U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE

April 25, 2018

TO: Members, Subcommittee on Digital Commerce and Consumer Protection

FROM: Committee Majority Staff

RE: Hearing entitled "Do Not Call: Combating Robocalls and Caller ID Spoofing"

I.   INTRODUCTION

The Subcommittee on Digital Commerce and Consumer Protection will hold a hearing on Friday, April 27, 2018, at 9:00 a.m. in 2123 Rayburn House Office Building. The hearing is entitled "Do Not Call: Combating Robocalls and Caller ID Spoofing."

II.   WITNESSES

- Aaron Foss, Founder, Nomorobo;

- Scott Hambuchen, Executive Vice President-Technology and Solution Development, FirstOrion;

- Ethan Garr, Chief Product Officer, RoboKiller; and,

- Maureen Mahoney, Policy Analyst, Consumers Union.

III.   BACKGROUND

Automated pre-recorded telemarketing calls (commonly known as robocalls) have long been a source of frustration and annoyance for the American public. Every day consumers report receiving tens of thousands of them. Robocalls are a particularly significant consumer protection problem today because the increased volume of unwanted and illegal robocalls – to both landline and wireless phones – greatly exacerbate the disruption of consumers' privacy as well as the scamming and defrauding of this country's most vulnerable populations like senior citizens. Recent cases brought by the Federal Trade Commission (FTC) highlight the need to address the exploitation and harm caused by robocall scams and fraud.

A robocall is any phone call that uses a computerized auto-dialer to deliver pre-recorded messages or to connect a call to a live caller.[1] Some robocalls use personalized audio messages to simulate a personal phone call. The deployment of advanced communications technologies

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[1] It is important to note that there are certain categories of legal robocalls, often associated with political campaigns, non-profits, or emergency announcements. *See* "Enforcement" section below. Legitimate call originators use legal robocalls to contact consumers, and have worked to remind regulators about the need to preserve ubiquitous access to the telephone network for legal users. http://www.paceassociation.org/blog_home.asp?display=148

allows illegal telemarketers to circumvent more easily the existing rules and protections that the FTC and Federal Communications Commission (FCC) have heretofore used to stem the tide of robocalls and other fraudulent calls.[2] Caller ID spoofing (which mimics a consumer's area code and three-digit prefix), dialing automation, and voice-over-Internet protocol, to name a few, have made it significantly easier and cheaper to initiate illegal, pre-recorded calls from anywhere in the world, to scam U.S. consumers, and to avoid detection and prosecution from law enforcement and regulators like the FTC and FCC.

Incidence of Robocalls, Complaints and Fraud

Robocalls are consistently a top consumer complaint category at the FTC and FCC, and both independent agencies regularly cite the protection of consumers from unwanted and illegal robocalls as a top priority. American consumers and businesses were bombarded by approximately 30.5 billion robocalls in calendar year 2017, which eclipsed the prior national record of 29.3 billion robocall calls placed in 2016.[3] A staggering 3.2 billion robocalls were placed nationwide in March 2018 alone, according to the YouMail Robocall Index which estimates robocalls volumes each month.[4]

According to the FTC, the number of consumer complaints about robocalls jumped to 4.5 million in fiscal year 2017, up from 3.4 million complaints the previous year.[5] For every month in the past year, robocalls made up the majority of consumer complaints about Do Not Call Registry violations.[6] The topic of the call consumers most frequently identified when reporting a robocall complaint was "Reducing Debt," with 771,158 complaints received.[7] The FCC receives approximately 200,000 robocall complaints each year.[8]

As advanced communications technology evolves allowing for a greater volume of robocalls, the malicious and deceptive tactics used to trick consumers into answering a robocall evolve. In the past, scammers would fake caller ID information to trick consumers in thinking their bank was calling, or the phone number was labeled "unknown" or "blocked." Scammers can now deliberately falsify caller ID information to display a consumer's area code and three-digit prefix on their phone. "Neighbor spoofing," as it is commonly known, is a deliberate tactic behind unwanted calls and texts to both wireline and wireless phones with the intent of

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[2] The Energy and Commerce Committee passed H.R. 4986, the RAY BAUM Act of 2018, which contained anti-spoofing provisions to prohibit spoofing calls or texts originating outside the United States, require the FCC to work with FTC to educate consumers on identifying spoofed calls, and direct the Government Accountability Office to conduct a study on fraudulent, misleading, or inaccurate caller ID info. The provisions were included in an omnibus package to fund the government for fiscal year 2018, and signed into law on March 23, 2018.

[3] https://www.prnewswire.com/news-releases/robocall-epidemic-breaks-annual-record-with-305-billion-calls-in-2017-300580916.html

[4] https://robocallindex.com

[5] https://www.ftc.gov/news-events/press-releases/2017/12/ftc-releases-fy-2017-national-do-not-call-registry-data-book-dnc

[6] *Id*.

[7] *Id*. "Vacation and timeshares," "Warranties and protection plans," and "Imposters" were the second through fourth most frequently identified topics when reporting a robocall complaint to the FTC in fiscal year 2017, respectively, with 235,678, 223,119, and 179, 925 complaints.

[8] https://www.usatoday.com/story/tech/news/2018/03/23/robocall-battle-continues-fcc-and-ftc/453782002/

compelling a consumer to answer a phone call that appears to be local, from a family member, school, doctor or business establishment. This type of spoofing accounted for 18 percent of all robocalls in July 2017, from less than 4 percent the prior year, according to Nomorobo industry data.[9]

Robocalls and spoofing have the potential for real financial harm. Fraud from unwanted calls amounts to about $9.5 billion annually, according to the FTC.[10] Scammers use deceptive tactics to convince people – often senior citizens – to hand over their personal or financial information or to purchase fraudulent goods and services.[11] Consider the IRS tax scam,[12] for example: a consumer receives an unexpected phone message claiming to be from the IRS. The call indicates they are entitled to a tax refund and asks that they provide bank account or personal information over the phone. Or the call might indicate the consumer owes taxes that must be paid immediately with a credit card or debit card. IRS scammers have been known to use the threat of a lawsuit, or arrest by the police, to convince victims to hand over information.

Consumers may also receive deceptive calls offering to help lower debt or interest rates, extending free vacations and cruises, or presenting other "limited time" offers or discounts.[13] Senior citizens might be easy victims to any and all of these scams, but they are often targets of elderly-specific robocall scams relating to Medicare, health care, and funeral arrangements, to name a few.[14]

Federal Enforcement and Initiatives

The Telemarketing and Consumer Fraud and Abuse Prevention Act, enacted in 1994, is the primary Federal statute authorizing the FTC to regulate telemarketing calls.[15] As prescribed by the law, the FTC promulgated the Telemarketing Sales Rule (TSR),[16] which requires telemarketers, among other things, to disclose certain relevant information, prohibit telemarketing misrepresentations, and prohibit calls to a consumer who has asked not to be called again.[17] The FTC's primary concern is centered on the content of the call, whether that call was fraudulent, and whether the call was made to a number on the Do Not Call Registry (see below).[18]

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[9] https://www.consumerreports.org/robocalls/how-to-deal-with-robocalls/

[10] https://www.usatoday.com/story/tech/columnist/2018/04/20/could-we-please-love-all-things-good-stop-these-annoying-robocalls/535555002/

[11] https://www.pindrop.com/wp-content/uploads/2017/07/Top10-ConsumScams-Report.pdf; https://blog.truecaller.com/2017/04/19/truecaller-us-spam-report-2017/

[12] https://www.irs.gov/newsroom/scam-calls-and-emails-using-irs-as-bait-persist

[13] https://www.ftc.gov/news-events/press-releases/2017/12/ftc-releases-fy-2017-national-do-not-call-registry-data-book-dnc

[14] https://www.usatoday.com/story/money/personalfinance/2018/03/17/elderly-americans-face-slew-online-phone-scams-heres-how-avoid-top-ones/428629002/

[15] P.L. 103-297, 15 U.S.C. §§ 6101-6108, *as amended*.

[16] 16 CFR Part 310.

[17] Congressional Research Service, "Protecting Consumers and Businesses from Fraudulent Robocalls," by Patricia Moloney Figlioia (Jan. 5, 2018), at https://fas.org/sgp/crs/misc/R45070.pdf

[18] *Id*.

The FTC has undertaken enforcement actions against companies and telemarketers for robocall, Do Not Call Registry and related violations. According to the FTC, the agency has brought 134 enforcement actions. One hundred twenty-one of these actions have been resolved, and in those cases, the agency has recovered over $50 million in civil penalties and $71 million in redress or disgorgement.[19] In 2017, a federal district court held that the satellite television provider Dish Network was liable for millions of calls that violated the FTC's Telemarketing Sales Rule, as well as other Federal and State laws.[20] The court awarded civil penalties in the amount of $280 million; $168 million for the Federal government, the remainder to be awarded to the States. The case is currently on appeal.

In addition to enforcement actions, the FTC has highlighted technical solutions and marketplace innovations to block robocalls through its Robocall Challenge program and other initiatives. In 2013, the FTC selected two winners to share a $50,000 cash prize for the Best Overall Solution to block robocalls at its inaugural FTC Robocall Challenge.[21] Messrs. Serdar Danis and Aaron Foss presented winning technical proposals focused on intercepting and filtering out robocalls using technology to "blacklist" robocaller numbers and "whitelist" numbers associated with acceptable calls. Additionally, the FTC selected Messrs. Daniel Klein and Dean Jackson of Google for the Robocall Challenge Technical Achievement Award. The 2013 challenge garnered nearly 800 submissions.

In 2015, at its "Robocalls: Humanity Strikes Back" contest, the FTC selected RoboKiller as its winning technological solution.[22] Messrs. Bryan Moyles and Ethan Garr created the winning entry, which relies on universally available call forwarding and audio-fingerprint technology to identify robocalls. Previously, the FTC has traveled to the annual hacker conference DEF CON, and conducted hackathons like "DetectaRobo" (2015), to engage and enlist the tech community in the fight against robocalls.[23]

The FTC announced in August 2017 it would share consumer complaint information about robocalls with telecommunications companies and industry stakeholders who administer call-blocking technology and solutions. According to the FTC, "[c]onsumer complaint data is crucial because many of today's call-blocking solutions rely on 'blacklists' – databases of telephone numbers that have received significant consumer complaints – as one way to determine which calls should be blocked or flagged before they reach consumers' phones."[24]

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[19] https://www.ftc.gov/news-events/media-resources/do-not-call-registry/enforcement; https://www.ftc.gov/news-events/media-resources/do-not-call-registry/robocalls
[20] https://www.ftc.gov/news-events/press-releases/2017/06/ftc-doj-case-results-historic-decision-awarding-280-million-civil
[21] https://www.ftc.gov/news-events/press-releases/2013/04/ftc-announces-robocall-challenge-winners
[22] https://www.ftc.gov/news-events/press-releases/2015/08/ftc-awards-25000-top-cash-prize-contest-winning-mobile-app-blocks
[23] https://www.consumer.ftc.gov/blog/2015/08/robokiller-kills-def-con; *see also* https://www.ftc.gov/news-events/contests/detectarobo
[24] https://www.ftc.gov/news-events/press-releases/2017/08/ftc-escalates-fight-against-illegal-robocalls-using-consumer

Complaint data is posted to the FTC website every weekday on the "Do Not Call Reported Calls Data" webpage as well as shared with industry.[25]

On March 23, 2018, FTC and FCC co-hosted a Policy Forum to discuss the regulatory challenges posed by illegal robocalls and the efforts undertaken by both agencies to protect consumers and encourage the development of private-sector solutions.[26] Subsequently, on April 23, 2018, the agencies co-hosted a Technology Expo featuring innovative technologies, devices, and applications to minimize or eliminate the unwanted and illegal robocalls consumers receive.[27]

State Enforcement

States protect consumers from unwanted or fraudulent robocall calls through the enforcement of their deceptive and unfair trade practices laws and their Do Not Call registries. As early as 1987, states began creating their own Do Not Call registries and, by 1989, Oregon and Alaska had implemented "black dot" laws which required telephone companies to note a consumer's telemarketing preference.[28] Further, in 2000, Missouri implemented a "No-Call Law" which directed the State Attorney General to compile "a list of telephone numbers of residential subscribers who object to receiving telephone solicitations."[29] By 2002, 27 states had established some form of a Do Not Call list.[30] Today, 12 states have their own Do Not Call lists, 31 states have adopted the National Do Not Call Registry and seven states do not maintain their own list nor have their officially adopted the National list.[31]

Additionally, states can enforce their unfair and deceptive trade practices statutes with respect to robocalls. For example, in 2016, the Florida Attorney General, in conjunction with the FTC, brought a case against Life Management Services of Orange Country, LLC, under its deceptive and unfair trade practices act for "bombarding consumers with illegal robocalls in an attempt to sell them bogus credit-card interest rate reduction and debt relief services."[32] States have a number of options to protect their consumers against what has proved to be one of, if not the, main consumer protection complaints to State Attorney General Offices.

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[25] https://www.ftc.gov/site-information/open-government/data-sets/do-not-call-data

[26] https://www.fcc.gov/fcc-ftc-robocalls-forum

[27] https://www.ftc.gov/news-events/press-releases/2018/04/ftc-fcc-co-host-expo-april-23-featuring-technologies-block-0

[28] http://www.naag.org/publications/nagtri-journal/volume-1-number-4/do-not-call-the-history-of-do-not-call-and-how-telemarketing-has-evolved.php

[29] *Id.*; *see also* Mo. Rev. Stat. § 407.1101.

[30] *Id.*

[31] *Id.*

[32] https://www.ftc.gov/news-events/press-releases/2016/06/ftc-florida-attorney-general-take-action-against-illegal-robocall

Do Not Call Registry and Other Solutions

Do Not Call Registry

Consumers can register their home or mobile phones with the FTC's National Do Not Call Registry by calling (888) 382-1222 or visiting www.donotcall.gov. While registration for the Do Not Call Registry commenced on June 27, 2003, it is worth noting that a new generation of landline and mobile phone users may not be aware that they can request to opt-out of receiving telemarketing calls regardless of whether the robocalls are classified as legal or illegal. Registration is simple and free. Because most legitimate companies will not contact consumers if they are on the Registry, consumers can reduce the number of telemarketing calls.

If consumers received unwanted and fraudulent calls after registering with the Do Not Call Registry, they are encouraged to report the call number to the FTC which will share Do Not Call and robocall complaint information with telecommunications providers and industry partners that administer call-blocking solutions.[33] Consumers can visit https://complaints.donotcall.gov/complaint/complaintcheck.aspx.

Call-Blocking Services for Landlines

Consumers can contact their cable, telephone or wireless provider to see if their carrier or provider has ways to help them block unwanted calls. Many telecommunications companies providing residential phone service, as well as mobile wireless service, now offer call-blocking functionality to stop robocalls on your home and mobile phones, often for free or a small fee.

Call-Blocking Applications for Mobile Phones

Consumers can download a call-blocking app for your mobile phone. Apps use blacklists—as discussed above, databases of telephone numbers—to flag and divert unwanted calls on the mobile devices we carry with us every day. According to the CTIA, the wireless industry trade association, app platforms have seen a 495 percent increase in the number of available call blocking apps between October 2016 and March 2018.[34] A list of Apple iOS robocall blocking apps is available at http://www.ctia.org/your-wireless-life/consumer-tips/blocking-robocalls/ios-robocall-blocking. Similarly, a list of Android OS call blocking apps is available at http://www.ctia.org/android-robocalls-blocking. Consumer resources for how to block robocalls on Blackberry and Windows phones are available the CTIA website.[35]

Call-Blocking Features on Mobile Phones

Consumers can access call-blocking features on the mobile phone itself. According to the FTC, these features let mobile users block specific contacts and set "do not disturb" hours.

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[33] https://www.ftc.gov/news-events/press-releases/2017/08/ftc-escalates-fight-against-illegal-robocalls-using-consumer
[34] https://www.ctia.org/consumer-resources/how-to-stop-robocalls
[35] http://www.ctia.org/blackberry-robocall-blocking; http://www.ctia.org/windows-robocall-blocking

For example, Apple (manufacturer of the iPhone) highlights the ability for users block a phone number or contact, to manage blocked numbers and contacts, filter iMessage (text messages) from unknown senders, and report spam or junk text messages.[36] Similar functionality and features are available for other mobile phone operating systems like Android, BlackBerry and Windows.[37]

IV.   ISSUES

This hearing will examine the tactics behind robocalls and caller ID spoofing that harm consumers as well as discuss the tools and strategies available for Americans to protect themselves and their families.

V.   STAFF CONTACTS

If you have any questions regarding this hearing, please contact Melissa Froelich or Paul Jackson of the Committee staff at (202) 225-2927.

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[36] https://support.apple.com/en-us/HT201229
[37] https://www.digitaltrends.com/mobile/how-to-block-a-number-in-android/; http://support.blackberry.com/kb/articleDetail?articleNumber=000034313; https://www.windowscentral.com/how-to-block-calls-windows-smartphones