10-can-stop-spams-and-scams-before-they-reach-you.html>.

<sup>35</sup> Dialing Back, *supra* note 32, at 6.

<sup>36</sup> In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act, Declaratory Ruling and Order, CG Docket No. 02-278, at ¶154 (Rel. July 10, 2015), [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-15-72A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-72A1.pdf) [hereinafter Declaratory Ruling and Order].

<sup>37</sup> Tom Wheeler, *Cutting Off Robocalls*, FCC Blog (July 22, 2016), <https://www.fcc.gov/news-events/blog/2016/07/22/cutting-robocalls>.

<sup>38</sup> Robocall Strike Force Report at 2 (Oct. 26, 2016), <https://transition.fcc.gov/cgb/Robocall-Strike-Force-Final-Report.pdf>.

<sup>39</sup> Industry Robocall Strike Force Report at 17-18 (April 28, 2017), <https://www.ustelecom.org/sites/default/files/documents/Ex%20Parte-Strike-Force-Report-2017-04-28-FINAL.pdf>.

traditional landline users, in particular, have few options for blocking unwanted calls, and options for them can be pricey.<sup>40</sup>

The FCC should also require the phone companies to implement technology that can verify the accuracy of the Caller ID information, by a date certain. This is important because caller ID spoofing poses challenges to blacklist-based call blocking. Callers often cycle through different spoofed numbers in a short amount of time, making it difficult to stay one step ahead of the robocallers.<sup>41</sup> We are not prescriptive about the technology that should be implemented, but it is important that it be able to protect all consumers, be able to block unwanted spoofed calls, offer protection against calls originating from overseas, and be provided at no extra charge.<sup>42</sup> In addition, we recognize that there are legitimate reasons for masking the caller's identity in some circumstances. This technology should not prevent the blocking of caller ID information as allowed under the Communications Act<sup>43</sup> and FCC regulations.<sup>44</sup> Finally, the deadline for implementing this technology should take into account the different financial circumstances of the phone service providers, while expediting implementation as feasible.

As these comprehensive blocking mechanisms are implemented, certain wanted calls may be blocked. Our goal is to ensure that consumers receive the calls they want, while having the ability to protect themselves from the calls they don't. Thus, the FCC should establish a system to manage the unblocking of legitimate calls. It should be guided by a set of principles to ensure that the consumer's wishes are not disregarded. The unblocked calls should be legal; the caller ID information should be verified; and calls blocked by optional call-blocking systems should not be unblocked without the consent of the called party. Finally, to ensure that the costs of implementing this system are not passed along to be borne by consumers, the system should be paid for by those in the calling industry who seek to benefit from it.<sup>45</sup>

### **Ensure that consumers have strong legal protections against unwanted calls.**

We urge the FCC to ensure that the legal protections that currently exist in the Telephone Consumer Protection Act against unwanted calls remain robust. Even with the best robocall-blocking tools, consumers cannot effectively control unwanted calls without privately

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<sup>40</sup> *Robocall-Blocker Review*, CONSUMER REPORTS (Aug. 14, 2015), <https://www.consumerreports.org/cro/magazine/2015/07/robocall-blocker-review/index.htm> [hereinafter "Robocall Blocker Review"].

<sup>41</sup> Nomorobo, Background Updates (last visited April 24, 2018), <https://nomorobo.zendesk.com/hc/enus/articles/115001498406-Background-Updates>.

<sup>42</sup> See, Comments of Consumers Union et al, WC Docket No. 17-97 (August 11, 2017), *available at* <http://consumersunion.org/wp-content/uploads/2017/08/Robocalls-FCC-NOI-on-caller-ID-authentication-CUcomments-final.pdf>.

<sup>43</sup> 47 U.S.C. § 227(e)(3)(B).

<sup>44</sup> 47 C.F.R. §64.1604(b)

<sup>45</sup> See, Comments of Consumers Union, National Consumer Law Center, et al., CG Docket No. 17-59 (Jan. 23, 2018), <https://ecfsapi.fcc.gov/file/10124133525388/Consumer%20group%20comments%20FNPRM%201.23.18.pdf>

enforceable legal rights. The Court of Appeals for the DC Circuit recently vacated portions of the FCC's 2015 Declaratory Ruling and Order on robocalls.<sup>46</sup> Specifically, the court rejected the FCC's definition of an autodialer, a key element in TCPA for controlling unwanted, automated calls. Under the TCPA, most calls made with an autodialer to a cell phone can only be made with consent. Second, the Court rejected the FCC's rule that established a safe harbor limited to one robocall made to a reassigned number. Finally, the Court upheld the FCC's rule that a consumer may revoke consent to receive robocalls in any reasonable manner.

The FCC will likely open a proceeding to address open questions of how to define an autodialer. The courts have repeatedly found that automated calls from call centers meet the statutory definition under the TCPA, and thus require consent to be placed to cell phones.<sup>47</sup> We are hopeful that the FCC will recognize that the statute has ample room to cover most existing automated dialers, and thus will protect consumers from unwanted calls. If, instead, the FCC narrowly defines autodialer, many telemarketing scam calls and unwanted calls from debt collectors will not be covered by the TCPA, leaving consumers without the means of controlling or stopping these calls.

We call on the FCC to issue rules that 1) maintain a comprehensive definition of an autodialer, so that all automated calls are included, but that exempt equipment that is not typically used to engage in mass calling, such as the personal use of a smartphone; 2) create the reassigned number database as they have proposed,<sup>48</sup> which callers can use to ensure they are contacting consumers who have provided their consent, allowing a safe harbor only for calls made due to errors in the database; and 3) ensure that consumers may revoke consent to receive automated messages, so consumers know exactly how to request that the calls stop.<sup>49</sup>

### **Increase protections against unwanted debt collection calls.**

Debt collectors remain a top source of unwanted automated messages. According to YouMail, 16 of the top 20 robocallers in March 2018 were payment reminders and debt collectors.<sup>50</sup> Consumers often tell us that they receive debt collection robocalls that are intended for someone else, but the callers ignore the pleas to stop calling. Despite these concerns, the Budget Act of 2015 exempted from the TCPA robocalls made for the purpose of collecting

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<sup>46</sup> *ACA International v. FCC*, 885 F.3d 687 (D.C. Cir. 2018).

<sup>47</sup> *The Effect of ACA International: What Does it Vacate, What Does it Undermine, What Rules Remain?* NATIONAL CONSUMER LAW CENTER 13-15 (April 2, 2018), <https://www.nclc.org/images/pdf/robocalls/memo-effect-of-aca-international.pdf>.

<sup>48</sup> In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59 (April 23, 2018), available at <https://www.federalregister.gov/documents/2018/04/23/2018-08376/advanced-methods-to-target-and-eliminate-unlawful-robocalls>.

<sup>49</sup> Saunders testimony, *supra* note 8, at 17-18.

<sup>50</sup> *National Robocall Volumes Jump 15% in March to Topple Monthly Records*, YOUMAIL, (April 10, 2018), <https://www.prnewswire.com/news-releases/national-robocall-volumes-jump-15-in-march-to-topple-monthly-records-300627110.html>.

federal debt, such as student loan debt or tax debt.<sup>51</sup> This provision could lead to millions more robocalls not only to consumers, but to their relatives, references, and employers.

We support the HANGUP Act, which not only removes the debt collection provision from the TCPA, but reverses a decision made by the FCC that we are concerned effectively exempts federal contractors from the TCPA as well.<sup>52</sup> The HANGUP Act has garnered bipartisan support, and over 80,000 Consumers Union activists contacted their representatives in Congress to support it when it was first introduced in 2015. We urge Congress to pass it as soon as possible.

In the meantime, rules implementing the Budget Act provision have yet to go into effect. The Budget Act directed the FCC to issue rules to implement the provision.<sup>53</sup> The FCC finalized rules that put strict limits on the debt collection robocalls, limiting them to three per month without the consumer's prior consent, in August 2016.<sup>54</sup> However, those rules have yet to be implemented, as the FCC withdrew them from the OMB in January 2017.

The exception to the TCPA does not go into effect until rules have been issued to implement it, yet Navient has robo-called consumers even after they have asked for the calls to stop.<sup>55</sup> In defense against resulting TCPA suits, Navient has argued that the Budget Act exempts these calls.<sup>56</sup> Though the Budget Act exemption never should have been passed in the first place, it is important that the implementing rules be finalized now so that the guidelines will be clear and consumers will have some protection regarding debt collection robocalls made on behalf of the federal government.

### **Empower the FTC to counter robocallers.**

The Federal Trade Commission has taken a number of steps to address the illegal robocall problem, beginning with its implementation of the Do Not Call Registry in 2003, which has helped consumers to control telemarketing calls from legitimate telemarketers.<sup>57</sup> However, the FTC has faced challenges in effectively enforcing the Do Not Call registry, collecting only about 12% of the civil penalties and equitable relief it has ordered for robocall and Do Not Call violations.<sup>58</sup> Indeed, enforcement efforts have proven inadequate to the problem of robocalls. We

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<sup>51</sup> Budget Act, *supra* note 28.

<sup>52</sup> S. 564, Congress.gov, (last visited April 15, 2018), <https://www.congress.gov/bill/115th-congress/senate-bill/564/cosponsors>,

<sup>53</sup> Budget Act, *supra* note 28, § 301(b)

<sup>54</sup> In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, FCC 16-99, (Rel. Aug. 11, 2016) available at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-16-99A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-99A1.pdf).

<sup>55</sup> NCLC letter, *supra* note 26, at 12-13.

<sup>56</sup> *Id.*

<sup>57</sup> Still Ringing Off the Hook, *supra* note 6, at 1-2.

<sup>58</sup> "FTC DNC and Robocall Enforcement," (April 3, 2018), provided to the author by Mitchell Katz of the FTC.

recommend that the FTC be given additional funding to pursue cases against more robocallers and to be able to effectively bring them to justice.

In addition, Congress should earmark additional funds for the FTC to further develop anti-robocall technology. The FTC has played an important role in the development of these tools. It created a series of contests in order to spur development of technology to automatically identify and block robocalls.<sup>59</sup> Most notably, Nomorobo was selected the winner of the first contest, and it was made available for consumers to use beginning in 2013.<sup>60</sup> Volunteer testers for Consumer Reports gave Nomorobo's home phone service high marks for its ability to block unwanted calls.<sup>61</sup> The FTC should continue to push to develop robocall-blocking technology, particularly for traditional landline phones, where market incentives may be less compelling for phone companies.

Finally, the FTC currently lacks authority over phone companies that could help ensure that the consumer protection agency uses its expertise and enforcement strength to push the phone service providers to address this issue. This is one more reason why Congress should remove the common carrier exemption in the FTC Act.

## **Conclusion**

There is a long way to go in the fight against robocalls. Consumers Union will continue urging phone companies, the FCC, and Congress to take action on this issue, while also providing consumers with information on steps that they can take to protect themselves.<sup>62</sup> We thank you for your interest in helping to protect consumers from these relentless unwanted calls. I look forward to addressing any questions you may have.

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<sup>59</sup> Still Ringing Off the Hook, *supra* note 6, at 13-15.

<sup>60</sup> *Id.* at 13.

<sup>61</sup> Robocall-Blocker Review, *supra* note 40.

<sup>62</sup> See, e.g., Anthony Giorgianni, *The Newest Ways to Deal with Robocalls*, Consumer Reports (Nov. 13, 2017), <https://www.consumerreports.org/robocalls/how-to-deal-with-robocalls/>.