

April 29, 2019

The Honorable Michael F. Doyle, Chair
The Honorable Robert Latta, Ranking Member
U.S. House Committee on Energy and Commerce
Subcommittee on Communications and Technology
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Doyle and Ranking Member Latta:

We write to you regarding the upcoming hearing on “Legislating to Stop the Onslaught of Annoying Robocalls.”¹ In EPIC’s view, the FCC needs to do far more to protect consumers from robocalls.

EPIC is a public interest research center established in 1994 to focus public attention on emerging privacy and civil liberties issues.² For over twenty years, EPIC has worked to ensure that the FCC protects the privacy of American consumers.³ We are now concerned that the Commission has abdicated one of its most important responsibilities to the American public. The FCC must do more to safeguard American consumers.

Americans are suffering from an epidemic of robocalls. In 2018 alone, it is estimated that 47.8 billion robocalls were made in the United States, an increase of more than 50% over the prior year.⁴ The Federal Communications Commission is charged with enforcing the Telephone Consumer Protection Act (“TCPA”), the law that Congress passed in 1991 to prevent precisely this problem.⁵

¹ *Legislating to Stop the Onslaught of Annoying Robocalls*, 116th Cong. (2019), H. Comm. on Energy and Commerce, Subcomm. on Communications and Technology (April 30, 2019), <https://energycommerce.house.gov/committee-activity/hearings/hearing-on-legislating-to-stop-the-onslaught-of-annoying-robocalls>.

² See EPIC, *About EPIC*, <https://epic.org/epic/about.html>.

³ See EPIC, *CPNI (Customer Proprietary Network Information)*, <https://epic.org/privacy/cpni/#EPIC> (outlining the history of EPIC’s advocacy for consumer privacy rules at the FCC, including two successful campaigns for pro-consumer rule changes); EPIC, *US West v. FCC – The Privacy of Telephone Records*, <https://epic.org/privacy/litigation/uswest/> (1997) (describing the efforts of EPIC and others to defend the FCC’s customer proprietary network information (“CPNI”) rules); see also EPIC *Amicus brief, NCTA v. FCC*, 555 F.3d 996 (D.C. Cir. 2009) (defending the FCC’s CPNI privacy rules); Letter from EPIC to the U.S. House of Representatives Committee on Energy and Commerce on FCC Privacy Rules (June 13, 2016), <https://epic.org/privacy/consumer/EPIC-FCC-Privacy-Rules.pdf>.

⁴ *Nearly 48 Billion Robocalls Made in 2018, According to YouMail Robocall Index*, PR Newswire (Jan. 23, 2019), <https://www.prnewswire.com/news-releases/nearly-48-billion-robocalls-made-in-2018-according-to-youmail-robocall-index-300782638.html>.

⁵ 47 U.S.C. § 227.

The FCC knows of the scope of the problem.⁶ But so far the Commission has been unable to stop or even reduce the flow of unwanted calls. And the Commission is simultaneously soliciting proposals from telemarketing industry groups to would weaken the TCPA rules that are supposed to protect consumers from nuisance calls.⁷

EPIC has repeatedly warned the Commission about the need to strengthen, not weaken, privacy protections in the TCPA rules. For example, in response to the FCC’s notice in May 2018, EPIC filed detailed comments explaining why the Commission should not modify the regulations to exempt millions of unwanted calls and leave consumers without legal rights.⁸ The Commission has twice sought comment on the question of “what constitutes an ‘automatic telephone dialing system’” under the TCPA.⁹ This definition is central to the entire structure of the law, and if the Commission improperly narrows the definition, many consumers will be left without legal protection from unwanted calls. The FCC’s willingness to eliminate consumer protections when we are experiencing an unprecedented increase in robocalls contradicts the agency’s mission and would further the TCPA’s deterrent effect.

We ask that this letter be submitted into the hearing record. EPIC looks forward to working with the Subcommittee on this issue.

Sincerely,

/s/ Marc Rotenberg

Marc Rotenberg
EPIC President

/s/ Caitriona Fitzgerald

Caitriona Fitzgerald
EPIC Policy Director

/s/ Alan Butler

Alan Butler
EPIC Senior Counsel

⁶ Fed. Commc’ns Comm’n, *The FCC’s Push to Combat Robocalls & Spoofing* (2019), <https://www.fcc.gov/about-fcc/fcc-initiatives/fccs-push-combat-robocalls-spoofing>.

⁷ Public Notice, Fed. Commc’ns Comm’n, *Consumer and Governmental Affairs Bureau Seeks Comment on Interpretation of the Telephone Consumer Protection Act in Light of the D.C. Circuit’s ACA International Decision*, 33 FCC Rcd. 4864 (May 14, 2018), <https://www.fcc.gov/document/cgb-seeks-comment-tcpa-light-dc-circuit-decision-aca-intl>.

⁸ Comments of EPIC to the Fed. Commc’ns Comm’n, *Interpretation of the Telephone Consumer Protection Act in Light of the D.C. Circuit’s ACA International Decision*, DA-18-493, CG 02-278, CG 18-152 (June 13, 2018), <https://epic.org/apa/comments/EPIC-FCC-TCPA-June2018.pdf>; Reply Comments of EPIC to the Fed. Commc’ns Comm’n, *Interpretation of the Telephone Consumer Protection Act in Light of the D.C. Circuit’s ACA International Decision*, DA-18-493, CG 02-278, CG 18-152 (June 28, 2018), <https://epic.org/apa/comments/EPIC-FCC-TCPA-ReplyComments-June2018.pdf>.

⁹ Public Notice, 33 FCC Rcd. 4864, *supra*; Public Notice, Fed. Commc’ns Comm’n, *Consumer and Governmental Affairs Bureau Seeks Comment on Interpretation of the Telephone Consumer Protection Act in Light of the Ninth Circuit’s Marks v. Crunch San Diego, LLC Decision*, DA-18-493, CG 02-278, CG 18-152 (Oct. 3, 2018)