

September 20, 2011

The Honorable Fred Upton
Chairman
House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Henry Waxman
Ranking Minority Member
House Committee on Energy and Commerce
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Upton and Ranking Minority Member Waxman:

We the undersigned write to express our strong support for H.R. ___, the Mobile Informational Call Act of 2011. This legislation will modernize the Telephone Consumer Protection Act (TCPA) by enacting limited, common-sense revisions to facilitate the delivery of time-sensitive consumer information to mobile devices, while continuing to protect wireless consumers from unwanted telemarketing calls.

Businesses increasingly rely on advanced communications technologies to convey timely and important information to consumers. These calls notify consumers about threats such as data breaches and fraud alerts, provide timely notice of flight and service appointment cancellations and drug recalls, and protect consumers against the adverse consequences of failure to make timely payments on an account.

Unfortunately, the TCPA restricts informational calls that utilize assistive technologies to mobile devices even though the law permits such calls to be made to wireline phones. As a result, the approximately 40% of American consumers who identify their mobile device as their primary or exclusive means of communication do not receive many of these calls.

This restriction imposes unwarranted costs and inconveniences on consumers, businesses, and the economy as a whole. When enacted in 1991, Congress intended this restriction to protect consumers against the then-daunting per-minute costs and privacy concerns associated with unsolicited incoming calls from telemarketers. But this restriction applies equally to informational calls. In addition, most wireless consumers are now covered by flat-rate plans, and even for those who are not, technological advances and increased competition have greatly reduced per-minute charges.

A strong consumer-protection environment depends on appropriate communication between businesses and their customers. As consumers increasingly rely on wireless phones as their primary, or even sole, means of communication, the TCPA's outdated restriction on the use of assistive technologies in contacting wireless consumers for non-telemarketing purposes is now doing far more harm than good for the consumers such restriction was intended to protect.

For these reasons, we strongly support H.R. ___. This bill will modernize the TCPA by:

- Exempting informational calls from the restriction on auto-dialer and artificial/prerecorded voice calls to wireless numbers;
- Clarifying the “prior express consent” requirement to ensure that the TCPA facilitates communications between consumers and the businesses with which they choose to interact; and
- Excluding from the restriction equipment that merely stores pre-determined numbers or that has latent (but unused) capacity to generate random or sequential numbers.

In addition, H.R. ___ will continue the prohibition against the use of assistive technologies to call wireless numbers for telemarketing purposes.

Furthermore, H.R. ___ will curb the abuse of the TCPA’s private right of action, which does not appear to be functioning as an effective vehicle for the compensation of meritorious claims. This provision is instead being utilized by professional repeat plaintiffs and in lawyer-driven class actions, tying up the courts in frivolous litigation and imposing significant costs on small businesses. H.R. ___ provides that TCPA complaints would be heard by the Federal Communications Commission (FCC), and would permit private suit only if the FCC fails to respond to a complaint in a timely manner. This places the primary responsibility for addressing violations where it belongs—with the agency charged with implementing the TCPA.

We commend Representatives Terry and Towns for introducing this legislation. Congress should act now to modernize the TCPA’s treatment of informational calls to consumers, while preserving its original intent to protect wireless consumers from unwanted telemarketing calls. We urge the Energy and Commerce Committee to approve this legislation as soon as possible.

Sincerely,

American Bankers Association
 ACA International
 Air Transport Association
 Consumer Bankers Association
 Coalition of Higher Education Assistance Organizations
 Edison Electric Institute
 Education Finance Council
 Financial Services Roundtable
 Housing Policy Council
 Mortgage Bankers Association
 National Association of College and University Business Officers (NACUBO)
 National Council of Higher Education Loan Program
 Student Loan Servicing Alliance
 Student Loan Servicing Alliance Private Loan Committee
 The Clearing House
 U.S. Chamber of Commerce