

**H.R. 3035, THE MOBILE INFORMATIONAL CALL
ACT OF 2011**

HEARING
BEFORE THE
SUBCOMMITTEE ON COMMUNICATIONS AND
TECHNOLOGY
OF THE
COMMITTEE ON ENERGY AND
COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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H.R. 3035, THE MOBILE INFORMATIONAL CALL ACT OF 2011

FRIDAY, NOVEMBER 4, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:01 a.m., in room 2123, Rayburn House Office Building, Hon. Greg Walden (chairman of the subcommittee) presiding.

Members present: Representatives Walden, Terry, Stearns, Shimkus, Blackburn, Bilbray, Bass, Gingrey, Scalise, Latta, Guthrie, Barton, Eshoo, Markey, Doyle, Barrow, Towns, and Waxman (ex officio).

Staff present: Ray Baum, Senior Policy Advisor/Director of Coalitions; Nicholas Degani, FCC Detailee; Neil Fried, Chief Counsel, Communications and Technology; Kirby Howard, Legislative Clerk; Debbee Keller, Press Secretary; David Redl, Counsel, Communications and Technology; Alex Yergin, Legislative Clerk; Shawn Chang, Minority Counsel; Jeff Cohen, Minority Counsel; Roger Sherman, Minority Counsel; and Will Wallace, Minority Policy Analyst.

OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. WALDEN. I am going to call to order the Subcommittee on Communications and Technology, as we open this hearing on H.R. 3035, the Mobile Informational Call Act of 2011.

Today's hearing is an opportunity for our subcommittee to explore an age-old problem with legislation: How do we ensure the laws on the books makes sense, given new technologies and the evolving marketplace? I welcome that opportunity, and I want to thank our vice chairman of the committee, Lee Terry, and I want to thank Mr. Towns for bringing us their bipartisan legislation, the Mobile Informational Call Act of 2011.

The bill would update the Telephone Consumer Protection Act, which aimed to protect telephone customers from intrusive telephone marketing while balancing those protections against the needs of business and nonprofits to communicate and inform consumers. It did so, among other ways, by restricting the ability of telemarketers to make telephone solicitations and by prohibiting all use of automatic-dialing equipment and prerecorded voice messages for calls to wireless phones.

But it has been 20 years since Congress passed TCPA, and the world of telecommunications has changed. Back then, the only person with a cell phone was probably Gordon Gekko. Today, many Americans households have given up the landline and rely exclusively on wireless services. Back then, wireless customers paid higher per-minute rates to receive calls. Now, most customers have bucket of minutes so that receiving an additional call costs them nothing. Given these changes to the marketplace, now seems like a good time to revisit some of the rules the TCPA put in place.

The thrust of the TCPA was to help protect consumers from unwanted telemarketing calls. The question now, however, is whether the TCPA is inadvertently preventing consumers from the convenience of getting other information that consumers do want and while they are on the go with their mobile phones. And if so, how can we address that? Does the TCPA prevent consumers from receiving informational calls from their banks, like fraud or low-balance alerts? Do the strictures of the TCPA and the FCC's implementation of it make it too difficult for businesses to engage their customers and provide them with valuable services? What is the proper role for States in protecting the privacy of telephone subscribers?

Reasonable people can disagree on the answers to all of these questions, and I imagine we will, but I think we can all agree that any legislation should not subject consumers to unwanted telephone solicitations. Surely we can figure out a way to allow consumers to receive useful informational calls without unleashing the telemarketers. I think that is exactly the needle that this legislation is aiming to thread.

We have before us several experts that will help us explore these issues, and I hope we will learn something about the consumer benefits of mobile informational calls, something about the concerns of consumer advocates and our States' attorney generals, and something about today's wireless marketplace.

I think this can be a very productive discussion about ways to improve our country's laws for the benefit of all Americans, and I expect we will have some vigorous debate on how to do that. That is what hearings are all about.

And I thank, again, our colleagues who have brought this legislation forward.

And I would now yield to—well, we didn't start the clock, so I don't know how much time I have to yield. Looks like I have 89 minutes and 43 seconds. Since there was no objection from my—yes.

I would yield to my colleague from Tennessee, Ms. Blackburn, the remaining 1 minute I apparently had.

[The prepared statement of Mr. Walden follows:]

Statement of the Honorable Greg Walden
Chairman, Subcommittee on Communications and Technology
Hearing on H.R. 3035, The Mobile Informational Call Act of 2011
November 4, 2011

Today's hearing is an opportunity for our Subcommittee to explore an age-old problem of legislation: How do we ensure that the laws on the books make sense given new technologies and the evolving marketplace? I welcome that opportunity, and I thank Vice Chairman Terry and Mr. Towns for bringing before us their bipartisan bill, the Mobile Informational Call Act of 2011.

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But it's been twenty years since Congress passed the TCPA, and the world of telecommunications has changed. Back then, the only person with a cell phone was Gordon Gecko. Today, many American households have given up the landline and rely exclusively on wireless service. Back then, wireless customers paid higher

per-minute rates to receive calls; now, most consumers have buckets of minutes so that receiving an additional call costs them nothing. Given these changes to the market, now seems like a good time to revisit some of the rules the TCPA put in place.

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We have before us several experts that will help us explore these issues. I hope we'll learn something about the consumer benefits of mobile informational calls, something about the concerns of consumer advocates and our states' attorneys general, and something about today's wireless marketplace. I think this can be a very productive discussion about ways to improve our country's laws for the benefit of all Americans; and I expect we'll have some vigorous debate on how to do that.

On that note, I yield my remaining time to _____.

OPENING STATEMENT OF HON. MARSHA BLACKBURN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mrs. BLACKBURN. Thank you, Mr. Chairman, and that is about all I need.

I do want to let you all know that I appreciate so much your work and Mr. Terry's work, the work of our staff, on the Mobile Informational Call Act. I am a cosponsor of this, and I think it does strike a reasonable balance that protects consumers while also allowing companies to provide beneficial information.

An example of that, when FedEx, one of our Tennessee constituent companies, is able to provide automated informational calls to their customers using cell phones about future deliveries, they are able to increase their delivery rates on a first attempt by as much as 30 percent. That is a good thing because it reduces cost, helps the customers, and makes things more efficient. Under current law, FedEx is restricted in its ability to make automated calls about deliveries to customers, and we need a commonsense way to fix this.

I appreciate your good work, and yield back.

Mr. WALDEN. I thank the gentlelady.

And all time has expired on our side. I turn now to my ranking member and friend, Ms. Eshoo from California, for 89-1/2 minutes.

OPENING STATEMENT OF HON. ANNA G. ESHOO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. ESHOO. Thank you, Mr. Chairman.

And good morning, everyone. Good morning to the witnesses, and thank you for being here.

Today's hearing revisits legislation enacted by this committee 20 years ago. Much has changed, as the chairman said, since that time, particularly in the way Americans communicate with each other. An increasing number of U.S. consumers identify their wireless device as their primary means of communication, and many have eliminated the use of a landline phone altogether.

And while I believe these changes in consumer behavior warrant our review of the Telephone Consumer Protection Act, I am concerned about the potential for misuse by modifying the act. In fact, my constituents have spoken very clearly. They don't like this bill. I have heard from many, many constituents, and, to a person, they don't like it. They have written to me since this legislation was introduced, and, as I said, they are opposed because they have a lot of concerns about it.

We almost always have our wireless devices with us. And I agree that, with a consumer's consent, these devices can serve as an ideal method for communicating data breaches, fraud alerts, drug recalls, and other important information in a timely manner. But "consent" is a very important term. I am concerned that in redefining, quote, "prior express consent," as this legislation does, consumers will unknowingly be opening themselves up to future robocalls anytime they provide a business with their mobile number.

Furthermore, unlike landline phones, there is still a cost associated with receiving an incoming call or text message on a wireless device. While it is true that many consumers subscribe to a monthly service plan, there is still a growing portion of the population, particularly many low-income Americans, who rely on prepaid service and pay on a per-minute or per-message basis.

We see what happened with the banks and their debit card fees. And I think that there are going to be a lot of consumers in the country—if this bill were adopted in its present form, I think the Congress will hear from an awful lot of people on this.

Why should a consumer be subjected to an unsolicited text message at a cost of 20 cents per message? Many consumers may wish to opt out of receiving these informational text messages, preferring instead to receive a phone call, an email, or other form of communication. So these options should be available to consumers, yet they are not considered by this legislation.

So I think that there are some real questions that need to be answered about the legislation under consideration. I thank each one of the witnesses for being here with us today, and I look forward to their testimony.

And, Mr. Chairman, I would like to ask unanimous consent to submit the following letters of opposition for the record.

[The letters follow:]



November 3, 2011

Honorable Greg Walden, Chairman
House Subcommittee on Communications and Technology
U.S. House of Representatives
2182 Rayburn House Office Building
Washington, DC 20515

Honorable Anna G. Eshoo, Ranking Member
House Subcommittee on Communications and Technology
U.S. House of Representatives
205 Cannon Building
Washington, DC 20515

RE: H.R. 3035, Mobile Informational Call Act of 2011

Dear Chairman Walden and Ranking Member Eshoo:

We appreciate the opportunity to comment on the Mobile Information Call Act of 2011, H.R. 3035. Although Consumers Union agrees that companies should be able to contact consumers' cell phones to provide crucial safety and emergency information, the scope of H.R. 3035 is much too broad and could undermine the intent of the Telephone Consumer Protection Act (TCPA), which protects consumers against unsolicited telephone calls. As a result, we wish to express our opposition to the bill and urge you to either withdraw it or significantly modify its provisions.

In light of the growing number of unsolicited telephone marketing calls to consumers' homes and the increasing use of prerecorded messages and automatic telephone dialing systems, our organization has been particularly supportive of the protections put in place by the TCPA and the Do-Not-Call Registry. These protections have been popular with consumers because they offer some relief from annoying and intrusive telemarketing calls.

At the same time, we understand that consumers may benefit from receiving certain types of informational calls on their cellular telephones. As more and more consumers identify their mobile devices as their primary or exclusive means of communication, companies may find it difficult to notify customers about important safety and emergency information due to the current restrictions on use of robo-calls to contact mobile devices.

However, H.R. 3035 would not simply allow companies to provide consumers with necessary safety information. The scope of the bill is broad, and could open up consumers' cell phones and landlines to a deluge of unwanted calls. In the case of cell phones, the customer could bear the cost of the call. Through its weak definition of "prior

express consent,” its opening up of consumer cell phones to any calls other than “telephone solicitations,” and its state law pre-emption, this bill could turn back the clock on the important protections set in place by the TCPA.

The definition of “prior express consent” is too broad

H.R. 3035 seeks to establish that an individual has given “prior express consent” any time he or she has provided a telephone number as a means of contact. This provision could have far-reaching consequences. Consumers are often asked to provide phone numbers when signing up for deals, opening online accounts, receiving supermarket bonus cards, or simply completing a purchase. The person would not be aware that simply providing their phone number evidences “prior express consent,” thereby opening them up to annoying and harassing calls of all types on both cell phones and landlines. The bill does not give consumers the right to opt out of these calls.

Companies could use automated predictive dialers to contact consumer cell phones

The bill permits any and all types of calls to cell phones, other than calls that are “telephone solicitations.” The definition of “telephone solicitations” in the TCPA would not sufficiently protect consumers from cell phone calls involving marketing, survey requests, and debt collection attempts, among others.

Consumers could bear the cost of unwanted cell phone calls

The TCPA prohibits calls to consumers’ cell phones “or any service for which the called party is charged for the call.” Under H.R. 3035, however, consumers would be forced to pay for unwanted calls received on their cell phones. Consumer cell phone plans are often limited to a set number of minutes and when that limit is exceeded, consumers are charged hefty fees for additional talking time. Causing consumers to bear the financial burden of unsolicited marketing calls is diametrically opposed to the core goals of the TCPA.

The bill does not allow states to grant consumers more protections

The TCPA set a floor, not a ceiling, allowing states to experiment and give consumers more protections, should they wish to do so. By contrast, this bill would take away states’ ability to provide additional protections to their consumers by prohibiting any state laws addressing the subject matters regulated in the bill.

In closing, Consumers Union understands the need for companies to be able to reach consumers in order to impart important safety and emergency information. However, H.R. 3035 is much too broad and could weaken current consumer protections. We look forward to working with you to ensure that consumers are not subjected to intrusive and harassing commercial phone calls. For further information, please do not hesitate to contact me at irusu@consumer.org or (202) 462-6262.

Regards,

A handwritten signature in black ink, appearing to read "Ioana Rusu". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ioana Rusu
Regulatory Counsel
Consumers Union
1101 17th St. NW
Washington, DC 20036

cc: Members of the House Committee on Energy and Commerce

October 27, 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

Re: H.R. 3035 (Terry), Mobile Informational Call Act of 2011 (oppose)

Dear Chairman Upton and Ranking Minority Member Waxman:

The undersigned consumer, civil rights, poverty and privacy organizations write to express our strong opposition to H.R. 3035, the Mobile Informational Call Act of 2011. The bill purports to make common sense updates to the Telephone Consumer Protection Act (TCPA) to ensure that consumers know about data breaches, fraud alerts, flight and service appointment cancellations, drug recalls and late payments. But the bill is a wolf in sheep's clothing.

The real purpose of H.R. 3035 is to open up *everyone's* cell phones, land lines, and business phone numbers, without their consent, to a flood of commercial, marketing and debt collection calls (to not only the debtor but everyone else). The bill would effectively gut the TCPA, a widely popular statute that protects Americans from the proliferation of intrusive, nuisance calls from telemarketers and others whose use of technology "may be abusive or harassment."¹ In 1991 Congress found that unwanted automated calls were a "nuisance and an invasion of privacy, regardless of the type of call" and that banning such calls was "the only effective means of protecting telephone consumers from this nuisance and privacy invasion."²

Automated predictive dialers would be exempt from the TCPA, permitting repetitive "phantom" calls to cell phones, doctor's offices, hospital rooms and pagers. Predictive dialers use a computer to call telephones based on predictions of when someone will answer and when a human caller will be available. They are the source of calls that begin with a long pause and of calls with no one on the other end (if the prediction of the human caller's availability is wrong.) Since the purpose of predictive dialers is to get someone to answer, computers often call a number repeatedly throughout the day. The TCPA currently prohibits the use of automatic telephone dialing systems to make calls, with certain exceptions, to (1) any emergency telephone line (including 911, hospitals, medical offices, health care facilities, poison control centers, fire protection or law enforcement agencies), (2)

¹ 47 U.S.C. § 227 note.

² Pub. L. No. 102-243, §§ 2(10-13), (Dec. 20, 1991), *codified at* 47 U.S.C. § 227.

guest or patient room of hospital, health care facility, elderly home, (3) pagers or (4) cell phones. H.R. 3035 would revise the definition of “automatic telephone dialing system” so that modern predictive dialers, which do not use random or sequential number generators, would be outside of the TCPA’s protections. Calls could even be made for solicitation purposes unless the telephone number is a residential one on the Do Not Call list.

Businesses could make prerecorded robo-calls to anyone’s personal or business cell phone for any commercial purpose that is not a solicitation, including debt collection, surveys, “how did you like your recent shopping experience,” and “we’ve enhanced our service” – even if you are on the Do-Not-Call list. TCPA currently prohibits robo-calls to cell phones unless the consumer has provided prior express consent. H.R. 3035 would add a new exception permitting robo-calls to cell phones for any commercial call that is not a solicitation. The possibilities are endless. The Do Not Call list protects people only from telemarketing calls, not these other calls. Debt collection calls would be made to the cell phones of friends, family, neighbors, employers, or strangers with similar names or numbers. Families struggling in the current economy will be hounded on their cell phones, even if they have a landline that the collector could call, and even if the call uses up precious cell phone minutes or incurs per-minute charges for those with prepay phones. Commercial calls for debt collection or other commercial purposes could be made even if the consumer never gave out his or her cell phone number—the business could call if it found the consumer’s cell phone number on Google or by purchasing a list from entities that collect that information.

The bill redefines “prior express consent” to make that requirement meaningless. The TCPA’s restrictions on robo-calls have an exemption for calls made with the consumer’s “prior express consent.” The bill would define that phrase to find “prior express consent” any time a person provides a telephone number “as a means of contact” at time of purchase or “any other point.” Thus, even if the telephone number was provided for a limited, one-time purpose, the business or consumer would be deemed to have consented to robo-calls into the future.

Consumers can already receive cell phone calls (and landline calls) for emergency or informational purposes. The TCPA has existing exceptions from its prohibitions for emergency calls and for calls made with the consumer’s prior express consent. Any consumer who wants to get cell phone or landline calls about public service announcements, flight cancellations, or anything else is welcome to give their consent. But consumers often prefer to receive such information other ways, such as through email. The purpose of H.R. 3035 is to permit calls to cell phones without the consumer’s consent.

Nuisance calls and collection calls on cell phones endanger public safety. Unlike land lines, people carry cell phones with them. They have them while driving and operating machinery. Many people use their cell phones primarily for emergency purposes and rush to answer them when they ring. Opening the floodgates to robo-calls to cell phones endangers public safety. Driving while distracted is always dangerous, but is especially so if the driver

becomes agitated by fears that their child is in trouble or by a debt collector calling to harass them.

H.R. 3035 is not only unnecessary, it will effectively gut the Telephone Consumer Protection Act's essential protections against invasion of privacy, nuisance and harassing calls. We urge you to withdraw the bill. For further information please contact Delicia Reynolds at the National Association of Consumer Advocates, 202-452-1989, extension 103, Delicia@naca.net or Margot Saunders at the National Consumer Law Center, 202-452-6252, extension 104, msaunders@nclc.org.

Sincerely,

Americans for Financial Reform

Center for Media and Democracy.

Citizens for Civil Discourse (The National Political Do Not Contact Registry)

Consumer Action

Consumer Federation of America

Consumer Watchdog

National Association of Consumer Advocates

National Consumer Law Center (on behalf of its low income clients)

Privacy Activism

Privacy Rights Now Coalition

U.S. Public Interest Research Group

cc: Members of the House Committee on Energy and Commerce

Ms.ESHOO. And I would like to yield the remaining time that I have to Mr. Doyle for the balance of the time.

Mr.WALDEN. Without objection.

Ms.ESHOO. Thank you.

OPENING STATEMENT OF HON. MICHAEL F. DOYLE, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF PENNSYLVANIA

Mr.DOYLE. I want to thank our ranking member and my good friend, Anna Eshoo, for giving me some time to speak.

I want to thank our distinguished panel of witnesses for joining us today.

Mr. Chairman, only 4 years ago, I remember the Energy and Commerce Committee's consideration of my bill to make the Do Not Call List permanent. That legislation, which was signed into law in 2008, allows people to opt out of receiving unwanted telemarketing calls once and for all. The bill before the subcommittee today presents a similar opportunity for us to weigh the potential benefits of a business' ability to contact its customers with the importance of consumer protections.

As a growing number of people cut the cord in favor of wireless phone and text services, it is commendable that the subcommittee seeks to explore the effects of these changes on the conduct of commerce. However, my initial read of this legislation causes me to worry that its possible harmful impact on consumer welfare could overshadow its benevolent goals. I am concerned about the bill's potential consequences for individual privacy as well as its implication on consumers' pocketbooks.

So I look forward to learning more from our witnesses about the legislation's impacts on consumers, in addition to businesses. I want to thank you again, to all the members of our panel, for taking the time to help explain these complex issues to the subcommittee.

Mr. Chairman, I appreciate your patience, and I yield back.

Mr.WALDEN. The gentleman yields back his time.

I now recognize the vice chair of the committee, Mr. Terry.

OPENING STATEMENT OF HON. LEE TERRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr.TERRY. Thank you, Mr. Walden, for holding this hearing today.

And this is a continuation of this committee's effort to look at older laws and see how they need to be changed to meet modern needs and technologies.

Now, I will admit that, after reading some articles that have been written about this, that maybe there is a misperception, but also the misperception can be reality, in the sense that the essence of this bill is to ride the fine line between unwanted and wanted communications from people that choose to have the communication occur.

So that is the fine line that we are trying to ride here. I make no pretense here that we have perfect language in finding that line. And that is why I am pleased that all of our panelists are here to help us refine the language today.

So, under current law, if a consumer like me gives my cell phone number as my contact to an organization or business—so, let's say, schools—already current in law is I have consented because I physically gave them that phone number. I wrote it down on the line that says, "How do we contact you?" OK? Under the FCC, that is permission.

The issue is whether the phone number is going to be physically dialed by somebody pushing 10 buttons or whether it is an automated, computer-based call. And we think that needs to be modernized. That is where the line should be drawn between weeding out or preventing—and this bill's intent is to never allow an unsolicited, unwanted call. That is the goal here.

Now, you look at society today, and it is ubiquitous in our ability to communicate with each other. I give my school my cell phone number. I get texts when there is an emergency or some issue that they need to communicate with—last year, it was a certain virus that was going around the schools. We have snow days in Nebraska. I want to know about that. The cell phone is my only way to get that information.

Another example with some of our financial institutions is their overdraft protection. You can sign up that they will notify you when you get to a certain point in your checking, let's say \$20. You say, I want to be notified if I get down to \$20 so I don't write a bad check. That is an automated call that comes out and says, your account is at \$20. Under today's law, that is not lawful, but yet it is wanted.

That is our goal here. We can go through dozens of examples where people give their phone number as a contact, that want the information, but it is unlawful. That is the fine line that we are riding here today.

And I really look forward to Attorney General Zoeller. You are particularly vociferous. I appreciate that. We want your suggestions of how to define that line. Because I think all of us would say, if you signed up, you want that information, you should get it lawfully.

So, with that, what I would like to do is yield my remaining minute, 15 to the chairman emeritus, Mr. Barton.

Mr.BARTON. I want to thank the sponsor of the bill, Mr. Terry, for yielding some time to me even though he knows that I am in opposition to his bill. That shows great statesmanship and tolerance on your part, and I appreciate it.

Mr.TERRY. Take it back.

Mr.WALDEN. The gentleman's time is expired.

Mr.BARTON. Yes, that is way the game is played.

**OPENING STATEMENT OF HON. JOE BARTON, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

I hate to be the Republican that spoils the garden party, but the current system is in place for a reason, and that reason is that people do protect and want to protect their privacy.

I have a cell phone also, and the only people that have my cell phone number are other Members of Congress, my family, my very close friends, and my senior staff. I know that if I get a phone call

on my cell phone, it is from somebody that I know and that they need or want to talk to me.

I have three landline phones in Texas. I know that if that phone rings, the odds are better than even that it is a commercial call that I don't really care to get. So about half the time I don't even answer it, unless I am expecting a call from somebody.

I know what Mr. Terry and Mr. Towns are attempting to do, and I think it is noble, but I don't think you can draw that fine line, as Mr. Terry said. Once we open the door to automated dialing for cell phones for very reasonable reasons such as Mr. Terry suggested, I don't see how you prevent it being used for other, less reasonable reasons.

So, for that reason, Mr. Chairman and Mr. Vice Chairman and Mr. Towns, I do respectfully oppose the bill. But I am glad that we are having a hearing to air the issues.

With that, I yield back.

[The prepared statement of Mr. Barton follows:]

**Opening Statement of the Honorable Joe Barton
Chairman Emeritus, Committee on Energy and Commerce
Subcommittee on Communications, Technology, and the Internet
“H.R. 3035, the Mobile Informational Call Act of 2011”
November 4, 2011**

I can remember growing up as a kid and having the understanding that if I were to make a call to anyone, it would be by a landline phone. While I still have a landline phone at home, most of my calls take place on my cell phone. Technology has advanced so rapidly that when my six year old son is my age, he will mainly have memories of cell phones and smartphones when he reminisces on his childhood days.

There are 5.3 billion mobile subscribers in our world today and that number is directly related to the increase of mobile device sales over the last two years by an impressive 18.5 percent.¹ As a result of the increase in mobile phone usage, Mr. Terry introduced the Mobile Informational Call Act of 2011.

Current law states that it is unlawful for any person within the United States, or any person outside the United States, to make a call to the cell phone of an American citizen, without their consent, using an automatic telephone dialing system.² This bill seeks to provide an exemption to this rule to allow companies, regardless of true consent, to autodial their consumers on their mobile phones. I do

not support this exemption and, I simply cannot support this piece of legislation. I believe that if we make it lawful for a company to participate in this practice, then we open the gateway for additional reasons to autodial consumers. I take great value in knowing that when my cell phone rings, there is someone on the other end that knows me personally. The last thing I need is to receive a bunch of unwanted calls on my cell phone, it is bad enough on my landline.

I am thankful for the witnesses that have joined us today, and I look forward to further discussing this bill with my colleagues.

¹ <http://mobithinking.com/mobile-marketing-tools/latest-mobile-stats>

²Section 227 (b)(1) of the Communications Act of 1934

Mr. WALDEN. The gentleman yields back the balance of his time. I recognize the ranking member of the full committee, Mr. Waxman.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you, Mr. Chairman. I appreciate your holding this hearing on the Mobile Informational Call Act of 2011. You and Mrs. Eshoo have put together another balanced panel, and it is appreciated.

The Telephone Consumer Protection Act, TCPA, was signed into law by President Bush in 1991. In the 20 years since its enactment, there have been dramatic changes in phone technology. Most notably, in 1991, less than 8 million Americans subscribed to mobile phone service. Today, there are well over 300 million wireless subscribers. And every day, more Americans are cutting the cord and relying on their mobile phones exclusively.

Congress enacted the TCPA based on the bipartisan premise that residential telephone subscribers consider automated or prerecorded telephone calls, regardless of the content or the initiator of the message, to be a nuisance and an invasion of privacy. Although mobile phone usage has skyrocketed, I expected most Americans still have a high degree of concern about unwanted telephone calls, regardless of where they receive them. Indeed, congressional actions to protect Americans from unwanted phone solicitation have proven wildly popular.

Fundamentally, we need to look at this issue from the perspective of the wireless consumer. By amending the law, as H.R. 3035 proposes, are we modifying consumer control over wireless phones? Are we changing expectations regarding privacy? Are we increasing costs?

Although some consumers have unlimited texting and calling plans, millions do not. Will consumers have a clear ability to avoid unwanted calls and texts on their wireless phones when such communications increase their costs?

Will consumers understand that, when they turn over their wireless phone number to the auto dealership, they are agreeing to receive future autodialed and prerecorded calls and texts about recalls, warranty updates, scheduled oil changes, or even from third-party bill collectors?

We also need to understand whether existing law already allows consumers to receive calls on their wireless phones from businesses and others. Several experts have suggested that this is permissible under existing law. For example, if a school wants to use an automated dialer or prerecorded message to call parents' cell phones or send them text messages about a snow day, this is permissible under existing law with a parent's prior express consent. Similarly, autodialed and prerecorded updates from power companies, airlines, banks, and cable companies are all allowed with the prior express consent of their customers.

Finally, H.R. 3035 appears to preempt a variety of existing State laws in a significant way. The bill would amend the TCPA to preempt all State laws about faxed advertisements, autodialers, and

artificial or prerecorded voice messages. I know the preemption of State laws can sometimes be good for businesses, but it is not clear to me how preemption would help consumers or deter telemarketing abuses.

I look forward to our hearing, and I wish to yield the balance of my time to Mr. Towns.

[The prepared statement of Mr. Waxman follows:]

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

**Opening Statement of Rep. Henry A. Waxman
Ranking Member, Committee on Energy and Commerce
Hearing on "H.R. 3035, the Mobile Informational Call Act of 2011"
Subcommittee on Communications and Technology
November 4, 2011**

Thank you Chairman Walden for holding this hearing on the Mobile Informational Call Act of 2011. You and Ms. Eshoo have put together another balanced panel and it is appreciated.

The Telephone Consumer Protection Act (TCPA) was signed into law by President Bush in 1991. In the twenty years since its enactment there have been dramatic changes in phone technology. Most notably, in 1991, less than eight million Americans subscribed to mobile phone service. Today there are well over 300 million wireless subscribers.

And every day, more Americans are "cutting the cord" and relying on their mobile phones exclusively. It makes sense to take a look at whether existing law unduly restricts the ability of consumers to receive information they want from businesses with which they have a relationship.

In conducting this inquiry, however, we need to proceed cautiously. Congress enacted the TCPA based on the bipartisan premise that "residential telephone subscribers consider automated or prerecorded telephone calls, regardless of the content or the initiator of the message, to be a nuisance and an invasion of privacy." Although mobile phone usage has skyrocketed, I suspect that most Americans still have a high degree of concern about unwanted telephone calls, regardless of where they receive them.

Indeed, Congressional actions to protect Americans from unwanted telephone solicitations have proven wildly popular. Over 200 million consumers have signed up for the Do Not Call List and concerns about unwanted calls to residential landlines and mobile phones still generate large numbers of consumer complaints at the state and federal level.

Fundamentally, we need to look at this issue from the perspective of wireless consumers. By amending the law as H.R. 3035 proposes, are we modifying consumer control over wireless phones? Are we changing expectations regarding privacy? Are we increasing costs?

Although some consumers have unlimited texting and calling plans, millions do not. Will consumers have a clear ability to avoid unwanted calls and texts on their wireless phones when such communications increase their costs? Will consumers understand that when they turn over their wireless phone number to the auto dealership, they are agreeing to receive future, auto-dialed, and prerecorded calls and texts about recalls, warranty updates, scheduled oil changes, or even from third party bill collectors?

We also need to understand better whether existing law already allows consumers to receive calls on their wireless phones from businesses and others. Several experts have suggested that this is permissible under existing law.

For example, if a school wants to use an automatic dialer or prerecorded message to call parents' cell phones, or send them text messages about a snow day, this is permissible under existing law with a parent's prior express consent, which the school could obtain readily. Similarly, autodialed and prerecorded updates from power companies, airlines, banks, and cable companies are all allowed with the prior express consent of their customers. All a consumer has to do is provide a wireless phone number to the calling party and grant consent for the use of such methods.

Finally, H.R. 3035 appears to preempt a variety of existing state laws in a significant way. H.R. 3035 would amend the TCPA to preempt all state laws about fax advertisements, autodialers, and artificial or prerecorded voice messages.

I know that preemption of state laws can sometimes be good for businesses, but it is not clear to me how preemption would help consumers or deter telemarketing abuses.

I look forward to hearing from our expert panel. Thank you.

OPENING STATEMENT OF HON. EDOLPHUS TOWNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr.TOWNS. Thank you very much.

You know, I am proud to stand with President Obama, who included this in his jobs proposal because of the opportunity it offers to assist with deficit reduction, something that we all are concerned about.

I look forward to learning from the witnesses how this legislation can impact consumers' daily lives in a positive way. Again, I thank the subcommittee and my colleagues for holding this hearing. As we move forward in the legislative process, I will work with my colleagues to shape the bill to keep the important benefits the bill would provide to consumers while at the same time ensuring that it has strong consumer protection to prevent and punish abuse.

Critics of the bill have said that the bill will open the door to nuisance and abusive calls that impose unacceptable costs to people's cell phone bills. While I don't think the incentives are there for this to happen to consumers, I look forward to learning and hearing from the witnesses to see in terms of how we can move forward and hoping that, as we move forward, some of the things that have been said, that we will be able to clear them up.

And, on that note, I want to thank the ranking member of the full committee for yielding to me.

And, on that note, I don't have anything to yield back, but I will yield back.

Mr.TERRY [presiding]. Thank you, Mr. Towns.

And I ask unanimous consent to submit 29 letters in support, the majority of which are from universities so they can contact their students. So I will submit those for the record, without objection.

[The letters follow:]

November 2, 2011

The Honorable Greg Walden
Chairman
House Subcommittee on Communications
and Technology
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Minority Member
House Subcommittee on Communications
and Technology
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Walden and Ranking Member Eshoo:

I am writing to express my strong support for H.R. 3035, the Mobile Informational Call Act of 2011. This legislation will modernize the Telephone Consumer Protection Act (TCPA) by facilitating the delivery of time-sensitive consumer information to mobile phones, an important issue for my office at Bethel University. Due to our volume of students and their preferences for communication, my office and our servicer partners increasingly rely on advanced communications technologies to convey timely and important information to students. In particular, these calls protect students against the adverse consequences of failing to meet certain deadlines, such as registration for classes or completing necessary administrative paperwork, as well as providing options for remaining in good standing with their tuition or student loan accounts.

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. Approximately 65-75% of young adults exclusively use wireless devices for telephonic communications and the number of "no landline" students and recent graduates is growing by the day.

With the recent economic downturn leading to an increase in student loan defaults, it is more important than ever for colleges and universities to have every tool available to them to assist students in completing their degrees and keeping their student loan and tuition balances in good standing. The forgiveness, deferment, and forbearance options available to students on Federal and institutional student loans can often be confusing and H.R. 3035 would allow for more efficient communication from colleges and universities and student loan service providers in their efforts to effectively convey these options to student borrowers.

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. I strongly urge the Subcommittee on Communications and Technology to approve this legislation as soon as possible.

Sincerely,

Jane Thielen
Collections
Bethel University
3900 Bethel Drive, Saint Paul, MN 55112-6999

Cc: Representative Lee Terry
Representative Edolphus Towns



**BUTLER
UNIVERSITY**

November 3, 2011

**Perkins Loan Administration
Butler University**

4600 Sunset Avenue
Indianapolis, Indiana 46208-3485
(317) 940-9572
1-800-368-6852 ext. 9572
Fax: (317) 940-3282

The Honorable Greg Walden
Chairman
House Subcommittee on Communications
Technology
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Minority Member
House Subcommittee on Communications and
Technology
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Walden and Ranking Member Eshoo:

I am writing to express my strong support for H.R. 3035, the Mobile Informational Call Act of 2011. This legislation will modernize the Telephone Consumer Protection Act (TCPA) by facilitating the delivery of time-sensitive consumer information to mobile phones, an important issue for my office at Butler University in Indianapolis IN.

Due to our volume of students and their preferences for communication, my office and our servicer partners increasingly rely on advanced communications technologies to convey timely and important information to students. In particular, these calls protect students against the adverse consequences of failing to meet certain deadlines, such as registration for classes or completing necessary administrative paperwork, as well as providing options for remaining in good standing with their tuition or student loan accounts.

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. Approximately 65-75% of young adults exclusively use wireless devices for telephonic communications and the number of "no landline" students and recent graduates is growing by the day.

With the recent economic downturn leading to an increase in student loan defaults, it is more important than ever for colleges and universities to have every tool available to them to assist students in completing their degrees and keeping their student loan and tuition balances in good standing. The forgiveness, deferment, and forbearance options available to students on Federal and institutional student loans can often be confusing and H.R. 3035 would allow for more efficient communication from colleges and universities and student loan service providers in their efforts to effectively convey these options to student borrowers.

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. I strongly urge the Subcommittee on Communications and Technology to approve this legislation as soon as possible.

Sincerely,

Judy Renschler
Perkins Loan Manager
BUTLER UNIVERSITY

Cc: Representative Lee Terry
Representative Edolphus Towns

November 3, 2011

The Honorable Greg Walden
Chairman
House Subcommittee on Communications
and Technology
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Minority Member
House Subcommittee on Communications
and Technology
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Walden and Ranking Member Eshoo:

I am writing to express my strong support for H.R. 3035, the Mobile Informational Call Act of 2011. This legislation will modernize the Telephone Consumer Protection Act (TCPA) by facilitating the delivery of time-sensitive consumer information to mobile phones, an important issue for my office at Carnegie Mellon University.

Due to our volume of students and their preferences for communication, my office and our service partners increasingly rely on advanced communications technologies to convey timely and important information to students. In particular, these calls protect students against the adverse consequences of failing to meet certain deadlines, such as registration for classes or completing necessary administrative paperwork, as well as providing options for remaining in good standing with their tuition or student loan accounts.

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. Approximately 65-75% of young adults exclusively use wireless devices for telephonic communications and the number of "no landline" students and recent graduates is growing by the day.

With the recent economic downturn leading to an increase in student loan defaults, it is more important than ever for colleges and universities to have every tool available to them to assist students in completing their degrees and keeping their student loan and tuition balances in good standing. The forgiveness, deferment, and forbearance options available to students on Federal and institutional student loans can often be confusing and H.R. 3035 would allow for more efficient communication from colleges and universities and student loan service providers in their efforts to effectively convey these options to student borrowers.

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. I strongly urge the Subcommittee on Communications and Technology to approve this legislation as soon as possible.

Sincerely,

Donna Chrestay
Assistant Director - Student Accounts - Carnegie Mellon University

Cc: Representative Lee Terry
Representative Edolphus Towns

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000
202/463-5310

November 3, 2011

The Honorable Greg Walden
Chairman
Subcommittee on Communications and
Technology
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Member
Subcommittee on Communications and
Technology
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Walden and Ranking Member Eshoo:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region, strongly supports H.R. 3035, the "Mobile Informational Call Act of 2011." This legislation would update the Telephone Consumer Protection Act (TCPA) to help ensure that consumers can receive time-sensitive information on their mobile devices, while maintaining current restrictions designed to protect wireless users from unwanted telemarketing calls.

When the TCPA was enacted, cell phones were luxury devices with very expensive per-minute charges. However, flat-rate plans and other very affordable wireless options have become the norm. Nearly 40% of consumers now rely on wireless phones as their primary or exclusive means of communication, according to the Centers for Disease Control.

Unfortunately, the TCPA has not kept pace with changes in the wireless industry and how consumers use mobile devices. The TCPA prohibits the use of assistive technology—such as autodialers—to contact wireless users with important notifications, but permits hand-dialed communications to consumers. Yet, the use of autodialers and other technology is permitted when contacting wireline consumers. Therefore, the TCPA harms many mobile users—particularly those who do not have wireline phones—by inhibiting the ability of these consumers to receive timely and important informational messages regarding data breaches, power outages, product recalls, fraud alerts, missed delivery of packages, and other similar notifications.

The Chamber looks forward to working with you on this important legislation.

Sincerely,



R. Bruce Josten

Cc: Members of the House Subcommittee on Communications and Technology

November 2, 2011

The Honorable Greg Walden
Chairman
House Subcommittee on Communications
Technology
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Minority Member
House Subcommittee on Communications and
and Technology
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Walden and Ranking Member Eshoo:

I am writing to express my strong support for H.R. 3035, the Mobile Informational Call Act of 2011. This legislation will modernize the Telephone Consumer Protection Act (TCPA) by facilitating the delivery of time-sensitive consumer information to mobile phones, an important issue for my office at the Georgetown College.


Due to our volume of students and their preferences for communication, my office and our servicer partners increasingly rely on advanced communications technologies to convey timely and important information to students. In particular, these calls protect students against the adverse consequences of failing to meet certain deadlines, such as registration for classes or completing necessary administrative paperwork, as well as providing options for remaining in good standing with their tuition or student loan accounts.

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. Approximately 65-75% of young adults exclusively use wireless devices for telephonic communications and the number of "no landline" students and recent graduates is growing by the day.

With the recent economic downturn leading to an increase in student loan defaults, it is more important than ever for colleges and universities to have every tool available to them to assist students in completing their degrees and keeping their student loan and tuition balances in good standing. The forgiveness, deferment, and forbearance options available to students on Federal and institutional student loans can often be confusing and H.R. 3035 would allow for more efficient communication from colleges and universities and student loan service providers in their efforts to effectively convey these options to student borrowers.

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. I strongly urge the Subcommittee on Communications and Technology to approve this legislation as soon as possible.

Sincerely,



Marianne Riddle, Bursar
Georgetown College
Georgetown, KY

Cc: Representative Lee Terry
Representative Edolphus Towns



Floyd E. Stoner
Executive Vice President
Congressional Relations & Public Policy
202.663.5339
fstoner@aba.com

November 3, 2011

The Honorable Greg Walden
Chairman, Subcommittee on
Communications and Technology
House Committee on Energy and Commerce
2125 Rayburn House Office Bldg.
Washington, DC 20515

The Honorable Anna G. Eshoo
Ranking Member, Subcommittee on
Communications and Technology
House Committee on Energy and Commerce
2322A Rayburn House Office Bldg.
Washington, DC 20515

Re: H.R. 3035, the Mobile Informational Call Act of 2011

Dear Chairman Walden and Ranking Member Eshoo:

On behalf of the American Bankers Association (ABA), I am writing to express our support for H.R. 3035, the Mobile Informational Call Act of 2011. The legislation would modernize the Telephone Consumer Protection Act (TCPA) by making limited, commonsense amendments to the TCPA to facilitate the delivery of time-sensitive consumer information to mobile devices. Importantly, the bill would continue the prohibition against the use of assistive technologies to call wireless numbers for telemarketing purposes without the consumer's consent.

In 1991, when the TCPA was enacted, the predominant mode of telephone communications was via wire-line phones. Today, almost a third of American households (29.7 percent) subscribe only to wireless telephone service, with that number increasing to 53.5 percent for younger households of adults aged 25-29. H.R. 3035 simply recognizes the changing use of telephone communications from wired to wireless while ensuring consumer protections for wireless users.

The legislation would continue to prevent autodialed calls to consumers absent reasonable prior consent, while permitting businesses such as financial institutions to make informational calls to their customers. Autodialed, prerecorded messages, and text alerts are the most efficient means by which financial institutions can inform their customers of potential security breaches or fraud. Immediate action following an incident, by the bank and the consumer, is essential to limiting consumer loss and protecting the customer's identity. Financial institutions initiate an estimated 189 million fraud-alert calls and texts each month using predictive dialers and prerecorded messages. A 2010 survey conducted by Harris Interactive reported that 89 percent of consumers prefer to receive alerts about suspicious activity through multiple channels, including text, phone calls to mobile and residential lines, and emails.

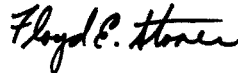
Additionally, predictive dialers and prerecorded calls or text alerts are used to help customers avoid the assessment of fees. Customers may be alerted by phone or text about low account balances, overdrafts, over-limit transactions, or past due accounts in time for them to take action to avoid the fee. In addition, these reminder calls and texts may help consumers avoid late payments, the accrual of additional interest, and negative reports to credit bureaus.

November 3, 2011
Page 2

Also, financial institutions rely on the efficiencies provided by autodialed and prerecorded calls to reach out to, and service, the millions of consumers having trouble paying their mortgage. Autodialers and prerecorded messages are used to initiate contact with homeowners, to remind them to return the necessary paperwork to qualify for a mortgage modification, to initiate follow-up calls required to complete the modification, and finally to notify borrowers that a modification offer is being delivered so that the homeowner will accept the package.

H.R. 3035 correctly responds to America's reliance on wireless communications versus wire-line telephones. The legislation would place in statute existing regulatory practices, ensuring that consumers continue to receive time sensitive information protecting them from fraud and identity theft. Consumers would also be able to receive important communications to assist them in managing their finances during difficult economic periods.

Sincerely,



Floyd E. Stoner

Cc: Members of the Subcommittee on Communications and Technology



ARKANSAS STUDENT
LOAN AUTHORITY

November 3, 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:

On behalf of the Arkansas Student Loan Authority (ASLA), I am writing to express my support for the bipartisan legislation, H.R. 3035, The Mobile Informational Call Act of 2011. H.R. 3035 will strengthen default prevention efforts provided by ASLA to student loan borrowers in Arkansas. During these difficult economic times, it is critical that nonprofit and state agency student loan providers like ASLA have the ability to utilize technologies such as auto-dialers and predicative dialers to reach students on their wireless phones before they default and are subject to collection fees and penalties.

For over 30 years ASLA has worked with students attending Arkansas schools to assist them with access to higher education funding and management of their student loan debt. In order to reach these borrowers in a timely and effective manner, ASLA utilizes auto-dialer technology as a key part of its counseling services. More and more, we find that students are utilizing wireless phones as their primary form of communication. Therefore, under the current Telephone Consumer Protection Act (TCPA), without the express consent from the student loan borrower to be contacted on the wireless phone, we are constrained in the way we can contact and help the borrower manage existing student loans.

Student loan defaults are reaching epidemic levels today and default rates are expected to continue to increase in the future; therefore, it is more important than ever to open all channels of communications with student loan borrowers. Effective default management involves the ability to communicate available options to students when it becomes difficult for them to make monthly payments. It is crucial that we are able to discuss these options prior to default in order to protect federal assets while also protecting students from the very serious repercussions of default.

H.R. 3035 would provide the necessary and targeted revisions to the TCPA that would facilitate our use of auto-dialer and similar assistive technologies to place the time-sensitive informational calls to the students we serve regarding the status of their student loans. Moreover, we support the provisions of H.R. 3035 that protect students and other consumers from unwanted telemarketing

calls. I commend Representatives Lee Terry and Ed Towns for introducing this legislation and hope the Committee acts upon it favorably in the near future so that ASLA can continue fulfilling its mission to make higher education accessible to all Arkansans.

Sincerely,

A handwritten signature in black ink that reads "Tony Williams". The signature is written in a cursive style with a horizontal line extending to the right.

Tony Williams
Executive Director

cc: The Honorable Mike Ross



FINANCE AND ADMINISTRATION CABINET
KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

Steven L. Beshear
Governor

P.O. Box 798
Frankfort, Kentucky 40602-0798
Phone: 502.696.7200
Fax: 502.696.7496
www.kheaa.com

Lori H. Flanery
Secretary

Edward J. Cunningham
Executive Director

Congressman Brett Guthrie
308 Cannon H.O.B.
Washington, DC 20515

November 2, 2011

Re: H.R. 3035, The Mobile Informational Call Act of 2011

Dear Congressman Guthrie:

As the Commonwealth's only nonprofit student loan state agency, it has come our attention that H.R. 3035, *The Mobile Informational Call Act of 2011*, if passed, could strengthen the debt resolution services Kentucky Higher Education Student Loan Corporation (KHESLC) provides to student loan borrowers, constituents in Kentucky and tax-payers nation-wide.

It is in the best interest of all student loan borrowers that the Telephone Consumer Protection Act (TCPA) be modernized to appropriately reflect current trends in technology and the way in which people communicate. As you are well aware, student loan debt is rapidly escalating along with the high cost of defaulted federal education loans. What has not been progressing, however, is our ability to reach out to borrowers and work with them to resolve their debt. With more and more Americans deeming landlines inefficient or less economical, our customer base is increasingly "cell phone only", which we are prohibited from calling on a predictive dialer without express permission. By allowing autodialer informational calls to wireless numbers, we will be able to use an existing and effective tool in our toolbox and work with students in resolving their educational indebtedness.

KHESLC Borrower Stats:

- Of borrowers 0 to 29 days past due as of 10/31/2011, 8% list a cell phone number only. This translates to \$13.8 million in student loan debt owed by cell phone only borrowers.
- Of borrowers 30 to 270 days delinquent as of 10/31/2011, 11% list a cell phone number only. This translates to \$17.2 million in delinquent student loan debt owed by cell phone only borrowers.

A predictive dialer is a type of autodialer our agency uses to minimize the time between calls and maximize our staffing resources. We do not make cold calls or telemarketing solicitations, nor do we include similar names or numbers in the dialer list. Instead, the passage of this bill will allow us to reach customers with whom we already have an existing business relationship, primarily for default prevention services. Once a borrower is past due, we are required as a federal servicer to do the following:

Days Past Due	Required Activities
1-15 days	1 collection letter
16-90 days	2 phone attempts or 1 contact
16-180 days	4 collection letters 8 phone attempts or 4 contacts
91-180 days	2 phone attempts or 1 contact

“Snail mail” has become increasingly inefficient as a communication tool as well. Just as past-due notices can be ignored, it is extremely difficult to obtain written permission from a borrower to consent to automated calls to their wireless number. The success rate of return on written cell phone consent forms is so negligible that permission is often sought through other methods (application for electronic funds transfer, deferment or forbearance, while on the phone for other business reasons, etc.). But these must be borrower initiated contacts, and again, do not assist in helping a past-due borrower bring his or her account current.

To fulfill our mission related activities in assisting borrowers with financial literacy, debt resolution, and default aversion, we must be proactive as well. Passage of this bill could also allow us to make helpful automated calls before a borrower enters repayment to remind them when their first payment is due, how to make a payment, etc. With the increasing use and functionality of smart phones and applications, a call to a borrower would allow them to be notified of an upcoming payment, check their bank account, and maybe even remit that payment online. Without that initial contact, however, the potential for a healthy, business relationship is never realized.

Some consumer groups have raised privacy concerns about cell phone usage, but we must counter by stating the landlines are far less privacy-oriented than a borrower’s cell phone. Multiple users can answer a landline, take a message, or listen to voicemail within a household; not so with an individual’s cell phone registered to a single user. There are other concerns that agencies like ours would make harassing calls to friends and family, but this bill does nothing to change the guidelines we are required to follow in the Fair Debt Collection Practices Act (FDCPA). We do not advocate expansion of TCPA to allow for unsolicited telemarketing calls.

Please consider the passage of this bill in regards to preserving American tax dollars. By resolving delinquency, we are preventing default on federal loans. TCPA and FDCPA guidelines on telemarketing must still be followed, but most importantly, the best interest of the consumer will be served.

Sincerely,

Erin Klarer
VP Government Relations
KHEAA/KHESLC


www.uheaa.org

November 2, 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:

On behalf of the Utah Higher Education Assistance Authority (UHEAA), I am writing to express my support for the bipartisan legislation, H.R. 3035, The Mobile Informational Call Act of 2011. H.R. 3035 will strengthen the default prevention UHEAA provides to student loan borrowers and constituents in Utah. During these difficult economic times, it is critical that nonprofit and state agency student loan providers like UHEAA have the ability to utilize technologies such as autodialers and predicative dialers to reach students on their wireless phones and offer assistance before they default.

For 34 years UHEAA has worked with Utahns and students attending Utah schools to access higher education and manage their student loan debt. In order to reach these borrowers in a timely and effective manner, UHEAA utilizes autodialer technology as a key part of its borrower outreach services. More and more, we find that students are utilizing wireless phones as their primary form of communication. We are also faced with situations where some students have listed a parent's wireless number as their primary contact number or have changed wireless numbers over time. Therefore, under the current Telephone Consumer Protection Act (TCPA), without the express consent from the student to be contacted on the wireless phone, we are constrained in the way we can contact and help them with their existing student loans.

Effective default management starts with reaching students before loans become seriously delinquent. H.R. 3035 would provide the necessary and targeted revisions to the TCPA that would facilitate our use of autodialer and similar assistive technologies to place the time-sensitive informational calls to the students we serve regarding the status of their student loans. Moreover, we support the provisions of H.R. 3035 that protect students and other consumers from unwanted telemarketing calls. I commend Representatives Lee Terry and Ed Towns for introducing this legislation and hope the Committee acts upon it favorably in the near future so that UHEAA can continue fulfilling its mission to assist student loan borrowers successfully repay their loans and maintain a favorable credit status.

Sincerely,

David A. Feitz
Executive Director, UHEAA
60 South 400 West
Salt Lake City, UT 84101
801.321.7210
dfeltz@utahsbr.edu

cc: Representative Jim Matheson

(801) 321-7200
(800) 418-8737
TDD (801) 321-7130
Fax (801) 366-8470
uhea@utahsbr.edu



Board of Regents Building, The Gateway
60 South 400 West
Salt Lake City, UT 84101-1284
P.O. Box 145112
Salt Lake City, Utah 84114-5112



INDIANA UNIVERSITY
OFFICE OF THE BURSAR
Bloomington

November 2, 2011

The Honorable Greg Walden
Chairman
House Subcommittee on Communications
and Technology
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Minority Member
House Subcommittee on Communications and Technology
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Walden and Ranking Member Eshoo:

I am writing to express my strong support for H.R. 3035, the Mobile Informational Call Act of 2011. This legislation will modernize the Telephone Consumer Protection Act (TCPA) by facilitating the delivery of time-sensitive consumer information to mobile phones, an important issue for my office at Indiana University.

Due to our volume of students and their preferences for communication, my office and our service partners increasingly rely on advanced communications technologies to convey timely and important information to students. In particular, these calls protect students against the adverse consequences of failing to meet certain deadlines, such as registration for classes or completing necessary administrative paperwork, as well as providing options for remaining in good standing with their tuition or student loan accounts.

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. Approximately 65-75% of young adults exclusively use wireless devices for telephonic communications and the number of "no landline" students and recent graduates is growing by the day.

With the recent economic downturn leading to an increase in student loan defaults, it is more important than ever for colleges and universities to have every tool available to them to assist students in completing their degrees and keeping their student loan and tuition balances in good standing. The forgiveness, deferment, and forbearance options available to students on Federal and institutional student loans can often be confusing and H.R. 3035 would allow for more efficient communication from colleges and universities and student loan service providers in their efforts to effectively convey these options to student borrowers.

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. I strongly urge the Subcommittee on Communications and Technology to approve this legislation as soon as possible.

Sincerely,

Kimberley A. Kercheval
Executive Associate Bursar

Cc: Representative Lee Terry
Representative Edolphus Towns



BUSINESS OFFICE

November 2, 2011

The Honorable Greg Walden
Chairman
House Subcommittee on Communications
and Technology
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Minority Member
House Subcommittee on Communications
and Technology
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Walden and Ranking Member Eshoo:

I am writing to express my strong support for H.R. 3035, the Mobile Informational Call Act of 2011. This legislation will modernize the Telephone Consumer Protection Act (TCPA) by facilitating the delivery of time-sensitive consumer information to mobile phones, an important issue for my office at Wartburg College, Waverly, Iowa.

Due to our volume of students and their preferences for communication, my office and our service partners increasingly rely on advanced communications technologies to convey timely and important information to students. In particular, these calls protect students against the adverse consequences of failing to meet certain deadlines, such as registration for classes or completing necessary administrative paperwork, as well as providing options for remaining in good standing with their tuition or student loan accounts.

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. Approximately 65-75% of young adults exclusively use wireless devices for telephonic communications and the number of "no landline" students and recent graduates is growing by the day.

With the recent economic downturn leading to an increase in student loan defaults, it is more important than ever for colleges and universities to have every tool available to them to assist students in completing their degrees and keeping their student loan and tuition balances in good standing. The forgiveness, deferment, and forbearance options available to students on Federal and institutional student loans can often be confusing and H.R. 3035 would allow for more efficient communication from colleges and universities and student loan service providers in their efforts to effectively convey these options to student borrowers.

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. I strongly urge the Subcommittee on Communications and Technology to approve this legislation as soon as possible.

Sincerely,

Jean Schloemer
Federal Perkins Loan Coordinator
Wartburg College
100 Wartburg Blvd.
Waverly, IA 50677

Cc: Representative Lee Jerry Waverly, IA 50677-0903 319-352-8278 FAX 319-352-8247 WWW.WARTBURG.EDU
100 WARTBURG BLVD.
Representative Edolphus Towns

November 2, 2011

The Honorable Greg Walden
Chairman
House Subcommittee on Communications
Technology
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Minority Member
House Subcommittee on Communications and
and Technology
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Walden and Ranking Member Eshoo:

I am writing to express my strong support for H.R. 3035, the Mobile Informational Call Act of 2011. This legislation will modernize the Telephone Consumer Protection Act (TCPA) by facilitating the delivery of time-sensitive consumer information to mobile phones, an important issue for my office at Concordia College.

Due to our volume of students and their preferences for communication, my office and our service partners increasingly rely on advanced communications technologies to convey timely and important information to students. In particular, these calls protect students against the adverse consequences of failing to meet certain deadlines, such as registration for classes or completing necessary administrative paperwork, as well as providing options for remaining in good standing with their tuition or student loan accounts.

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. Approximately 65-75% of young adults exclusively use wireless devices for telephonic communications and the number of "no landline" students and recent graduates is growing by the day.

With the recent economic downturn leading to an increase in student loan defaults, it is more important than ever for colleges and universities to have every tool available to them to assist students in completing their degrees and keeping their student loan and tuition balances in good standing. The forgiveness, deferment, and forbearance options available to students on Federal and institutional student loans can often be confusing and H.R. 3035 would allow for more efficient communication from colleges and universities and student loan service providers in their efforts to effectively convey these options to student borrowers.

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. I strongly urge the Subcommittee on Communications and Technology to approve this legislation as soon as possible.

Sincerely,



Larry Rock
Director of Student Loan Repayment
Concordia College
(218) 299-3323
larock@cord.edu

Cc: Representative Lee Terry
Representative Edolphus Towns



November 3, 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 Member
House Committee on Energy and Commerce
2322A Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
Chairman
Subcommittee on Communications and
Technology
2182 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Member
Subcommittee on Communications and
Technology
205 Cannon House Office Building
Washington, DC 20515

Dear Chairman Upton, Ranking Member Waxman, Chairman Walden and Ranking Member Eshoo:

On behalf of the Mortgage Bankers Association (MBA), I am writing to express our support for H.R. 3035, 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.

Today, businesses increasingly rely on advanced communications to convey timely and important information to consumers. Often this is achieved through calls. These calls notify consumers about threats such as data breaches and fraud alerts, provide timely notice of flight and service appointment cancellations and product recalls. Further, they protect consumers against the adverse consequences of failure to make timely payments on an account.

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

MBA believes this restriction imposes unwarranted costs and inconveniences on consumers, businesses, and the economy as a whole. Congress originally intended this restriction to protect consumers against the then-daunting per-minute costs and privacy concerns related to unsolicited incoming calls from telemarketers. But this restriction applies equally to informational calls as well.

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.

MBA supports H.R. 3035. 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.

We respectfully urge the Energy and Commerce Committee to approve this legislation as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Killmer', with a long horizontal flourish extending to the right.

William P. Killmer
Senior Vice President, Legislative and Political Affairs



JONATHAN M. WEISGALL
VICE PRESIDENT
LEGISLATIVE AND REGULATORY AFFAIRS

November 3, 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:

MidAmerican Energy Holdings Company writes to express its strong support for H.R. 3035, 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.

We believe most Americans agree that telemarketing “robocalls” or autodialed calls are an unwelcome part of modern life and agree that telemarketing calls should be limited. However, not all autodialed calls are equal. There are significant differences in the value and impact to citizens between telemarketing and service-related autodialed calls.

Unfortunately, the TCPA restricts informational calls that utilize assistive technologies to mobile devices even though the law permits such calls to be made to land-line phones. 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. However, this restriction applies equally to informational calls. In addition, the TCPA requirement of obtaining written customer consent before making any informational calls represents a hardship to our organization and a disservice to customers. Obtaining, maintaining and cross-referencing express written consent for autodialed calls to wireless devices would add unnecessary burdens and costs to our utilities and therefore to our customers.

MidAmerican Energy Holdings Company's regulated utilities¹ use land-line and cell phone contacts as a cost-effective method to initiate and handle customer interactions. Both companies and our state regulatory bodies recognize the need for oral and implied consent and have relied on expressed and unexpressed consent for over a decade. This has enabled our company to provide timely and cost effective electric and natural gas service, products generally considered vital to our customers and the local economies. Further, we do not distinguish between land lines and cell phones when opening customer accounts. Our business practice is to request a customer's primary contact phone number. As is the trend throughout the country, a growing number of our customers now use wireless numbers only.

Our use of pre-recorded outbound calls is an extension of long-established telephone-based practices that have only become more important in recent years. The industry recognizes that automated outbound calling is an efficient and cost-effective method to deliver important information to large numbers of customers quickly. Customer response to these calls has been very positive and is currently considered an industry best practice. Elimination or a reduction in the company's ability to provide these services would decrease customer satisfaction and increase the company's cost to deliver this important information.

Our utilities can deliver automated outbound calls for approximately \$0.25 per call. This compares to approximately \$2.00 for a live agent call and approximately \$1.00 per letter delivered via the U.S. Postal Service. In addition to cost, utilizing live agents to make a large volume of outbound calls is not practical and would significantly degrade the service provided to customers calling into our call centers for regular business issues.

The following is a summary of outbound pre-recorded calling activities currently used by our two regulated utilities:

Customer Recovery Calls

Outbound pre-recorded calls are used to deliver informational messages about incorrect payment processing, system or technical issues that may have impacted the ability of customers to contact its call centers, such as local or long distance carrier outages or internal system outages. The calls explain what happened, apologize for the inconvenience, and instructs the customer to contact the company if they would like additional information or need assistance. Customer response to the recovery calls has been very positive, and this method is a quick and inexpensive way to let customers know about any service-related issue.

Planned Interruption Calls / Scheduled Work in the Area

Outbound pre-recorded calls are used to deliver informational messages about planned electric service interruptions needed to accomplish electric or natural gas service infrastructure improvements and repairs. The calls provide customers with the reason for the planned interruption, as well as the date and the length of time their electric or natural gas service will be off.

¹MidAmerican Energy Company operates in Illinois, Iowa, Nebraska, and South Dakota. PacifiCorp, branded as Pacific Power, operates in California, Oregon, and Washington, and branded as Rocky Mountain Power, operates in Idaho, Utah, and Wyoming.

Electric Service Curtailment Calls

Outbound pre-recorded calls are used to deliver messages concerning possible curtailment of a customer's electric service related to a storm, wildfire, system re-routing, weather or other natural disaster affecting power usage and power availability. We serve urban and rural customers over a large and varied terrain, and weather-related power curtailments are a particular concern for our utilities and for our customers. Timely communication to our customers about potential curtailment is a critical vital service that is only feasible through the use of pre-recorded, autodialed messages.

Outage Callbacks

Outbound pre-recorded calls are used to deliver outage updates, revised outage restoration estimates and outage restoration confirmation. When customers call our utilities, they can select to receive an automated call back to provide updated outage information or to confirm that their electric service has been restored. When the call back is made, the customer can also advise if their power is still out, and a new outage order is automatically generated. When a power outage occurs, customers want to know when the power will be restored, and our utilities' ability to send out automatic calls represents a valuable service to our customers.

Appointment Reminder

Outbound pre-recorded calls are used to deliver reminder messages regarding work to be done at customer premises on the next business day. The call is done for a number of reasons. First, it is to ensure that safety measures are taken for the benefit of the field technician, the customer, and the customer's pets. Second, it acts as a reminder to the customer to ensure that any access arrangements made have been acknowledged. Third, it acts as a reminder to those customers who do not need to be present for access that the utility will be on their property. The callout provides the customer with the date and address of the work to be done, offers the capability to speak with a customer service associate, and provides a telephone number that they can call if they have further questions.

Door Hanger Notification

Outbound pre-recorded calls are used to advise customers when work was done at their property that requires further action on the customers' part. This callout is also done for customer security so a door tag is not left unnoticed by the customer for an extended period of time. The callout advises that a door tag was left and provides the date this occurred. It also provides a telephone number that a customer can call for additional information.

Tree Service Calls

Outbound pre-recorded calls are used to deliver messages concerning tree service work (mainly tree trimming) that will be performed in the customer's area. This call is to make customers aware that service personnel will be in the area to perform this service and may be on their property. The call provides the name of the tree service contractor doing the work and a telephone number that they can call with any questions.

Collection Calls

Outbound pre-recorded calls are used to deliver messages targeting customers that have a past-due balances and who are in danger of having their electric service disconnected for non-

payment. The calls notify the customer regarding their past-due balance and give them an option to contact the company to make payment arrangements, as well as an option to make a pay-by-phone payment. Written disconnect notices, in the form of past due and final bills, remain the primary means of communicating risk to our customers, but autodialed calls provide a cost-effective, meaningful service to customers to help them avoid the obvious hardship of disconnecting their electric or natural gas service.

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 the law was intended to protect.

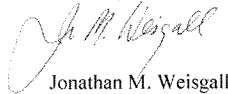
For these reasons, we strongly support H.R. 3035. This bill will modernize the TCPA by:

- Exempting informational calls from the restriction on auto-dialer and artificial/pre-recorded 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. 3035 will continue the prohibition against the use of assistive technologies to call wireless numbers for telemarketing purposes.

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,



Jonathan M. Weisgall

cc: The Hon. Lee Terry
The Hon. Edolphus Towns
The Hon. Greg Walden

September 23, 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. 3035, 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. 3035. This bill will modernize the TCPA by:

- Exempting informational calls from the restriction on auto-dialer and artificial/prerecorded voice calls to wireless numbers;
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- 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. 3035 will continue the prohibition against the use of assistive technologies to call wireless numbers for telemarketing purposes.

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 Programs, Inc.
Student Loan Servicing Alliance
Student Loan Servicing Alliance Private Loan Committee
The Clearing House
U.S. Chamber of Commerce

OBERLIN

COLLEGE & CONSERVATORY

November 2, 2011

Office of the Controller

The Honorable Greg Walden
Chairman
House Subcommittee on Communications
Technology
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Minority Member
House Subcommittee on Communications and
and Technology
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Walden and Ranking Member Eshoo:

I am writing to express my strong support for H.R. 3035, the Mobile Informational Call Act of 2011. This legislation will modernize the Telephone Consumer Protection Act (TCPA) by facilitating the delivery of time-sensitive consumer information to mobile phones, an important issue for my office at Oberlin College.

Due to our volume of students and their preferences for communication, my office and our servicer partners increasingly rely on advanced communications technologies to convey timely and important information to students. In particular, these calls protect students against the adverse consequences of failing to meet certain deadlines, such as registration for classes or completing necessary administrative paperwork, as well as providing options for remaining in good standing with their tuition or student loan accounts.

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. Approximately 65-75% of young adults exclusively use wireless devices for telephonic communications and the number of "no landline" students and recent graduates is growing by the day.

With the recent economic downturn leading to an increase in student loan defaults, it is more important than ever for colleges and universities to have every tool available to them to assist students in completing their degrees and keeping their student loan and tuition balances in good standing. The forgiveness, deferment, and forbearance options available to students on Federal and institutional student loans can often be confusing and H.R. 3035 would allow for more efficient communication from colleges and universities and student loan service providers in their efforts to effectively convey these options to student borrowers.

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. I strongly urge the Subcommittee on Communications and Technology to approve this legislation as soon as possible.

Sincerely,



Karla Sanderson
Loan Coordinator

Cc: Representative Lee Terry
Representative Edolphus Towns



November 3, 2011

The Honorable Greg Walden
Chairman
House Subcommittee on Communications
Technology
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Minority Member
House Subcommittee on Communications and
Technology
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Walden and Ranking Member Eshoo:

I am writing to express my strong support for H.R. 3035, the Mobile Informational Call Act of 2011. This legislation will modernize the Telephone Consumer Protection Act (TCPA) by facilitating the delivery of time-sensitive consumer information to mobile phones, an important issue for my office at the Seton Hill University.

Due to our volume of students and their preferences for communication, my office and our service partners increasingly rely on advanced communications technologies to convey timely and important information to students. In particular, these calls protect students against the adverse consequences of failing to meet certain deadlines, such as registration for classes or completing necessary administrative paperwork, as well as providing options for remaining in good standing with their tuition or student loan accounts.

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With the recent economic downturn leading to an increase in student loan defaults, it is more important than ever for colleges and universities to have every tool available to them to assist students in completing their degrees and keeping their student loan and tuition balances in good standing. The forgiveness, deferment, and forbearance options available to students on Federal and institutional student loans can often be confusing and H.R. 3035 would allow for more efficient communication from colleges and universities and student loan service providers in their efforts to effectively convey these options to student borrowers.

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. I strongly urge the Subcommittee on Communications and Technology to approve this legislation as soon as possible.

Sincerely,

A handwritten signature in cursive script that reads "Suzanne Dominick".

Suzanne Dominick
Accounts Receivable Supervisor

Cc: Representative Lee Terry
Representative Edolphus Towns

November 2, 2011

The Honorable Greg Walden
Chairman
House Subcommittee on Communications
and Technology
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Minority Member
House Subcommittee on
Communications and Technology
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Walden and Ranking Member Eshoo:

I am writing to express my strong support for H.R. 3035, the Mobile Informational Call Act of 2011. This legislation will modernize the Telephone Consumer Protection Act (TCPA) by facilitating the delivery of time-sensitive consumer information to mobile phones, an important issue for my office at Valparaiso University.

Due to our volume of students and their preferences for communication, my office and our servicer partners increasingly rely on advanced communications technologies to convey timely and important information to students. In particular, these calls protect students against the adverse consequences of failing to meet certain deadlines, such as registration for classes or completing necessary administrative paperwork, as well as providing options for remaining in good standing with their tuition or student loan accounts.

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With the recent economic downturn leading to an increase in student loan defaults, it is more important than ever for colleges and universities to have every tool available to them to assist students in completing their degrees and keeping their student loan and tuition balances in good standing. The forgiveness, deferment, and forbearance options available to students on Federal and institutional student loans can often be confusing and H.R. 3035 would allow for more efficient communication from colleges and universities and student loan service providers in their efforts to effectively convey these options to student borrowers.

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. I strongly urge the Subcommittee on Communications and Technology to approve this legislation as soon as possible.

Sincerely,



Director of Collection/Planned Giving Coordinator
Valparaiso University
Valparaiso, IN 46383

Cc: Representative Lee Terry
Representative Edolphus Towns



Edison Electric
Institute

Thomas R. Kuhn
President

November 3, 2011

The Honorable Lee Terry
U.S. House of Representatives
Washington, DC 20515

The Honorable Ed Towns
U.S. House of Representatives
Washington, DC 20515

Dear Congressmen Terry and Towns:

On behalf of EEI's member companies, I write in support of H.R. 3035, the Mobile Informational Call Act of 2011. This legislation would 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.

Electric utilities use "robocalls" for service related issues (not telemarketing) and use land-line and cell phone contacts as a means to initiate and handle customer interactions. In this manner, electric utilities use autodialed calls to provide information about events such as planned power outages, updates on emergency outages, power restoration confirmation, incorrect payment processing, appointment reminders, tree service notifications, customer surveys, disconnect notices and billing reminders; with so many customers giving up their landline phones, communication with wireless devices is imperative. Furthermore, as the utility industry moves towards increased deployment of smart grid technologies, the use of automated customer communications will only increase as utilities seek to notify customers about critical peak pricing events so that customers may adjust their usage during the declared time period. It is contemplated that customers will be able to select how they want to be notified, including through email, text message or phone call. Thus, autodialed calls would be used for those customers who selected the phone call notification.

November 3, 2011

Page 2

EEI has engaged the FCC as part of a broad coalition that includes banking, transportation, and other business interests. As members of this coalition, we commend the bill's sponsors for seeking to update the TCPA by:

- Exempting informational calls from the restriction on auto-dials to wireless numbers;
- Clarifying the "prior express consent" requirement so that businesses with an existing relationship can contact customers; and,
- Differentiating between auto-dialers that store phone numbers from those that generate random or sequential numbers (telemarketing).

This bill is exactly the clarification electric utilities need in order to ensure timely communications with customers via cell phone. Automated calls are an important tool utilities use to communicate with customers—and one that customers value tremendously. Requiring utilities to deliver this information using a different communication channel would be ineffective and more costly.

Again, I appreciate your introducing this legislation and urge Congress to 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.

Sincerely,



Thomas R. Kuhn

TRK: sa

Office of Loans Receivable
and Collections

November 2, 2011

THE UNIVERSITY OF
ALABAMA
FOUNDED 1831

The Honorable Greg Walden
Chairman
House Subcommittee on
Communications and Technology
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Minority Member
House Subcommittee on
Communications and Technology
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Walden and Ranking Member Eshoo:

I am writing to express my strong support for H.R. 3035, the Mobile Informational Call Act of 2011. This legislation will modernize the Telephone Consumer Protection Act (TCPA) by facilitating the delivery of time-sensitive consumer information to mobile phones, an important issue for my office at The University of Alabama.

Due to our volume of students and their preferences for communication, my office and our servicer partners increasingly rely on advanced communications technologies to convey timely and important information to students. In particular, these calls protect students against the adverse consequences of failing to meet certain deadlines, such as registration for classes or completing necessary administrative paperwork, as well as providing options for remaining in good standing with their tuition or student loan accounts.

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. Approximately 65-75% of young adults exclusively use wireless devices for telephonic communications and the number of "no landline" students and recent graduates is growing by the day.

With the recent economic downturn leading to an increase in student loan defaults, it is more important than ever for colleges and universities to have every tool available to them to assist students in completing their degrees and keeping their student loan and tuition balances in good standing. The forgiveness, deferment, and forbearance options available to students on Federal and institutional student loans can often be confusing and H.R. 3035 would allow for more efficient communication from colleges and universities and student loan service providers in their efforts to effectively convey these options to student borrowers.

105 Student Services Center
Box 870121
Tuscaloosa, Alabama 35487-0121
(205) 348-7663
fax (205) 348-8426

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. I strongly urge the Subcommittee on Communications and Technology to approve this legislation as soon as possible.

Sincerely,

A handwritten signature in black ink that reads "Tony Bordeaux". The signature is written in a cursive, flowing style.

Tony Bordeaux, Associate Director
Loans Receivable & Collections

Cc: Representative Lee Terry
Representative Edolphus Towns



University of Pittsburgh

Student Financial Services

160 Thackeray Hall
Pittsburgh, PA 15260
412-624-7500
Fax: 412-648-1009

Dennis J. DeSantis
Associate Vice Chancellor,
Student Financial Services

November 3, 2011

The Honorable Michael F. Doyle
House Subcommittee on Communications and Technology
401 Cannon HOB
Washington, DC 20515

Dear Representative Doyle:

I am writing to express my strong support for H.R. 3035, the Mobile Informational Call Act of 2011. This legislation will modernize the Telephone Consumer Protection Act (TCPA) by facilitating the delivery of time-sensitive consumer information to mobile phones, an important issue for my office at the University of Pittsburgh.

Due to our number of students and their preferences for communication, my office and our servicer partners increasingly rely on advanced communications technologies to convey timely and important information to students. In particular, these calls protect students against the adverse consequences of failing to meet certain deadlines, such as registration for classes or completing necessary administrative paperwork, as well as providing options for remaining in good standing with their tuition or student loan accounts.

Unfortunately, the TCPA restricts informational calls that utilize assistive technologies to mobile devices even though the law permits such calls to be made to wire line phones. Approximately 65-75% of young adults exclusively use wireless devices for telephonic communications and the number of "no landline" students and recent graduates is growing by the day.

With the recent economic downturn leading to an increase in student loan defaults, it is more important than ever for colleges and universities to have every tool available to them to assist students in completing their degrees and keeping their student loan and tuition balances in good standing. The forgiveness, deferment, and forbearance options available to students on Federal and institutional student loans can often be confusing and H.R. 3035 would allow for more efficient communication from colleges and universities and student loan service providers in their efforts to effectively convey these options to student borrowers.

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. I strongly urge the Subcommittee on Communications and Technology to approve this legislation as soon as possible.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dennis J. DeSantis".

Dennis J. DeSantis

Cc: Jeanne Stoner, University of Pittsburgh
Paul A. Supowitz, University of Pittsburgh

November 2, 2011

The Honorable Greg Walden
Chairman
House Subcommittee on Communications
and Technology
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Minority Member
House Subcommittee on Communications
and Technology
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Walden and Ranking Member Eshoo:

I am writing to express my strong support for H.R. 3035, the Mobile Informational Call Act of 2011. This legislation will modernize the Telephone Consumer Protection Act (TCPA) by facilitating the delivery of time-sensitive consumer information to mobile phones, an important issue for my office at the University of St. Thomas in Houston, Texas.

Due to our volume of students and their preferences for communication, my office and our servicer partners increasingly rely on advanced communications technologies to convey timely and important information to students. In particular, these calls protect students against the adverse consequences of failing to meet certain deadlines, such as registration for classes or completing necessary administrative paperwork, as well as providing options for remaining in good standing with their tuition or student loan accounts.

Unfortunately, the TCPA restricts informational calls that utilize assistive technologies to mobile devices even though the law permits such calls to be made to wireless phones. Approximately 65-75% of young adults exclusively use wireless devices for telephonic communications and the number of "no landline" students and recent graduates is growing by the day.

With the recent economic downturn leading to an increase in student loan defaults, it is more important than ever for colleges and universities to have every tool available to them to assist students in completing their degrees and keeping their student loan and tuition balances in good standing. The forgiveness, deferment, and forbearance options available to students on Federal and institutional student loans can often be confusing and H.R. 3035 would allow for more efficient communication from colleges and universities and student loan service providers in their efforts to effectively convey these options to student borrowers.

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. I strongly urge the Subcommittee on Communications and Technology to approve this legislation as soon as possible.

Sincerely,

Susan Rose
Treasurer
University of St. Thomas
Houston, TX

Cc: Representative Lee Terry
Representative Edolphus Towns

November 4, 2011

The Honorable Greg Walden
Chairman
House Subcommittee on Communications
and Technology
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Minority Member
House Subcommittee on Communications
and Technology
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Walden and Ranking Member Eshoo:

I am writing to express my strong support for H.R. 3035, the Mobile Informational Call Act of 2011. This legislation will modernize the Telephone Consumer Protection Act (TCPA) by facilitating the delivery of time-sensitive consumer information to mobile phones, an important issue for my office at the University of South Carolina.

Due to our volume of students and their preferences for communication, my office and our servicer partners increasingly rely on advanced communications technologies to convey timely and important information to students. In particular, these calls protect students against the adverse consequences of failing to meet certain deadlines, such as registration for classes or completing necessary administrative paperwork, as well as providing options for remaining in good standing with their tuition or student loan accounts.

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With the recent economic downturn leading to an increase in student loan defaults, it is more important than ever for colleges and universities to have every tool available to them to assist students in completing their degrees and keeping their student loan and tuition balances in good standing. The forgiveness, deferment, and forbearance options available to students on Federal and institutional student loans can often be confusing and H.R. 3035 would allow for more efficient communication from colleges and universities and student loan service providers in their efforts to effectively convey these options to student borrowers.

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. I strongly urge the Subcommittee on Communications and Technology to approve this legislation as soon as possible.

Sincerely,


UNIVERSITY OF
SOUTH CAROLINA
Spartan Heritage
Office of Financial Services
Student Loan Collections
Columbia, SC 29208

Cc: Representative Lee Terry
Representative Edolphus Towns

November 2, 2011

The Honorable Greg Walden
Chairman
House Subcommittee on Communications
Technology
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Minority Member
House Subcommittee on Communications and
and Technology
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Walden and Ranking Member Eshoo:

I am writing to express my strong support for H.R. 3035, the Mobile Informational Call Act of 2011. This legislation will modernize the Telephone Consumer Protection Act (TCPA) by facilitating the delivery of time-sensitive consumer information to mobile phones, an important issue for my office at Otterbein University.

Due to our volume of students and their preferences for communication, my office and our service partners increasingly rely on advanced communications technologies to convey timely and important information to students. In particular, these calls protect students against the adverse consequences of failing to meet certain deadlines, such as registration for classes or completing necessary administrative paperwork, as well as providing options for remaining in good standing with their tuition or student loan accounts.

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With the recent economic downturn leading to an increase in student loan defaults, it is more important than ever for colleges and universities to have every tool available to them to assist students in completing their degrees and keeping their student loan and tuition balances in good standing. The forgiveness, deferment, and forbearance options available to students on Federal and institutional student loans can often be confusing and H.R. 3035 would allow for more efficient communication from colleges and universities and student loan service providers in their efforts to effectively convey these options to student borrowers.

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. I strongly urge the Subcommittee on Communications and Technology to approve this legislation as soon as possible.

Sincerely,

Vicky Degen

Otterbein University

Cc: Representative Lee Terry
Representative Edolphus Towns



A LEADING AMERICAN UNIVERSITY WITH INTERNATIONAL REACH
OFFICE OF THE BURSAR-COLLECTIONS OFFICE

November 2, 2011

The Honorable Greg Walden
Chairman
House Subcommittee on Communications
Technology
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Minority Member
House Subcommittee on Communications and
and Technology
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Walden and Ranking Member Eshoo:

I am writing to express my strong support for H.R. 3035, the Mobile Informational Call Act of 2011. This legislation will modernize the Telephone Consumer Protection Act (TCPA) by facilitating the delivery of time-sensitive consumer information to mobile phones, an important issue for my office at Western Kentucky University.

Due to our volume of students and their preferences for communication, my office and our servicer partners increasingly rely on advanced communications technologies to convey timely and important information to students. In particular, these calls protect students against the adverse consequences of failing to meet certain deadlines, such as registration for classes or completing necessary administrative paperwork, as well as providing options for remaining in good standing with their tuition or student loan accounts.

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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. I strongly urge the Subcommittee on Communications and Technology to approve this legislation as soon as possible.

Sincerely,


Belinda Higginbotham
Bursar

Cc: Representative Lee Terry
Representative Edolphus Towns

The Spirit Makes the Master

Office of the Bursar- Collections Office | Western Kentucky University | 1906 College Heights Blvd. #11023 | Bowling Green, KY 42101-1023
phone: 270.745.2986 | fax: 270.745.8809 | email: perkins.loans@wku.edu | web: www.wku.edu

Equal Education and Employment Opportunities • Printing paid from state funds, 405 57.375 • Hearing Impaired Only: 270.745.5389

THE FINANCIAL SERVICES ROUNDTABLE
Financing America's Economy



1001 PENNSYLVANIA AVE., NW
SUITE 500 SOUTH
WASHINGTON, DC 20004
TEL 202-289-4322
FAX 202-628-2507

E-Mail info@fstound.org
www.fstound.org

November 4, 2011

The Honorable Greg Walden
Chairman
Subcommittee on Communications and
Technology
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Member
Subcommittee on Communications and
Technology
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Walden and Ranking Member Eshoo:

The Financial Services Roundtable and the Housing Policy Council strongly support H.R. 3035, the "Mobile Informational Call Act of 2011." This legislation will modernize the Telephone Consumer Protection Act (TCPA) to ensure individuals with mobile devices are able to receive time-sensitive information calls, such as those relating to fraud, identity theft, and foreclosure prevention, while protecting consumers from unwanted telemarketing messages.

Consumers reap significant benefits when financial institutions are able to reach them quickly and efficiently. Using autodialers or prerecorded messaging, as the bill allows, will enable us to initiate early conversations with consumers who may qualify for repayment or modification programs, including foreclosure prevention. These calling devices also free up loss mitigation specialists to spend time working with borrowers, rather than making repetitive manual calls.

Additionally, financial institutions frequently rely on these automated calling devices to comply with legal and regulatory obligations. For example, autodialers and prerecorded messaging are used to provide security breach notifications pursuant to state laws and the Gramm-Leach-Bliley Act, or notice of address discrepancies pursuant to the Fair Credit Reporting Act.

We look forward to working with you on this important legislation.

Best regards,

Steve Bartlett
President and CEO
The Financial Services Roundtable

John Dalton
President
The Housing Policy Council



DAVE McCURDY
President & CEO

November 3, 2011

Chairman Greg Walden
2125 Rayburn House Office Building
Washington, D.C. 20515

Ranking Member Anna G. Eshoo
2322A Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Walden and Ranking Member Eshoo:

On behalf of the American Gas Association (AGA), which represents over 200 local energy companies that deliver clean natural gas throughout the United States, I am writing to let you know that the American Gas Association supports H.R. 3035, the Mobile Information Calling Act. There are more than 70 million residential, commercial and industrial natural gas customers in the U.S., of which 91 percent — more than 65 million customers — receive their gas from AGA members. AGA is an advocate for natural gas utility companies and their customers and provides a broad range of programs and services for member natural gas companies, pipelines, marketers, gatherers, international natural gas companies and industry associates.

The bill would serve to clarify that companies, such as the utilities that constitute our membership, are permitted to make automated service-related or informational calls to customers on their wireless phone numbers.

Our members have a strong interest in communicating clearly and rapidly with their customers. Currently, if there is a need to issue a pre-recorded message about matters such as power interruptions, fraud alerts, or service call cancellations, utilities may run afoul of the Telephone Consumer Protection Act, which says cell customers can't receive automated calls unless they have given prior consent to be called on their cell lines. The measure would continue the prohibition against using automated systems to call cell numbers for telemarketing purposes.

Since increasing number of Americans are using mobile devices as either their primary or exclusive means of communication, updating the statute to take into account this shift in consumer preference is essential for good customer service.

Please contact Luis A. Luna at the American Gas Association (202-824-7020 or lluna@aga.org) should you have any questions regarding this.

Sincerely,

A handwritten signature in black ink that reads "Dave McCurdy". The signature is written in a cursive, flowing style.



November 2, 2011

The Honorable Greg Walden
Chairman
House Subcommittee on Communications
Technology
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Minority Member
House Subcommittee on Communications and
Technology
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Walden and Ranking Member Eshoo:

I am writing to express my strong support for H.R. 3035, the Mobile Informational Call Act of 2011. This legislation will modernize the Telephone Consumer Protection Act (TCPA) by facilitating the delivery of time-sensitive consumer information to mobile phones, an important issue for my office at the Biola University.

Due to our volume of students and their preferences for communication, my office and our servicing partners increasingly rely on advanced communications technologies to convey timely and important information to students. In particular, these calls protect students against the adverse consequences of failing to meet certain deadlines, such as registration for classes or completing necessary administrative paperwork, as well as providing options for remaining in good standing with their tuition or student loan accounts.

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. Approximately 65-75% of young adults exclusively use wireless devices for telephonic communications and the number of "no landline" students and recent graduates is growing by the day.

With the recent economic downturn leading to an increase in student loan defaults, it is more important than ever for colleges and universities to have every tool available to them to assist students in completing their degrees and keeping their student loan and tuition balances in good standing. The forgiveness, deferment, and forbearance options available to students on Federal and institutional student loans can often be confusing and H.R. 3035 would allow for more efficient communication from colleges and universities and student loan service providers in their efforts to effectively convey these options to student borrowers.

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. I strongly urge the Subcommittee on Communications and Technology to approve this legislation as soon as possible.

Sincerely,

Melanee Gallina
Educational Loan Specialist
Biola University
13800 Biola Ave.
La Mirada, CA 90639

Cc: Representative Lee Terry
Representative Edolphus Towns

Statement for the Record
Consumer Bankers Association
House Committee on Energy and Commerce
Subcommittee on Communications and Technology
November 4, 2011
Hearing to examine
H.R. 3035, The Mobile Informational Call Act of 2011

The Consumer Bankers Association (CBA)¹ appreciates the opportunity to submit this statement for the record for the House Energy and Commerce Committee's Communications and Technology Subcommittee hearing to examine "H.R. 3035: The Mobile Informational Call Act of 2011" which was introduced by Representatives Lee Terry (NE-2) and Edolphus Towns (NY-10).

CBA strongly supports H.R. 3035, which would 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 consumers from unwanted telemarketing calls. These revisions have been supported by a broad range of industries who recognized the importance of modernizing the TCPA and value it can add to consumers.

As it currently stands, the TCPA prohibits all calls, with the exception of those made for emergencies, to a mobile number using assistive technologies, such as prerecorded calls and automatic telephone dialing systems (autodialers) unless the caller has obtained the customer's prior express consent to place that call. This is often referred to as the "autodialer rule" and it is important to note that there are no similar prohibitions on landline phones.

The autodialer rule may have been reasonable when the TCPA was adopted in 1991, a time when owners of mobile devices were heavily charged for each incoming call. However, the prohibition on informational autodialer calls to mobile devices makes little sense today. Cell phones are no longer the luxury item they were in the past and carry very little operating costs. In

¹ The Consumer Bankers Association (CBA) is the only national financial trade group focused exclusively on retail banking and personal financial services - banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation for its members. CBA members include the nation's largest bank holding companies as well as regional and super-community banks that collectively hold two-thirds of the total assets of depository institutions.

fact, a larger and rapidly growing segment of the population no longer have traditional landlines and are now categorizing their cellular phone number as their home number. Another point of consideration is the difficulty identifying cell phone numbers with certainty and many of these same numbers are used through different technologies using the same number (cellular, VOIP, land line).

When Congress originally debated and enacted the autodialer legislation, their intention was aimed at telemarketing calls and not informational calls. Given that nearly all cell phone customers also had landline phones in 1991, there seemed to be no reason to allow for automated calls to mobile phones. No one could have estimated how widespread cell phones and other advanced technologies would have come in the past 20 years.

Businesses in operation today that could not call their customers' mobile phones, or could only call those devices by inefficient manual means, would be severely limited in their use of one of today's most basic channels of communication. As a result, the approximately 40% of American consumers who identify their mobile device as their primary or exclusive means of communication would not receive many of these important calls and any such restriction would impose significant and unwarranted costs and inconveniences on consumers, businesses, and the economy as a whole.

Fortunately, the autodialer rule has been subject to a reasonable interpretation by the Federal Communications Commission (FCC). In its 1992 order adopting regulations to implement the TCPA, the FCC opined that if a customer voluntarily provides a mobile telephone number to a business, the customer has given prior express consent to get automated calls from the business at that number. Based on this guidance, businesses in all segments of the U.S. economy have been transmitting informational calls to customers that have provided their mobile telephone numbers as a direct line of communication.

However, the FCC has recently proposed that the prior express consent requirement for automated calls to mobile devices could only be accomplished by receiving *written* consent. The proposal brought considerable opposition from many private interest groups and the U.S. government. Although the rulemaking remains pending and its outcome uncertain, a written consent rule would disrupt existing customer arrangements across the economy and hamper customer communications in the future. H.R. 3035 would amend the outdated TCPA by exempting informational calls from the autodialer rule and clarifying the "prior express consent" requirement to ensure that the TCPA facilitates communications between consumers and the businesses with which consumers choose to interact.

Businesses increasingly rely on automated communications solutions such as autodialers to convey timely and important information to consumers. Fraud alerts, notices of address discrepancies, data security breach notifications, loan modifications outreach, and other time-critical, non-telemarketing communications often must reach large numbers of customers promptly and at reasonable cost. Only automated calling - not manual dialing - can meet these requirements in a timely and effective manner.

Most importantly, autodialed calls can benefit consumers in a number of ways. In cases of fraud and identity theft, businesses rely on the efficiency of autodialers to contact customers quickly. For those customers who have provided a mobile number, the business's inability to use autodialers would likely lead to delayed contact that could result in great cost to those individuals.

Financial institutions regularly provide account information by text or artificial message to their customers concerning fees, balances, transfers, withdrawals, over-limit transactions, past-due accounts, and deposits. This information helps consumers control personal expenditures, make purchasing decisions and further protect against fraud. The use of autodialers allows these institutions to reach out to customers who may be experiencing financial hardships. Failure to communicate promptly with potentially troubled customers can have severe adverse consequences. Customers that are not reached quickly and fail to resolve their payment issues are more likely to face the adverse consequences of repossession, foreclosure and negative credit reporting – causing them financial and emotional hardships.

Additionally, autodialers allow for business to reallocate resources to areas that can be of great benefit to customers. Reducing the resources needed to make numerous routine calls allows for greater costs savings to businesses and ultimately their customers. These resources can often be better utilized to produce a more efficient, customer-friendly experience.

It is important to note that the provisions of H.R. 3035 would not remove the TCPA prohibition against the use of automated dialing systems to call wireless numbers for telemarketing purposes. In fact, the legislation would continue to maintain the more stringent restrictions on telemarketing calls to wireless numbers than to landlines.

Also the bill would not allow businesses to violate consumer privacy by authorizing or allowing the sharing or publication of mobile phone numbers or by authorizing autodialer calls to any mobile number obtained from sources other than the customer. Most importantly, customers would not

be required to accept calls from companies they do business with and would maintain the right to request a cease and desist of any call, including informational, to their mobile number.

In conclusion, CBA strongly supports H.R. 3035, the Mobile Informational Call Act of 2011, which would amend the TCPA and help facilitate important communications between consumers and those companies they have chosen to engage for business. We applaud the subcommittee for holding this hearing and encourage quick action on this legislation. CBA looks forward to working with the Committee as they examine these important issues.



316 Pennsylvania Ave,S.E.
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November 3, 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 Member Waxman:

UPS supports H.R. 3035, the Mobile Informational Call act of 2011. This bill would ensure that UPS and other express delivery companies will be able to make informational calls to mobile devices of package shippers and recipients, while continuing to protect mobile users from unwanted telemarketing calls.

UPS relies on autodialed, prerecorded calls and SMS messages to provide various informational messages to certain customers and package recipients. UPS's customers and package recipients rely on this information. The law currently allows automated informational calls to "landlines", but not to mobile devices. H.R. 3035 would modernize the law to apply the same treatment for such calls to mobile devices. Because text messages to a mobile phone are now considered to be calls, the bill should also ensure the same treatment for text messages.

UPS commends Representatives Terry and Town for introducing H.R. 3035 and urges the Energy and Commerce Committee to approve the legislation.

Sincerely,

A handwritten signature in black ink that reads "Robert A. Bergman".

Robert A. Bergman
Vice President, Public Affairs

Mr.TERRY. So, at this time, we would like to hear from our witnesses. We will go from my left to right, with Ms. Schwartz.

You may begin. And if I could say, limit your comments to 5 minutes. And I will lightly tap at 5 minutes. So, it is not being rude, just kind of notice.

Go ahead.

STATEMENTS OF FAITH SCHWARTZ, EXECUTIVE DIRECTOR, HOPE NOW ALLIANCE; STEPHEN A. ALTERMAN, PRESIDENT, CARGO AIRLINE ASSOCIATION; DELICIA REYNOLDS HAND, LEGISLATIVE DIRECTOR, NATIONAL ASSOCIATION OF CONSUMER ADVOCATES; GREGORY F. ZOELLER, ATTORNEY GENERAL, STATE OF INDIANA; MICHAEL ALTSCHUL, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, CTIA

STATEMENT OF FAITH SCHWARTZ

Ms.SCHWARTZ. Chairman Walden, Ranking Member Eshoo, Vice Chair Terry, and members of the subcommittee, thank you for the opportunity to testify today.

My name is Faith Schwartz, and I am the executive director of the Hope Now Alliance, a nonprofit foreclosure-prevention effort. And I am the cofounder of Hope LoanPort, which is a nonprofit Web-based tool which is a public utility for borrowers and counselors to submit loan-workout packages to loan servicers for free.

I have served in a leadership capacity at Hope Now since 2007, during which time I worked closely with members and partners of the Alliance, including mortgage servicers, investors, nonprofit housing counseling partners, government agencies, and regulators to help homeowners avoid foreclosure. Before my time with Hope Now, I served in various capacities in the housing finance industry for 28 years.

The comments I make today are my own and reflect my experience in the mortgage business and, in particular, working with servicers and counselors attempting to help at-risk homeowners. These comments do not necessarily reflect all the views of Hope Now.

I am here today to speak to you specifically about our ongoing foreclosure-prevention efforts and the difficulties of reaching borrowers in financial distress.

The financial services industry and its nonprofit and government partners remain committed to using all the tools that are available to assist homeowners. Since 2007, the mortgage industry has completed an estimated 5 million permanent loan modifications—and we know this because we measure it every month from that date—based on 37 million loans. In total, the industry has provided 14 million solutions for homeowners that include loan mods, short-term solutions such as repayment plans and forbearance, unemployment options such as short sales and deed in lieu, that provide alternatives to foreclosure.

Hope Now has held 117 face-to-face events across the country since 2008. In fact, today we are in Houston, Texas, holding such an event with the United States Treasury, Making Home Affordable, and our nonprofit partner, NeighborWorks America. Without question, the outreach events have improved the experience of

many customers trying to resolve their mortgage difficulties through face-to-face meeting with their loan servicer or counseling through a nonprofit agency. But our exit surveys continue to show that at least 30 percent of those attending had never had contact with their servicer before the meeting, despite multiple attempts from the servicer.

The single greatest obstacle to keeping a delinquent borrower in their home is the inability to contact them and make aware the workout options that are available. The breadth and the complexity of options, both government programs and proprietary solutions—a full list of which I have included in my written testimony—makes it imperative that homeowners be in contact with their servicers. But we know from experience that often borrowers in financial distress do not open mail, they cancel their landline service, and increasingly rely on wireless phones as their primary or exclusive communications device.

As we see these numbers ever increasing, with cell phones and text messaging becoming the primary means of communication, it has become clear that the current Telephone Consumer Protection Act, TCPA, is hindering effective communications between homeowners and loan servicers. H.R. 3035, the Mobile Informational Call Act of 2011, would modernize TCPA by eliminating restrictions on informational calls to mobile phones.

For 20 years, the TCPA has permitted automated informational calls to be delivered to consumers' wireline phone numbers but not their wireless numbers. H.R. 3035 would allow automated commercial calls to mobile phone numbers as long as they do not include marketing messages.

Currently, our primary means of contact ourlandlines and mailing invitations to foreclosure-prevention outreach events. It is difficult, if not impossible, to efficiently and effectively reach approximately 40 percent of consumers who rely on wireless phones as their primary communication vehicle.

Consumers reap significant benefits when financial institutions are able to reach them quickly and efficiently. Using the autodialers or a prerecorded message, such as the bill allows, is not only a quicker, more cost-effective way, it would also free up loss-mitigation specialists to spend time working with individual borrowers rather than making repetitive manual calls.

While this bill is not a panacea and it certainly will not end every foreclosure, it will, without a doubt, increase our contact rate. And the more people we contact, the more solutions we offer. The equation is very simple: If you increase the amount of customers you reach, you increase the number of workouts and you decrease the number of foreclosures.

In conclusion, Mr. Chairman, in the area of foreclosure prevention, the Mobile Informational Call Act is a positive for consumers and for those working to keep them in their homes. Thank you.

[The prepared statement of Ms. Schwartz follows:]



Statement of Faith Schwartz

Executive Director, HOPE NOW Alliance

Before the

House Energy and Commerce Committee

Subcommittee on Communications and Technology

Hearing on

“H.R. 3035, The Mobile Informational Call Act of 2011”

November 4, 2011

Chairman Walden, Ranking Member Eshoo, Vice-Chair Terry, and Members of the Subcommittee, thank you for the opportunity to testify today. My name is Faith Schwartz. I am the Executive Director of the HOPE NOW Alliance and a co-founder of HOPE Loan Port.

I have served in a leadership capacity at HOPE NOW since 2007, during which time I worked closely with members and partners of the Alliance, including mortgage servicers, investors, non-profit housing counseling partners, government agencies and regulators to help homeowners avoid foreclosure. Before my time with HOPE NOW, I served in various capacities in the housing finance industry for 28 years.

The comments I make today are my own and reflect my experience in the mortgage business and in particular, in working with servicers and counselors attempting to help at-risk homeowners. These comments do not necessarily represent the views of all HOPE NOW members.

I am here today to speak to you specifically about our ongoing foreclosure prevention efforts and the difficulty of reaching borrowers in financial distress.

The financial services industry, and its non-profit and government partners, remains committed to using all of the tools available to assist families, whether they are home retention solutions, short term alternatives or other alternatives to foreclosure.

Since 2007, the mortgage industry has completed 5 million permanent loan modifications for struggling homeowners.

The industry has provided a total of 14.7 million solutions for homeowners that include loan modifications, short term solutions such as repayment plans and forbearance and options such as short sales and deeds in lieu that provide alternatives to foreclosure.

We have allocated considerable resources and collaborated with non-profits and government entities to educate at-risk homeowners about all of their options.

HOPE NOW has held 117 free face to face events across the country since 2008 that have afforded homeowners the opportunity to meet with their servicer or a non-profit counselor in order to find an alternative to foreclosure. Without question, the outreach events have improved the experience of many customers

trying to resolve their mortgage difficulties through a face to face meeting with their loan servicer or counseling through a non-profit agency.

But our exit surveys continue to show that as many as 30% - 40% of those attending had never had contact with their servicer before the meeting. Other surveys have found that 50% of all borrowers who reach foreclosure have not talked to their servicer, despite multiple attempts by the servicer.

The single greatest obstacle to keeping a delinquent borrower in their home is the inability to contact them and make them aware of the workout options available. The breadth and complexity of options, both government programs and proprietary solutions – a full list of which I have included in my written testimony – makes it imperative that homeowners be in contact with their servicer.

But we know from experience, that often borrowers in financial distress do not open mail, cancel their land-line service or increasing rely on wireless phones as their primary or exclusive communications device.

As we see these numbers ever-increasing, with cell phones and text messaging becoming the primary means of communication, it has become clear that the current Telephone Consumer Protection Act (TCPA) has not kept pace with consumer's use of communications technology, and has hindered effective communication between homeowners and servicers.

H.R. 3035, The Mobile Informational Call Act of 2011, attempts to modernize the TCPA by eliminating restrictions on informational calls to mobile phones that serve as an impediment to consumers' real-time access to information, like that from a mortgage servicer.

For twenty years, the TCPA has permitted automated informational calls to be delivered to consumers' wire-line phone numbers, but not their wireless numbers. H.R. 3035 would allow automated commercial calls to mobile phone numbers as long as they do not include marketing messages.

Currently, our primary means of contact are land-lines and mailing invitations to foreclosure prevention outreach events. It is difficult if not impossible to efficiently reach the approximately 40% of consumers who rely on wireless phones as their primary device.

Consumers reap significant benefits when financial institutions are able to reach them quickly and efficiently. Using autodialers or prerecorded messaging, as the bill allows, is not only quicker and more cost-effective, it would also free up loss mitigation specialists to spend their time working with individual borrowers, rather than making repetitive manual phone calls.

While this bill is not a panacea - it will not end every foreclosure - it will, without a doubt, increase our contact rates. And the more people we contact, the more solutions we can offer. The equation is rather simple: if you increase the number of borrowers we can reach, you increase the number of workouts, and decrease the number of foreclosures.

In conclusion, Mr. Chairman, the law as currently written unfairly prejudices borrowers who use cellphones – and makes it more difficult for us to communicate with these borrowers regarding our ongoing outreach and foreclosure mitigation efforts. In the area of foreclosure prevention, The Mobile Informational Call Act is a net positive for consumers and those working to keep them in their homes.

ADDITIONAL INFORMATION:

Foreclosure Prevention: 2007 to present

Today there are nearly three million Americans at least 60 days or more delinquent on their mortgage, and millions more who are still feeling the repercussions of a significant slide in housing prices. Studies and experience has shown that one of two homeowners going to foreclosure never contact their loan servicer in order to find out if an alternative to foreclosure is available. Some may desire to move on and others may not realize there are many effective tools that may assist them to avoid foreclosure.

HOPE NOW

Established in 2007, HOPE NOW is a voluntary, private sector, industry-led alliance of mortgage servicers, non-profit HUD-approved housing counselors and other mortgage market participants focused on finding viable alternatives to foreclosure. HOPE NOW's primary focus is a nationwide outreach program that includes 1) over five million letters to non-contact borrowers, 2) regional homeownership preservation outreach events offering struggling homeowners face to face meetings with their mortgage servicer or a counselor, 3) support for the national Homeowner's HOPE™ Hotline, 888-995-HOPE™, 4) Directing homeowners to free resources through our website at www.HOPENOW.com and

5) Directing borrowers to free resources such as HOPE LoanPort™, the new web-based portal for submitting loan modification applications.

In addition, HOPE NOW also collects data on almost 40 million first lien loans, from all participating servicers, on loan workout solutions; and has publically reported these results on a monthly basis since 2007.

Summary of 2011 3rd Quarter data results:

Total Loan Modifications Since 2007 at 4.86 Million

Permanent proprietary loan modifications for August 2011 were approximately 56,000. Since HOPE NOW began reporting data in 2007, the mortgage industry has completed 4.86 million loan modifications for homeowners. This includes more than 4.06 million proprietary modifications and 791,399 completed under the Home Affordable Modification Program (HAMP) through July 2011.

60+ Days Delinquencies Remained Flat

According to the survey data, the inventory of 60 day plus delinquencies is 2.80 million for August 2011, virtually unchanged from the 2.81 million reported in July.

Foreclosure Sales and Starts Increased Since July

Completed foreclosure sales for August 2011 increased 5% from the previous month (68,000 compared to 65,000). Foreclosure starts increased by 18% for the month (218,000 compared to 185,000).

HOPE NOW Outreach

The HOPE NOW outreach events are broad partnerships that include Making Home Affordable, NeighborWorks® America, Federal Reserve Banks, The GSEs, local task forces and hundreds of volunteers who care deeply about their communities. The homeowner outreach events were first initiated by the industry in early 2008 and since then they have been expanded to include these vital partners.

HOPE NOW has hosted over 100 in-person outreach events across the country since 2008. These events have enabled more than 85,000 families to meet with servicers and counselors to work face-to-face on foreclosure prevention solutions. It is important to note the significant personnel and resource dedication that

mortgage servicers, counselors and partners have made to HOPE NOW events and other outreach events. Outreach events are held throughout the year and there are many individuals that work seven days a week to work with distressed homeowners who want to stay in their home.

Foreclosure Prevention Options

Government programs

In 2007, there were few government resources focused directly on foreclosure prevention. Mortgage servicers and others worked individually and then pulled together through HOPE NOW to meet the challenge, progress was made but the growth of the housing crisis outweighed the response. Since 2008, the Government has taken on a broader role to address the crisis.

Government programs have fallen into the following categories:

- Refinance
- Unemployment Assistance
- Modification
- Short sale and deed in lieu
- Mediation (at the state level)

Some of these programs are more successful than others and it is difficult to measure the full impact of the programs.

- a) **FHA HOPE for Homeowners** was an attempt to assist homeowners who might qualify to refinance to an FHA-insured loan with the participation of servicers and investors willing to write-down the existing loan. It also required the homeowner to share possible future appreciation of the property with the government. There were few loans produced through the program in part because of its complexity. Originators and servicers have not been easy to match up with regard to refinancing higher risk loans and expanding short payoffs.
- b) **Home Affordable Refinance Program (HARP) is the refinance portion of the MHA program** offered by the Fannie Mae and Freddie Mac. It is a first lien refinance program targeted to loans at 80% LTV up to 125% LTV. Essentially, it targeted borrowers who were current on their loan, but at-risk to become delinquent. From April 2009 through November 2010, FHFA

reports 539,597 homeowners refinanced into this program. This is creative and an opportunity to continue reaching borrowers who could not otherwise refinance and may become future foreclosure candidates.

- c) **Making Home Affordable: HAFA** – A short sale and deed in lieu program that focuses on a detailed process for the complicated nature of a “short sale” and deed in lieu product. The effort has key timelines, document and process requirements that need to be followed and extends the timeline for loans for up to 120 days. It includes forgiveness of the deficiency when a borrower sells a property short of value and it offers clarity, accountability and clear expectations of what is required for realtors, servicers, and other stakeholders. Junior lien holders often require more dollars than HAFA supports. Recent adjustments to the program offered by Treasury suggest that this program may be used more in the future because of adjustments made to the requirements to prove hardship or stick to 31% DTI thresholds.
- d) **Making Home Affordable: HAMP** – This is the loan modification program which was rolled out to respond to the growing stress in the housing market. The crisis was deepening. By intervening with a loan modification that was subsidized by the government, it was a change from the previous attempts to modify loans, and was an important step toward creating market standards.
- Standards: Despite criticism for falling short of projected numbers for permanent modifications, HAMP helped create standards that improved methods and transparency on how to achieve affordable and sustainable loan modifications.
 - Increasing Homeowner Awareness: When the United States Government offers a potential solution to the loan modification process, the public listens. The awareness created by the HAMP program helped engage millions of at-risk homeowners in efforts to preserve their home and avoid foreclosure. The existence of the HAMP program helps attract borrowers to seek help. It is still a very valuable way for borrowers to get in the system, even if they do not qualify for a HAMP modification.
 - First line of defense for homeowners: The HAMP program structure requires participating servicers to first review the borrower for HAMP eligibility prior to placing them into alternative modifications. Even if they do not ultimately qualify, borrowers are first assessed for eligibility

for HAMP and then must be considered for other loan modifications or other workouts.

- *Safe Harbor*: HAMP created an industry “safe harbor” for modifying loans. Due to conflicting investor contracts, prior to HAMP it was difficult to identify a consistent “industry standard”. HAMP helped create these standards and common practices. The creation of tools to use in an evaluation “waterfall” and use of a Net Present Value test has transcended HAMP and is a model for servicers to use for proprietary modifications. This may transcend HAMP for other modifications as the process and NPV test provide an “industry standard”.
- Structure created: Through Making Home Affordable, government HAMP modifications introduced clear guidance for the HAMP waterfall, including guidance for working with unemployed or underemployed borrowers- one of the most difficult situations. The protocols on structuring an affordable payment for borrowers include:
 - a. Forbearance (3-6 months) for unemployed borrowers;
 - b. 31% housing DTI split by investors and government dollars from 38%;
 - c. Use of lower interest rate to 2%, extended terms to 40 years, and principal deferral and/or principal write-down;
 - d. If ineligible, servicers must review for proprietary solutions (GSE, other), and if ineligible for that option;
 - e. Servicers must consider HAFA (Home Affordable Foreclosure Alternatives short sale and deed in lieu) or proprietary programs;
 - f. In many instances, foreclosure prevention will then state mediation requirement to review all solutions outside of foreclosure; and
 - g. Foreclosure sale as the final option.
- e) **Treasury: Hardest Hit Funds** - Treasury has also expanded foreclosure prevention programs by creating a Hardest Hit Fund. The Hardest Hit Fund distributed \$7.5 billion dollars to 18 States and the District of Columbia and directed them to set up their own programs to assist unemployed and other at-risk homeowners in the hardest-hit housing markets. When a borrower is unemployed, it is difficult to qualify for a loan modification due to lack of income. State housing finance agencies develop the waterfall for approving borrowers for various means of assistance, including unemployment

assistance, principle write down, and combined funds that may compliment a HAMP modification.

This deployment of dollars should be helpful to assist some homeowners in particularly distressed States where there are few other solutions. However, the states, Treasury, counselors and state housing finance agencies must continue to work with industry to achieve some uniformity to ensure servicers can implement the many variations of programs in the different states. To help share information and increase the ability to execute on these programs, HOPE NOW has played a role in convening the stakeholders to discuss implementation issues. As a reminder, loan servicers need uniform standards and guidelines wherever possible for efficient execution. Each time a program is introduced, the more aligned it is with similar programs in various states with uniform automation, the more successful that new program will be.

f) Other government involvement, state mediation programs - Mediation is a recent development and there are now approximately 26 states that offer some kind of opt-in or opt-out mediation for homeowners. The physical presence of a third party is valuable for this final attempt to bring parties together to prevent a foreclosure. When appropriate mediation is a viable option, however, there is not enough data on mediation programs to make a clear judgment around the best mediation process. For instance, an author for the *Sun Sentinel* newspaper recently reported that Broward County, Florida examined 326 cases via mediation in December 2010 and 17% resulted in written settlements that avoided foreclosure. It is important we study mediation efforts going forward and wisely use our limited funds and human capital to make these most effective nationwide, and maximize assistance to qualified homeowners.

II. Proprietary Solutions/Modifications

The quality and uniformity of proprietary modifications has improved from earlier years of freezing existing rates or capitalizing arrearage and recasting the loan. According to HOPE NOW's 2010 data estimates:

- 84% of all proprietary modifications, from June 2010 through December 2010, had an initial set rate duration of five years or greater.

- 81% percent of proprietary modifications in 2010 had a lower principal and interest payment.
 - 59% of these modifications, from June 2010 through December 2010, reduced principal and interest payments by 10% or more.
- 80% of all proprietary modifications, on average, are performing after 6 months seasoning and are less than 90 days past due. This data looks back over an 18 month period.

Considering all retention plans, workout plans, and permanent modifications, HOPE NOW servicers, and the housing industry, have assisted nearly 14.7 million families since July 2007. While some forms of support are short term (due to short term hardships) and others longer term and permanent solutions, the tools used across the industry have had a meaningful impact on foreclosure prevention for millions of families.

Impact of proprietary loan modifications: The proprietary modifications have been a work in progress pre-HAMP and post-HAMP roll out. The face of proprietary modifications has changed due to some standards set by HAMP and the changing nature of the problem with unemployment and significant increase in defaults on prime loans.

If a borrower is qualified and there is more flexibility with the modification terms (such as documentation or DTI adjustments) then the borrower may be moved swiftly into a proprietary modification (in lieu of foreclosure).

As a reminder, proprietary modifications follow only after a loan is ineligible for a HAMP modification.

Proprietary modifications make up the majority of the total loan modification solutions being offered, providing sustainable, affordable and permanent solutions for borrowers seeking to avoid foreclosure. Additionally, there are no government funds or incentives used for proprietary modifications.

Mr.TERRY. Thank you, Ms. Schwartz.
Mr. Alterman?

STATEMENT OF STEPHEN A. ALTERMAN

Mr.ALTERMAN. Thank you very much.

Good morning, Chairman Walden, Ranking Member Eshoo, and members of the subcommittee. My is Steve Alterman, and I am president of the Cargo Airline Association. We appreciate the opportunity to testify today in support of the provisions of H.R. 3035, the Mobile Informational Call Act of 2011, and we request that our written testimony be made part of the record.

The Cargo Airline Association is the nationwide trade organization representing the interests of the United States all-cargo air transportation industry. That is companies such as FedEx, UPS, DHL, and all those that deliver packages. Members of our association are in the business of picking up, transporting, and delivering packages throughout the world to meet our customers' needs.

At times, our members may need to notify these package recipients of scheduled deliveries or failed attempts to deliver specific packages. Typically, such notifications involve shipments where a signature is required, notifications that shipments are being held for pickup at specified locations, and COD shipments. These calls merely provide customer service and do not contain any solicitation or product marketing.

In today's world, with more and more individuals relying solely on mobile phones, it is becoming even more important to permit informational calls to mobile devices. Indeed, anecdotal evidence in our industry indicates that upwards of 50 percent of all contact numbers provided are, in fact, cell phone numbers. Faced with these facts, the Association and its member companies have a significant interest in the passage of H.R. 3035.

The Association supports the intent of the TCPA in that it aims to restrict unsolicited telemarketing calls to residential and cellular telephones. At the same time, we agree that the TCPA properly grants to the FCC the regulatory authority to enact limited exemptions from this general ban. It has done so to permit non-telemarketing informational calls to landline equipment. And the time has now come to expand that to cell phones.

It is also important to point out that, in the case of customer service calls made by the Cargo Airline Association members, phone numbers are not randomly generated or sequentially generated but are given to the carriers by the package senders, who receive them from the purchasers, presumably so they or the intended recipient can be contacted in the event that they need to be called with information about the package delivery.

By giving the shipper a contact number, the recipient should be found to have authorized calls that to number, whether by the shipper or any other member of the supply chain. For example, if a customer orders an item online and provides a mobile number as the contact number, the consumer obviously consents to the retail merchant contacting with regard to their order, as well as to other parties that facilitate the fulfillment and delivery of that order. This information exchange is purely transactional, and, from the

carrier perspective, the consent significantly boosts the ability to deliver packages efficiently and effectively.

Finally, we believe that it is important that any legislation recognize, to the extent possible, the advancing technology of the modern world. Therefore, to avoid any issues or questions in the future, we respectfully request that the proposed legislation be amended to specifically provide that text messages, in addition to phone calls, be included in the scope of the calls allowed to be made to mobile devices under the terms of H.R. 3035.

In view of all these circumstances, the Association urges the enactment of H.R. 3035 to permit purely informational calls, including text messages, to mobile phones by automated-recording devices. Such action will retain the intended ban on so-called telemarketing calls while authorizing informational calls that are clearly in the public interest.

Thank you very much. I would be happy to answer any questions.

[The prepared statement of Mr. Alterman follows:]

**BEFORE THE
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.**

**Testimony of Stephen A. Alterman
President, Cargo Airline Association
November 4, 2011**

H.R. 3035, The Mobile Informational Call Act of 2011

Good morning Chairman Walden, Ranking Member Eshoo and Members of the Committee. My name is Steve Alterman and I am President of the Cargo Airline Association. We appreciate the opportunity to testify today in support of the provisions of H.R. 3035, The Mobile Informational Call Act of 2011.

Introduction

The Cargo Airline Association is the nationwide trade organization representing the interests of the United States all-cargo air transportation industry.¹ Members of the Association are in the business of transporting cargo throughout the world to meet customer needs. Our members transport approximately 87.4% of domestic Revenue Ton Miles² and sort and deliver millions of packages nightly. At times, our members also may need to notify package recipients of scheduled deliveries or failed attempts to deliver specific packages. Typically, such notifications involve shipments where a signature is required; notifications that shipments are being held for pickup at a specified location; and COD shipments. These calls merely provide a

¹ Association members include ABX Air, Atlas Air, Capital Cargo, DHL Express, FedEx Express, Kalitta Air and UPS Airlines.

² FAA Aerospace Forecast, March 2011, p. 42.

customer service and do not contain any solicitation or product marketing. In addition, some of these calls are made to package recipients that are not the original ordering customer (for example, when a customer is purchasing a gift for an intended recipient).

In today's world, with more and more individuals relying solely on mobile phones, it is becoming even more important to permit informational calls to mobile devices. Indeed, anecdotal evidence indicates that upwards of 50% of all contact numbers provided are, in fact, cell phone numbers. Faced with these facts, the Cargo Airline Association and its member companies have a significant interest in the issues raised by H.R. 3035.

The Existing Statutory Scheme

The Telephone Consumer Protection Act (TCPA) contains the statutory framework for telemarketing and other calls made using automated telephone equipment, providing certain requirements for such automated calls and allowing limited exemptions where automated calls are permitted. In relevant part, Section 227(b)(1)(B) currently makes it unlawful to place a non-emergency telephone call to a residential wireline "using an artificial or prerecorded voice" without the recipient's consent unless the call is "exempted by rule or order of the Commission under paragraph (2)(B)." Paragraph (2)(B) provides certain exemptions to the consent requirement, including an exemption for calls to wirelines "that are not made for a commercial purpose" or "do not include the transmission of any unsolicited advertisement." Section 227(b)(1)(A) of the TCPA, however, prohibits the use of any automated dialing system or an artificial or prerecorded voice to a cellular phone absent an emergency or "prior express consent of the called party," establishing a more restrictive regime for both telemarketing and non-telemarketing automated calls to cellular phones.

The Association supports the intent of the TCPA, in that it aims to restrict unsolicited telemarketing calls to residential and cellular telephones. At the same time, we agree that the TCPA properly grants to the Federal Communications Commission (“FCC” or “the Commission”) the regulatory authority to enact limited exemptions from this general ban. It has done so to permit non-telemarketing, informational calls to “land-line” equipment, but has not done so with respect to mobile phones absent the specific consent of mobile phone user. Left unclear is whether the provision of a cellular phone number to a retail store is sufficient to permit delivery companies who obtain these phone numbers from the retail establishments to contact the customers’ mobile phones with delivery information by use of automated phone calling equipment. Enactment of H.R. 3035 would resolve this ambiguity to permit purely informational calls to mobile phones from companies such as Federal Express and UPS to the intended recipients of goods ordered from retailers.

Congress Should Enact H.R. 3035 to Permit Pre-Recorded Informational Calls to Mobile Phones

As noted above, members of the all-cargo air carrier industry provide a customer service both by notifying recipients of an intended delivery date and by informing recipients that an attempted delivery has failed. In the latter case, such calls may also notify the consumer where a package can be picked up if a delivery has failed. This public service has already been exempted by the FCC from the TCPA with respect to calls to residential wirelines.³ However, the FCC has never expanded this exemption to calls made to cell phones.

Because calls to cell phones may involve a per-call charge to the recipient, the Association recognizes the original sensitivity to providing pre-recorded calls to cell phones. However, the cellular world is changing and Congress should recognize these changes. As a

³ See, for example, FCC 10-18, NPRM, CG Docket No. 02-278, 11, fn. 63.

practical matter, in today's world, there is an ever-shrinking difference between residential wireline phones and cell phones. Indeed, a growing percentage of the population is abandoning residential service and using cellular equipment as the primary service provider. In turn, contracts for cellular service have migrated to mirror contracts for residential service, with most service plans providing for a monthly service charge, rather than a charge for each call. In short, there today is little difference between wirelines and cell phones and the mobile phone ban for informational calls is unnecessary from a financial standpoint.

Moreover, in the case of customer service calls made by Cargo Airline Association members, the phone numbers are not randomly generated, but are given to carriers by the package senders or those placing the orders – presumably so they or the intended recipient can be contacted in the event they need to be called with information about the package delivery.⁴ By giving the shipper a contact number, the recipient should be found to have authorized calls to that number, whether by the shipper or any other member of the supply chain. For example, if a consumer orders an item online and provides a mobile number as their contact number, the consumer obviously consents to the retail merchant contacting them regarding their order, as well as to other parties that facilitate fulfillment and delivery of that order. This information exchange is purely transactional, and from the carrier perspective, the consent significantly boosts the ability to deliver packages efficiently and effectively.

Finally, we believe that it is important that any legislation recognize, to the extent possible, the advancing technology of the modern world. Therefore, to avoid any issues in the future, we respectfully request that the proposed legislation be slightly amended to specifically

⁴ Although air cargo industry members do not use any equipment that randomly or sequentially generates numbers to be called, we support the proposed definitional change to the term “automatic telephone dialing system” to limit the term to equipment that generates and dials random or sequential telephone numbers.

provide that text messages be included in the scope of “calls” allowed to be made to mobile devices under the terms of the H.R. 3035.

Conclusion

In view of all the facts and circumstances described above, the Association urges the enactment of H.R. 3035 to permit purely informational calls, including text messages, to mobile phones by automated recording devices. Such action will retain the intended ban on so-called telemarketing calls while authorizing informational calls that are clearly in the public interest.

Thank you very much. I would be happy to answer any questions.

Mr.TERRY. Thank you, Mr. Alterman.
And Ms. Hand? Thank you.

STATEMENT OF DELICIA REYNOLDS HAND

Ms.HAND. Thank you.

Chairman Walden, Ranking Member Eshoo, Vice Chair Terry, and members of the subcommittee, thank you for inviting me to testify today on the subject of H.R. 3035, the Mobile Informational Call Act of 2011.

I am the legislative director of the National Association of Consumer Advocates. NACA is a nonprofit association of consumer advocates and attorney members who represent hundreds of thousands of consumers victimized by fraudulent, abusive, and predatory business practices.

My testimony today expresses the sentiments of the 12 national consumer protection, civil rights, and privacy organizations who oppose the bill and recently submitted a letter opposing H.R. 3035 to this committee. This letter is included as an attachment to my written testimony.

H.R. 3035 will allow entities to use the automatic telephone dialing system, unaffectionately known as “robocalls,” and automated messages on consumer cell phones under the guise of consent, even though the consumer could never have envisioned such use. Under this new bill, any transaction or relationship will constitute consent to repeatedly call the consumer’s cell phone in perpetuity, even if the consumer does not give out her cell phone number and regardless of whether the consumer asks that she not be called.

Imagine if, after you leave today’s hearing, you stop by a local pharmacy on your way home. While at the counter making your payment, you absentmindedly hand over your phone number. This transaction alone would now suffice as consent to receive a robocall on your cell phone under H.R. 3035.

You have forgotten about this transaction, and a few days later, while you are out at dinner with your family, you receive a call on your cell phone with a robotic voice at the other end thanking you for your recent purchase and verifying that the prescription you picked up is the one you actually wanted. You hang up the phone, but 2 minutes later, from a different number, the same robotic voice is on the line. You hang up again. Two minutes later, yet from a different number, the same voice is on the line. Two minutes later, again the same thing. You get the idea.

This is the reality of thousands of Americans whose cell phone numbers have been entered into the smart-dialer technology that knows when you are likely to answer the phone due to estimating when you are most available.

Currently, the largest debt collectors make more than a million calls in 1 day to consumer cell phones. If H.R. 3035 becomes law in its present form, harassing robocalls on consumer cell phones will become the new norm.

Today, we respectfully urge committee members to be wary of the bill proponents’ motives for the following reasons.

First, debt-collection agencies, creditors, airlines, utilities, and other businesses may already robodial any telephone number, in-

cluding cellular phones, if the number was provided to them by the consumer.

Second, robocalling is also permitted in case of emergencies such as hurricanes and other natural disasters. For example, recently, in the wake of Hurricane Irene, technologies to notify residents of emergency preparedness measures through mass-notification systems were used by municipalities up and down the east coast.

Third, the proponents want to completely gut the important privacy and consumer protections found in the Telephone Consumer Protection Act. They want to strip consumers of any choice as to what phone numbers companies with which they do business may contact them. They want to remove all prohibitions against using robocalls by redefining automatic telephone dialing systems to include only antiquated technology that does not exist in the real world today.

In fact, under the definition provided in H.R. 3035, telemarketers, the original target of the Telephone Consumer Protection Act, would now be able to robocall consumer cell phones because most telemarketers do not use random or sequential dialers; they predictively dial cell phones. They want to prevent consumers from enforcing the demands that unwanted robocalls stop and to prevent State laws and attorneys general from further restricting and enforcing laws regarding these robotic calls.

In conclusion, Mr. Chairman and Ranking Member, I urge this subcommittee not to open Pandora's box of the many unforeseen harmful consequences that will result if H.R. 3035 becomes law in its present form.

Thank you.

[The prepared statement of Ms. Hand follows:]

Testimony before the
U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY

regarding

“HR 3035, The Mobile Informational Call Act of 2011”

November 4, 2011

Testimony submitted by:

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also on behalf of:

The National Consumer Law Center
(on behalf of its low income clients)



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**Testimony of Delicia Reynolds Hand for the
U.S. House of Representatives Committee on Energy and Commerce
Subcommittee on Communications and Technology
Regarding,
“HR 3035, the Mobile Informational Call Act of 2011”
November 4, 2011**

Chairman Walden, Ranking Member Eshoo, and members of the Subcommittee, thank you for inviting me to testify before you today on the subject of “HR 3035, the Mobile Informational Call Act of 2011.

I am the Legislative Director of the National Association of Consumer Advocates (NACA) a non-profit association of consumer advocates and attorney members who represent hundreds of thousands of consumers victimized by fraudulent, abusive and predatory business practices. As an organization fully committed to promoting justice for consumers, NACA's members and their clients are actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means. My testimony today is offered on behalf of and expresses the sentiments of the twelve national consumer protection, civil rights and privacy organizations – such as the Center for Media and Democracy, Consumer Federation of America, National Consumer Law Center, Consumer Action and Americans for Financial Reform – who are among the organizations that recently submitted a letter opposing HR 3035 to this committee.¹ I have included this coalition letter as an attachment to my written testimony. These organizations oppose HR 3035 and urge Congress to oppose this legislation.

Mr. Chairman and Ranking Member, I am here today because HR 3035 will allow entities to use automatic telephone dialing systems, un-affectionately known as “robo-calls” and automated messages on consumer cell phones under the guise of “consent,” even though the consumer could never have envisioned such. Under this new bill, *any* transaction or relationship will constitute consent to repeatedly call the consumer’s cell phone even if the consumer does not give out her cell phone number, in perpetuity, and regardless of whether the consumer asks that she not be called.

Imagine if, after you leave today’s hearing, you stop by the local pharmacy on your way home. While at the counter making your payment, absentmindedly you hand over your cell phone number. This transaction alone would now suffice as consent to receive a robo-call on your cell phone under HR 3035. You’ve forgotten about this transaction but a few days later

¹ A copy of this letter may be found at:
<http://www.naca.net/sites/default/files/HR%203035%20opposition%20letter%2010-27-11.pdf>

while you are out at dinner with your family, you receive a call on your cellular telephone with a robotic voice at the other end, thanking you for your recent purchase and verifying the prescription you picked up is the one you actually wanted. You hang up the call. Two minutes later, from a different number, the same robotic voice is on the line. You hang up. Two minutes later, from a different number, the same robotic voice is on the line. Hang up. Two minutes later, same thing. Two minutes after that, same thing again.

This is the reality of thousands of Americans whose cell phone numbers have been entered into the smart dialer technology that knows when you are likely to answer the phone due to estimating when you are most available.² Harassing robo-calls on consumer cell phones will become the new norm if HR 3035 becomes law in its present form. In the wake of an unprecedented cycle of unaffordable debt triggered by predatory lending and the recession, consumers need increased protection not additional exposure to robo-calls and harassment from debt collectors. Consumers need protection from merchants bombarding their cellular telephones with auto dialed robotic telephone calls.

We respectfully suggest that the committee members be wary of the bill proponents' motives. Debt collection agencies, creditors, airlines and other businesses may already robodial any telephone number, including cellular phones, if the number was provided to them by the consumer. Robo-calling is also permitted in case of emergencies, such as hurricanes and other natural disasters. The proponents want to completely "gut" the TCPA by (1) stripping consumers of any choice as to what phone numbers companies with which they do business may contact them, (2) removing all prohibitions against using robocalls by redefining "automatic telephone dialing system" to include only antiquated technology that does not exist in the real world today (3) preventing consumers from enforcing demands that unwanted robo-calls stop, and (4) prevent state laws, and attorneys general, from further restricting and enforcing laws regarding these robotic calls. These changes are unnecessary, and are designed to permit these robotic voices to invade our lives, wherever we are, no matter how closely we guard our privacy.

The need to modernize the Telephone Consumer Protection Act has been greatly exaggerated; current law already addresses the concerns raised by the supporters of HR 3035. Thus, the primary points that I would like to make today are that HR 3035 is not necessary because:

1. The Telephone Consumer Protection Act already allows businesses to contact consumers for emergency purposes; and,

² For an example of a robo- debt collection call made to the wrong consumer on their cell phone in violation of the



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TCPA sec:

*Delicia Reynolds Hand
National Association of Consumer Advocates*

2. with consumer consent, companies can already contact consumers for any purpose and on any phone number provided by the consumer.
3. The modifications proposed under HR 3035 will only equip and benefit the debt collection industry, one of the most abusive and frequent violators of our consumer protection laws.

Cell phones and today's consumer.

Cellular telephones are uniquely personal devices. They permit others to reach us regardless of where we are, or what we are doing. Cell phones permit us to talk to our children, spouses and grandparents when we are running between meetings; they help us coordinate meetings and check our email. Some of us closely guard our cellular telephone numbers. We give our office or home phone number out to strangers, and keep our cellular number secret, so that only family and close acquaintances are allowed such intimate and immediate access. No phone number would be safe from these calls: creditors and debt collection agencies use sophisticated "skip trace" methodologies to obtain even those cellular telephone numbers that we save for those closest to us. Incessant, unwanted calls at inopportune times are stressful and infringe on our efficiency; a landline will never interrupt you during a job interview, at the theater, during an important presentation at work, or dinner at a restaurant. Robocalls do not know (or care) if they have reached the wrong person, and will continue to ring the phone numbers they are programmed to call until their owner tells them to stop. Under this new bill there is no incentive for owners to do so.

Not only is our time and solitude valuable, most of us pay for our cell phone usage. If we do not prepay at a rate of \$.10 - \$.15 per minute, our cell phone plans include a finite "bucket" of minutes that are depleted as we use airtime. Consumers in today's economy can hardly afford to waste valuable minutes on their cell phones to field robocalls and even text messages from the wave of different companies that will surely seize the opportunity to robocall consumers if HR 3035 is passed.

Given the personal nature of the cell phone and the rising prominence and use of smart phones, today's cell phone is no longer just a device for voice communication. Today's cell phones are highly complex mobile personal computing devices. Consumers use cellular service to: obtain email, search for jobs on the internet, watch movies, read books, play music, talk to business associates and family members, as stopwatches and calculators, to record meetings, take and edit photographs, engage in video conferencing, use Global Positioning Systems (GPS), watch television, even prevent crime with instant abilities to report suspicious activities to law enforcement personnel. The list of potential uses increases every day.

The cellular telephone provisions of the Telephone Consumer Protection Act, as it exists now, are designed to safeguard this personal use and solitude by prohibiting use of robotic automatic dialing equipment and voice messages to consensual and emergency calls. Appreciating the deeply personal nature of the cell phone and anticipating its growing importance in society, Congress specifically prohibited robo-calling on consumer cell phones;

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the legislative history on this is clear, and the Congress' foresight in protecting these privacy rights should not be undone.

HR 3035 will effectively reward industries, like debt collectors, who frequently violate the Telephone Consumer Protection Act with more access to consumers, not less. In 2010, of all the consumer complaints received by the Federal Trade Commission (FTC) and the Federal Communications Commission (FCC), consumer complained most about robocalls and abuses by debt collectors. In the context of highly sophisticated technologies which enable users to locate the exact location of cell phone users and monitor data usage and web browsing patterns, consumer privacy, time and well-guarded solitude are too valuable to allow *carte blanche* access to cell phones.

While it is true that cellular telephone use is expanding, the death of the landline is greatly exaggerated by the bill's proponents. 76.1% of homes still have land lines.³ In the United States, cellular service is still in its infancy compared to countries like Japan and the United Kingdom and it is simply untrue to state that people are not using land lines anymore. Under the current TCPA regulations, debt collectors may (and do) robo-call landline phones as much as they like. The truth is we cannot effectively imagine today how cellular service will be used tomorrow. Though we can certainly be sure cell phones will become even more important for consumers, given the present economic climate many Americans are frequently making choices about where and what to cut and expensive cellular telephone plans are often part of the calculus. Therefore we want to encourage cellular telephone use by allowing consumers full control over how and from whom they receive these calls.

The law currently permits emergency calls to cell phones and consumers can already consent to any other type of calls on their cell phones. HR 3035 is simply unnecessary and potentially harmful.

HR 3035 is unnecessary. It is already permissible to do mass robocalls to any telephone for emergency purposes, regardless of consent. And it is currently legal for businesses to robo-call consumers' landline phones regardless of consent, and to call consumers' cellular telephones if the consumer voluntarily provides that number to the business. There are no prohibitions in the TCPA against human beings calling another human being's cellular telephone. This means that robodialing is allowed when it matters most: when there is a natural disaster or other dire

³ See recent survey by the Centers for Disease Control and Prevention's National Center for Health Statistics, April 20, 2011.

emergency.⁴ And the law also currently permits debt collection calls, too: creditors and debt collectors may already robodial landlines and cellular telephones, as long as the consumer has provided his cellular number to that business. What the law does not currently permit, the FCC has the authority to do. Thus, if something is not currently deemed ‘time sensitive’ or ‘emergency purpose’, the FCC can easily rule to expand what is included as ‘time sensitive’ or ‘emergency purpose.’

Current law facilitates the delivery of time-sensitive information

The suggestion that this bill is necessary in order to facilitate delivery of time-sensitive information is disingenuous. The TCPA already permits use of robocalls to make emergency notifications. Thus, in the case of a true emergency, municipalities, grammar schools, universities, condominium homeowner associations, and anti-terrorism agencies may all permissibly use this powerful technology to call both cellular and landline phones under the “emergency purposes” exception.⁵ For example, in late August of 2011 as Hurricane Irene barreled directly towards the east coast of the United States, states and many local municipalities like Hartford County, Maryland were able to utilize smart dial technologies to notify residents of emergency preparedness measures through mass notifications systems. In a robo-call to local residents announcing the state of emergency, county Emergency Managers were able to provide timely and important information to local residents about emergency shelter and other important information.⁶ This technology is presently in use in many other states.⁷

Similarly, flight changes, notifications about data security breaches, debt collection and other types of calls – for any purpose whatsoever – are permitted under the “prior express consent” exception.⁸ Credit card providers, airlines, doctors, banks, and anyone else can, pursuant to existing law, use automatic telephone dialing systems to deliver prerecorded voice

⁴ The TCPA already explicitly allows emergency calls. Section 227(b)(1)(a) of the Telephone Consumer Protection Act provides:

b) Restrictions on use of automated telephone equipment.

(1) Prohibitions. It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States--

(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice--

⁵ 47 U.S.C. §227(b)(1)(A) making an exception for calls that were “made for emergency purposes.”

⁶ <http://www.daggerpress.com/2011/08/26/hartford-county-declares-state-of-emergency-as-hurricane-irene-looms-patterson-mill-middlehigh-school-to-open-as-shelter-saturday-at-noon/>

⁷ New York State - <http://www.capitalnewyork.com/article/culture/2011/09/3212810/no-seinfeldian-gee-temporary-storm-shelter-john-jay?page=all>; Connecticut - http://articles.courant.com/2011-09-03/news/hc-ed-disasters-congress-20110903_1_relief-funds-tropical-storm-irene-joplin-tornado:

⁸ 47 U.S.C. §227(b)(1)(A) excepting all calls made “made ... with the prior express consent of the called party....”

messages, if they have the consumer's prior express consent. My own financial institution, Wells Fargo Bank, for example, provides clear opportunities for me to enroll in various fraud notification services, as evidenced by its recent announcement.⁹ If I so consent, Wells Fargo will send me emails, text messages, and, yes, even autodialed phone calls. And, even though wading through the different robo-prompts can at times be trying, I have chosen to receive these notifications. The supporters of this bill want to deprive consumers of this choice; they want *carte blanche* to use this equipment to call anyone, for any reason, regardless of consent. Again, there are no prohibitions in the TCPA regarding calls dialed and attended by human beings.

Current law protects consumers because it allows consumers to expressly opt out of receiving information that they deem unnecessary to receive.

Proponents of the bill also suggest that the prior express consent requirement is unclear. This, again, is disingenuous, as evidenced by cross industry comments recently submitted to the FCC in response to a Notice of Proposed Rule Making on the Telephone Consumer Protection Act.¹⁰ The "prior express consent" exception in the TCPA permits consumers to make their own

⁹ https://www.wellsfargo.com/press/2011/20110208_FraudTips

¹⁰ **Comments of Wells Fargo in response to FCC's Notice of Proposed Rule Making on the Telephone Consumer Protection Act, CG Docket No. 02-278; FCC Number 10-18 (May 21, 2010, page 8-9)**

"Over the years since the TCPA was enacted, Wells Fargo has reduced the negative impact of the autodialer restriction by integrating compliance into our day-to-day business practices. For example, to comply with the existing prior express consent requirement, we have been guided by the FCC's consistent findings that: (1) prior express consent to receive an autodialed or prerecorded voice call at a cell number may be given either orally or in writing; and (2) a business may contact a customer at a cell number provided to that business by the customer. Accordingly, we have developed and use application forms that expressly include the customer's consent to be contacted using autodialers or other available technology at any numbers they have provided. Wells Fargo also uses calling scripts during our telephone conversations with prospective and existing customers that request the customers' consent to be called at contact numbers, including mobile numbers that the customers provide. This compliance effort has resulted in Wells Fargo obtaining the consent of many of its customers in accordance with the FCC's guidance over the past several years."

Reply Comments of Cross-Industry Groups - including the U.S. Chamber of Commerce - in response to FCC's Notice of Proposed Rule Making on the Telephone Consumer Protection Act, CG Docket No. 02-278; FCC Number 10-18 (June 21, 2010, page 3)

"Accordingly, the associations oppose extending the written consent requirement to autodialed or prerecorded calls to wireless services. The associations ask the Commission to reaffirm its position that "prior express consent" obtained orally or in writing is sufficient to make autodialed and/or prerecorded non-marketing calls to wireless services."

Comments of The Financial Services Roundtable, The American Bankers Association, and the Consumer Bankers Association, in response to FCC's Notice of Proposed Rule Making on the Telephone Consumer Protection Act, CG Docket No. 02-278; FCC Number 10-18 (May 21, 2010, page 13)

"In complying with the prior express consent requirement, in particular, financial institutions have been guided by the FCC's consistent findings that: (1) prior express consent to receive an autodialed or prerecorded voice call at a mobile number may be given orally or in writing; and (2) a business may contact a customer at a mobile telephone

*Delicia Reynolds Hand
National Association of Consumer Advocates*

determination as to what circumstances they wish to receive these intrusive phone calls on their cell phones and consumers may consent in writing or orally to receive a communication. If HR 3035 is enacted, consumers' ability to expressly consent would be taken away and the caller would unilaterally decide what qualifies as "emergency" or urgent or non-solicitous and will constantly barrage consumers with phone calls – even if the consumer has indicated that she does not want such calls and even if the consumer is charged for the calls.

The current state of the law also permits a consumer that is "fed up" with incessant calls to demand that the calls stop. HR 3035 removes this protection. Thus, if enacted, robocalls may permissibly continue, regardless of the instructions, and wishes, of consumers.

Furthermore, HR 3035 would reduce the express prior consent requirement to an implied consent by broadening the "prior business relationship exemption" to cellular telephones, which the current TCPA does not allow. Adding the exemption of "prior business relationship" would effectively gut the law. Businesses use sophisticated technologies such as customer databases, "skip trace" and caller identification technologies to harvest cellular telephone numbers. Under this bill, once there is any relationship at all between a consumer and a business, the business could call any cellular number, obtained from any source that it believes to be associated with a consumer, to call that consumer for any purpose. It would say, in effect, all cellular telephone numbers are available to be called without permission, and without limits.

If HR 3035 passes and consumer cell phones are flooded with robo-calls, consumers will stop answering their phones. Consumers will find ways to effectively evade these calls and important emergency notifications which can already be made will never be heard.

Consumers do not expect to be inundated with cellular telephone calls as they talk with friends, engage in meetings, attend movies, travel on public transportation, or engage in any the many day-to-day activities we have come to expect, simply because they made the mistake of innocently giving a business their cellular telephone number. If a consumer purchases an item at their local grocer, pharmacy or major retailer, and provides contact information at the point of purchase, this should not be used to manifest consent to receive robocalls from the merchant. It is absurd to think that any consumer would willingly hand over personal cell phone numbers with this expectation and when more consumers learn that Congress is considering a bill that will allow this, consumers will make their feelings known.

number provided to that business by the customer. Accordingly, some financial institutions have created and use application forms that ask customers to designate the numbers at which they wish to be contacted. Some financial institutions also use calling scripts in their telephone conversations with prospective and existing customers that are written to request and obtain contact numbers, including mobile numbers, at which the institutions may contact those customers. These compliance efforts have resulted in an "installed base" of millions of customer consents obtained in accordance with this Commission's guidance over nearly two decades of TCPA implementation orders. There is no evidence, in the record of proceedings before this Commission or elsewhere, that these practices have deceived or abused consumers in any way."

*Delicia Reynolds Hand
National Association of Consumer Advocates*

Proponents are right about one thing. This bill will impact airlines, utilities, pharmacies, and municipalities but it will do so in a negative way. Given the high interest in guarding one's privacy, solitude and time, if the cellular telephones don't stop ringing, consumers will respond. For those whose sanity isn't completely tested by these annoying calls, they will change their telephone numbers or stop answering. The result will be that the urgent, emergency information will get lost in the mix – all the entities here today that would desire to communicate with consumers about data security breaches, natural disasters, etc., will end up in the new cell-phone 'spam-box' to which no one pays attention.

Current law is sufficiently modern, flexible and put in place for reasons that still exist and must be preserved.

Congress first passed the Telephone Consumer Protection Act (TCPA) in 1991 in response to consumer concerns about the growing number of robocalls to their homes and the increasing use of automated and prerecorded messages. Even when cellular telephones were in their infancy, Congress had the foresight to understand the personal nature of this technology, and its incongruence with the impersonal nature of robocall technology.

Congress delegated rulemaking authority to the FCC in its 1991 bill – and the FCC has been busy. Over the past twenty years, the FCC has issued several substantial regulations interpreting the TCPA as to robocalls in 1992, 2003 and 2008. This was after significant public comment and research. These rules were designed to modernize the TCPA to maintain its prohibitions, regardless of Industry attempts to circumvent the law. The FCC has kept the TCPA modern, by ensuring that telephone systems that perform the function of making mass amounts of telephone calls remains regulated. Passage of this bill would redefine "automatic telephone dialing system" in an antiquated way, such that any prohibitions will be completely meaningless because almost no telephone equipment used currently randomly or sequentially picks telephone numbers to dial, and then dials those numbers.

In passing the TCPA in 1991, Congress recognized that technology would change. In 2008, for example, the Association of Credit and Collection Professionals, ACA International, petitioned the FCC to exempt them from the TCPA in placing autodialed and/or prerecorded messages to consumer's cellular telephones. The FCC issued a ruling¹¹ and provided creditors, banks, and debt collectors means in which to place these automated calls, through the requirement of "prior express consent." This ruling demonstrates that the FCC has continually worked with stakeholders to ensure that the TCPA is sufficiently modern and permits broad access to consumers as long as the consumer expressly consents to receive a phone call.

¹¹ FCC January 2008 ruling – "No person or entity may initiate **any telephone call** (other than a call made for emergency purposes or made with the **prior express consent** of the called party) using an automatic telephone dialing system . . . (iii) to any telephone number assigned to a paging service, **cellular telephone service**, specialized mobile radio service, or other radio common carrier service, **or any service for which the called party is charged for the call.**" 47 *CFR* 64.1200(a)(1)

HR 3035 would overwhelm consumer cellular phone with debt collection calls, market research calls and surveys among other kinds of unwanted calls.

Tellingly, the proponents list purported companies that this would impact as, “airlines, pharmacies, utility companies, banks, insurance companies, cable operators, and car dealerships.” However, the proponents make no mention of the real beneficiaries of the bill which are creditors and debt collectors hoping to coerce payment by interrupting the peaceful tranquility consumers have come to expect. Industry literature and even the title of HB 3035 state that the purpose and intent of the bill is to “modernize” the TCPA to permit “informational” telephone calls, and to “improve communication” between creditors and consumers. However, nothing is farther from the truth. Intent is different from impact and, in effect, HR 3035 would legalize automated calls to cellular telephones for all kinds of business purposes, without the consumer having actually agreed.

The current rules are fair and balanced and do not need to be changed. They permit robocalls to people who have provided consent to receive such calls on their cell phone, and permit such calls to any number, regardless of consent, at any time where there is an emergency situation and information needs to be disseminated to a large number of persons extremely quickly. Many robodialers are capable of making more than ten calls per *second – this equals 600 calls per minute, 36,000 calls an hour, 864,000 within a 24 hour day.* Companies that want to access consumers, already have sufficient access.

Rather than providing information, the high number of calls will disrupt constituents’ daily business, negatively impact the positive affect cellular technology has on the stream of commerce, and invade the privacy rights of Americans, quite literally in every corner of the world. Across industries, a number of the industries supporting HR 3035 have acknowledged the negative impact of autodialer technology and have refined their business practices as a result.¹² Another aspect of the insidious nature of this impersonal technology is that robodialers do not

¹² **Comments of Wells Fargo in response to FCC’s Notice of Proposed Rule Making on the Telephone Consumer Protection Act, CG Docket No. 02-278; FCC Number 10-18 (May 21, 2010, page 8-9)**

“Over the years since the TCPA was enacted, Wells Fargo has reduced the negative impact of the autodialer restriction by integrating compliance into our day-to-day business practices. For example, to comply with the existing prior express consent requirement, we have been guided by the FCC’s consistent findings that: (1) prior express consent to receive an autodialed or prerecorded voice call at a cell number may be given either orally or in writing; and (2) a business may contact a customer at a cell number provided to that business by the customer. Accordingly, we have developed and use application forms that expressly include the customer’s consent to be contacted using autodialers or other available technology at any numbers they have provided. Wells Fargo also uses calling scripts during our telephone conversations with prospective and existing customers that request the customers’ consent to be called at contact numbers, including mobile numbers that the customers provide. This compliance effort has resulted in Wells Fargo obtaining the consent of many of its customers in accordance with the FCC’s guidance over the past several years.”

have human judgment, and cannot interact with call-recipients. Thus, for example, if the robocall is dialing the wrong number, there is no mechanism for the recipient to demand that the calls stop.

Similarly, robodialers can (and often do) leave literally hundreds of voice mail messages on cell phone voice mails for “Mary”, even though the consumer’s outbound voice mail greeting says “you have reached Joe.” These consumers are forced to pay for additional minutes to retrieve voice mails, and many cellular telephone companies do not allow consumers to delete messages until they have been played completely, wasting further minutes. None of these situations happen if it is a human being dialing and calling instead of a robot.

HR 3035 is an attempt by the debt collection industry to obtain further access to consumers without properly obtaining their consent and by changing the definition of auto-dialers to an outdated definition that is currently not in use.

Supporters of the bill testifying here today will suggest that the changes proposed in HR 3035 are necessary to facilitate the timely provision of important information to consumers. However, the real purpose of HR 3035 is to allow debt collectors to flood consumer cell phones with robo-calls without expressly obtaining their consent. If there is any doubt that this is the number one priority of the debt collection industry, it is helpful to reference the Association of Credit and Collection Professionals’ Spring 2011’s report ‘Five Essential Strategies to Move the Industry Forward’¹³ where increased access to consumers this so called “modernization” of the Telephone Consumer Protection Act ranked first amongst the ACA International’s priorities. While NACA agrees that consumers should timely pay the debts that they owe, consumers should not have to give up the right to consent to the means and mode by which they are contacted.

In 2006, the Association of Credit and Collection Professionals, now known as “ACA International,” a strong supporter of this bill, sought “clarification” as to whether debt collection calls were “covered” by the TCPA, and whether the newest generation of predictive dialers fell within the statute’s definition of “automatic telephone dialing system.” After extensive public comment and briefing, on January 4, 2008, the FCC ruled against the debt collection industry. It specifically found that robocalls to cellular telephones invaded the cell phone carriers’ privacy, and that industry should not be permitted to evade the TCPA’s prohibitions by coming up with new technology that operates as an automatic telephone dialing system, but does not “randomly” or “sequentially” generate numbers to be called.

HR 3035 was designed to override the FCC’s learned decisions and put an end to any consumer control over who calls their cellular telephone; any solitude that those who carry cellular telephones may have. It would permit any person with any relationship at all with a consumer to call any number they believe to be associated with that consumer, perpetuity, at

¹³ <http://www.acainternational.org/files.aspx?p=/images/18898/finalblueprint-designedversion.pdf>

times when they knew the consumer would be likely to answer. In redefining the definition of an Automated Telephone Dialing system to only include an autodialer, they have purposefully exempted the technology that is the industry standard and that is currently being used by every company, bank, collection agency in order to facilitate collections through the use of a “predictive dialer.” Changing the definition would effectively make the TCPA meaningless. The problem is not random dialing but databases of millions of telephone numbers repeatedly called by a computer without the permission of consumers.

Despite the fact that the collection industry was not able to persuade the FCC – the rulemaking body that knows the technological and privacy issues best – to permit them to use predictive dialers, most collection agencies, and many creditors have continued to use robocalls to dial cell phones, regardless of whether they had consent. As such the debt collection industry now seeks to obtain from Congress what they have failed to obtain from the FCC as the FCC has continually sought to protect and preserve consumers’ privacy and right to choose what calls they would like to receive.

Consumers, consumer advocates, civil rights organizations and privacy advocates urge Members of Congress to oppose HR 3035.

In conclusion I urge Members of this Committee not to open Pandora’s box. Do not to allow this bill to pass. Current law allows the FCC to respond to legitimate needs of consumers and businesses and it is sufficiently modern. No bill is necessary. If HR 3035 should pass, Congress will essentially write businesses a blank check to call consumers on their cellular telephones with no prior express consent and place the burden of rectifying this lack of privacy on the consumers who are being called and not the companies who are in the best position to obtain the requisite consent. Thank you for the opportunity to testify today. If you have any questions or comments regarding this testimony, please feel free to contact me.

APPENDIX I – Consumer Coalition Opposition Letter

November 3, 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

Re: H.R. 3035 (Terry), Mobile Informational Call Act of 2011 (oppose)

Dear Chairman Upton and Ranking Minority Member Waxman:

The undersigned consumer, civil rights, poverty and privacy organizations write to express our strong opposition to H.R. 3035, the Mobile Informational Call Act of 2011. The bill purports to make common sense updates to the Telephone Consumer Protection Act (TCPA) to ensure that consumers know about data breaches, fraud alerts, flight and service appointment cancellations, drug recalls and late payments. But the bill is a wolf in sheep's clothing.

The real purpose of H.R. 3035 is to open up *everyone's* cell phones, land lines, and business phone numbers, without their consent, to a flood of commercial, marketing and debt collection calls (to not only the debtor but everyone else). The bill would effectively gut the TCPA, a widely popular statute that protects Americans from the proliferation of intrusive, nuisance calls from telemarketers and others whose use of technology "may be abusive or harassment."¹⁴ In 1991 Congress found that unwanted automated calls were a "nuisance and an invasion of privacy, regardless of the type of call" and that banning such calls was "the only effective means of protecting telephone consumers from this nuisance and privacy invasion."¹⁵

¹⁴ 47 U.S.C. § 227 note.

¹⁵ Pub. L. No. 102-243, §§ 2(10-13), (Dec. 20, 1991), *codified at* 47 U.S.C. § 227.

*Delicia Reynolds Hand
National Association of Consumer Advocates*

Automated predictive dialers would be exempt from the TCPA, permitting repetitive “phantom” calls to cell phones, doctor’s offices, hospital rooms and pagers. Predictive dialers use a computer to call telephones based on predictions of when someone will answer and when a human caller will be available. They are the source of calls that begin with a long pause and of calls with no one on the other end (if the prediction of the human caller’s availability is wrong.) Since the purpose of predictive dialers is to get someone to answer, computers often call a number repeatedly throughout the day. The TCPA currently prohibits the use of automatic telephone dialing systems to make calls, with certain exceptions, to (1) any emergency telephone line (including 911, hospitals, medical offices, health care facilities, poison control centers, fire protection or law enforcement agencies), (2) guest or patient room of hospital, health care facility, elderly home, (3) pagers or (4) cell phones. H.R. 3035 would revise the definition of “automatic telephone dialing system” so that modern predictive dialers, which do not use random or sequential number generators, would be outside of the TCPA’s protections. Calls could even be made for solicitation purposes unless the telephone number is a residential one on the Do Not Call list.

Businesses could make prerecorded robo-calls to anyone’s personal or business cell phone for any commercial purpose that is not a solicitation, including debt collection, surveys, “how did you like your recent shopping experience,” and “we’ve enhanced our service” – even if you are on the Do-Not-Call list. TCPA currently prohibits robo-calls to cell phones unless the consumer has provided prior express consent. H.R. 3035 would add a new exception permitting robo-calls to cell phones for any commercial call that is not a solicitation. The possibilities are endless. The Do Not Call list protects people only from telemarketing calls, not these other calls. Debt collection calls would be made to the cell phones of friends, family, neighbors, employers, or strangers with similar names or numbers. Families struggling in the current economy will be hounded on their cell phones, even if they have a landline that the collector could call, and even if the call uses up precious cell phone minutes or incurs per-minute charges for those with prepaid phones. Commercial calls for debt collection or other commercial purposes could be made even if the consumer never gave out his or her cell phone number—the business could call if it found the consumer’s cell phone number on Google or by purchasing a list from entities that collect that information.

The bill redefines “prior express consent” to make that requirement meaningless. The TCPA’s restrictions on robo-calls have an exemption for calls made with the consumer’s “prior express consent.” The bill would define that phrase to find “prior express consent” any time a person provides a telephone number “as a means of contact” at time of purchase or “any other point.” Thus, even if the telephone number was provided for a limited, one-time purpose, the business or consumer would be deemed to have consented to robo-calls into the future.

Consumers can already receive cell phone calls (and landline calls) for emergency or informational purposes. The TCPA has existing exceptions from its prohibitions for emergency calls and for calls made with the consumer’s prior express consent. Any consumer who wants to get cell

phone or landline calls about public service announcements, flight cancellations, or anything else is welcome to give their consent. But consumers often prefer to receive such information other ways, such as through email. The purpose of H.R. 3035 is to permit calls to cell phones without the consumer's consent.

Nuisance calls and collection calls on cell phones endanger public safety. Unlike land lines, people carry cell phones with them. They have them while driving and operating machinery. Many people use their cell phones primarily for emergency purposes and rush to answer them when they ring. Opening the floodgates to robo-calls to cell phones endangers public safety. Driving while distracted is always dangerous, but is especially so if the driver becomes agitated by fears that their child is in trouble or by a debt collector calling to harass them.

H.R. 3035 is not only unnecessary, it will effectively gut the Telephone Consumer Protection Act's essential protections against invasion of privacy, nuisance and harassing calls. We urge you to withdraw the bill. For further information please contact Delicia Reynolds at the National Association of Consumer Advocates, 202 452-1989, extension 103, Delicia@naca.net or Margot Saunders at the National Consumer Law Center, 202 452 6252, extension 104, msaunders@nclc.org.

Sincerely,

- | | |
|---|--|
| Americans for Financial Reform | National Association of Consumer Advocates |
| Center for Media and Democracy | National Consumer Law Center (on behalf of its low income clients) |
| Citizens for Civil Discourse (The National Political Do Not Contact Registry) | Privacy Activism |
| Consumer Action | Privacy Rights Now Coalition |
| Consumer Federation of America | Evan Hendricks, Publisher, Privacy Times |
| Consumer Watchdog | U.S. Public Interest Research Group |

cc: Members of the House Committee on Energy and Commerce

Delicia Reynolds Hand
National Association of Consumer Advocates
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Mr.TERRY. Attorney General Zoeller?

STATEMENT OF GREGORY F. ZOELLER

Mr.ZOELLER. I thank you, Mr. Chairman and members.

I appreciate Congressman Terry pointing me out as having spoken out on this in the newspaper. It recognizes that it is very important to the State of Indiana and the people I represent.

I think particularly our focus of concern on H.R. 3035 deals with the proposed areas that deal with preemption. And "preemption" is one of those words that gets the attention of attorneys general. Just in the last day, I have received contacts from the attorney general's office in Connecticut, Iowa, Illinois, Kentucky, North Carolina, North Dakota, Nevada, Oregon, and Tennessee, immediately upon learning that I was coming here. So I recommend to all the Members to please contact your attorneys general in your home States and kind of listen to the boots on the ground that have to represent the consumers of your State.

Over the last 20 years, Indiana has had a very unique experience under our own sense of privacy among Hoosiers. We had an autodialer statute that prevented the use of the technology since 1988, well before it was seen as a problem. We had a do-not-call statute in 2001 that does not allow the exemption of prior business relationships. So, unlike the experience of the Congressman from Texas who says he won't answer the home phone, in Indiana you can still answer your phone because it will not be a telemarketer.

We had a do-not-fax statute in 2006. In this past legislative session, we allowed for cell phones to be added specifically to our do-not-call list. We now have over 2 million lines registered on our do-not-call statute. This past session, after the General Assembly allowed the cell phones, we had 189,000 immediately, within a very short period, sign up for the Do Not Call My Cell Phone.

So, the autodialer law is particularly one where we have the biggest problem. In Indiana, if you get a robocall, it is a scam. And everybody knows it is a scam because it is prohibited. It is the one State where, if you ask the Members of Congress, your colleagues from Indiana, where they do not use robocalling even for the tele-townhalls.

So it recognizes that in Indiana we have a certain appreciation for privacy that may not be common in all 50 States. They are subject to the Federal do-not-call statute that allows for the exemption of the prior business relationship, which I think has desensitized a lot of people, or as your colleague from Texas just simply doesn't answer the phone.

So, due to the success of our laws, the people of Indiana have been very sensitive to this. And, quite frankly, when I have toured the State talking about my trip out here, I heard very specifically some of their passion on this issue.

Another point that I would make is that, in 2010, recognizing that there are questions about political free speech, I asked the three major parties in Indiana to a "Treaty of 2010" where they all agree not to use or encourage the use of telemarketing. And I can report that that treaty was not broken during the 2010 election cycle.

If you look at the history of the Federal statute, starting in 1934, it was really meant to focus on the services and facilities and not really the use in the States. So one of the things that we are asking—and it is not that big an ask—having recently had a Federal court preempt the use of our own State statutes prohibiting autodialing, I would like to ask the committee to take a hard look at the use of the word “intrastate,” which was exactly what the court found allowed for the preemption of things that were interstate.

So, again, having recognized the problems of this case that we submitted in our written testimony, I would ask your staff to take a good, hard look at that case where, 2 weeks ago, Indiana’s robocall statute has now been preempted by the very act of Congress that I see again here in front of us.

So I would grant back the 5 seconds that I have left.

[The prepared statement of Mr. Zoeller follows:]

**BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY**



**Testimony of Attorney General Gregory F. Zoeller
State of Indiana
November 4, 2011
H.R. 3035, The Mobile Informational Call Act of 2011**

Good Morning Chairman Walden, Ranking Member Eshoo and members of the committee. Thank you for giving me the opportunity to speak today. I am here to express my concerns about the Mobile Informational Call Act of 2011 (H.R. 3035) which seeks to amend the Telephone Consumer Protection Act (TCPA). Since my office enforces the TCPA and also enforces state laws concerning telephone solicitations, automated calls, junk faxes and text messages, I want to offer my perspective on the effect of the proposed changes. I also want to suggest a simple alternate change to the TCPA to make clear that state telephone privacy protections are not preempted. My concerns are shared by at least eight of my Attorney General colleagues.

In short, H.R. 3035 will create obstacles to effective enforcement of state consumer protection laws and go far beyond the stated goal of giving debt collectors a new avenue to contact debtors. The State proposes that Congress instead eliminate any suggestion from the TCPA that state statutes regulating interstate telephone and fax harassment are preempted.

For more than 20 years, Indiana has protected its citizens from unwanted telephone calls in several ways: First there was the Autodialer Act passed in 1988. It prohibits most auto-dialed prerecorded message calls, with few exceptions. The Do Not Call law was next in 2001—which is one of the most restrictive Do Not Call laws in the country. We also have a very successful Do Not Fax law, enacted in 2006, which in four years has reduced fax complaints by 93%.

Since the Do Not Call law was passed, more than 2 million Hoosiers have opted for protection from unwanted telemarketing calls from businesses and charities. In 2011, our General Assembly amended the Do Not Call law to add cell phones. This was so popular that I had to extend our registration deadline to allow some 189,000 citizens to add their numbers to the list.

The success of Indiana's no-call law had the unexpected side-effect of making Hoosiers more sensitive to autodialer calls, especially political calls. Our office has filed lawsuits against political robo-callers, which led to Indiana's three main political parties coming together to sign the "Treaty of 2010," where they pledged not to use autodialers to bother Hoosier voters.

The changes proposed in H.R. 3035 will create obstacles to effective enforcement of state consumer protection laws. These changes go far beyond the stated goal of giving debt collectors a new avenue to contact debtors. H.R. 3035 proposes to remove the non-preemption clause in the TCPA and replace it with a wholesale preemption of all state telemarketing, autodialer and fax laws. To understand what a radical change H.R. 3035 proposes, you have to first understand the history of both the Federal Communications Act of 1934 and the Telephone Consumer Protection Act of 1991. The FCA is primarily concerned with regulation of telephone *services* and *facilities*. Understandably, you need regulation for a nation-wide and world-wide system of communication *transmission* to work properly. However, prohibiting telephone abuses, such as harassing, obscene or fraudulent calls, even if they cross state lines, has always been the terrain of the States, which even the FCC has recognized.

Previous efforts to preempt states under the TCPA have been largely unsuccessful. At the direction of Congress, the FCC created the national Do Not Call program in 2003. At that time, the FCC speculated that state laws that imposed greater restrictions on interstate calls might be preempted, and it invited petitions seeking preemption of state laws. After receiving several petitions and thousands of comments, the FCC never ruled on this issue. After nearly seven years, it is reasonable to infer that the FCC has concluded that the TCPA does *not* preempt State laws prohibiting interstate telephone harassment.

Rather than gutting state regulation concerning harassing calls and faxes, Congress should be strengthening it. While preemption of such state laws has not been a problem up to

this point, Indiana's recent litigation experience demonstrates that States and their residents cannot take their residential privacy protections for granted any longer. Last year, a group called Patriotic Veterans filed suit to enjoin enforcement of the Autodialer law. A federal court recently ruled that the TCPA preempts our Autodialer law. I believe that ruling is wrong and I'm appealing it to the 7th Circuit.

The best way for Congress to eliminate uncertainty concerning preemption of state telephone and fax harassment laws is to remove the word "intrastate" from 47 U.S.C. § 227(f)(1). This modification would eliminate any distinction between interstate and intrastate laws, and thereby clarify that *no* state laws are preempted by the TCPA, even as applied to interstate calls. This slight modification should convince telemarketers and courts alike that States have every right to stop the invasion of residential privacy, and the imposition of costs on consumers by means of telephones and fax machines.

Consumer protection, including protection against deceptive trade practices and privacy invasions that occur by telephone, has long been within the states' traditional police powers. As the chief law enforcement officers of our states, we regard the protection of our consumers from unfair and deceptive trade practices as one of our top law enforcement priorities. States have always been on the front line, enacting and enforcing laws to address new forms of deception and intrusion affecting consumers. Indeed, states have traditionally served as laboratories for the development of effective laws and regulations to protect consumers and promote fair competition. Congress should use this opportunity to strengthen state authority in this important area rather than boost the prospects of those who would use the telephone to bother consumers.

Thank you for the opportunity to testify today.

A detailed analysis follows:

1. Background regarding Indiana’s regulation of harassing calls and faxes

Indiana protects its citizens from unwanted telemarketing calls in three ways. First, in 1988, the General Assembly enacted the first of these by banning, absent the consent of the call recipient, calls that deliver prerecorded messages by way of autodialers. *See* Ind. Code § 24-5-14-5 (“Autodialer Law”). The Autodialer Law sweeps within its ambit *all* autodialed, prerecorded calls (with narrow exemptions), including survey calls, political-campaign calls, and collection calls to persons with whom the debt collector has no business relationship: “A caller may not use or connect to a telephone line an automatic dialing-announcing device . . .” that delivers a prerecorded message. *See* Ind. Code § 24-5-14-5(b).

Second, in 2001, the General Assembly enacted a second level of protection—upheld in *National Coalition of Prayer, Inc. v. Carter*, 455 F.3d 783, 790 (7th Cir. 2006)—permitting citizens to register with the Attorney General their preferences not to receive “telephone sales calls.” “Telephone sales calls” means only calls peddling “consumer goods and services” or soliciting “a charitable contribution.” Ind. Code §§ 24-4.7-2-9, 24-4.7-4-1. Telemarketers may not, without consent, make telephone sales calls—no matter how dialed—to registered residential telephone numbers. *See* Ind. Code § 24-4.7-2-9 (the “Telephone Privacy Act” or “do-not-call” law). In 2011, the Telephone Privacy Act was amended to add wireless and VOIP telephone numbers to the protection of the Indiana Do-Not-Call list, and to expand the definition of a telephone sales call to include text messages. *See* P.L.226-2011, Sec. 11-12.

Finally, in 2006, the Indiana General Assembly enacted the Do Not Fax Act making the sending of an unsolicited fax advertisement a deceptive act under Indiana law. Ind. Code § 24-5-0.5-3(a)(19).

2. Background regarding federal regulation of harassing calls and faxes

To understand what a radical change H.R. 3035 proposes, one must understand the history of both the Federal Communications Act of 1934 and the Telephone Consumer Protection Act of 1991.

Regulation of telephone harassment and fraud, as distinct from regulation of telephone *services* and *facilities* constitutes an area of traditional state concern. For while Congress and the FCC have long asserted primacy over the physical and pricing components of interstate transmission of telephonic messages, it has not historically regulated the content of such messages. Indeed, the underlying regulatory rationale of the Federal Communications Act of 1934 is to ensure a “rapid, efficient Nation-wide, and world-wide, wire, and radio communication *service* with adequate *facilities* at reasonable charges” 47 U.S.C. § 151 (emphasis added). The FCA applies to “all interstate . . . communication by wire,” 47 U.S.C. § 152(a), where the term “communication by wire” is expressly defined to mean only “the *transmission* of writing, signs, signals, pictures, and sounds of all kinds by aid of wire . . . between the points of origin and reception of such transmission, including all *instrumentalities, facilities, apparatus, and services* (among other things the receipt, forwarding and delivery of communications) incidental to such transmission.” 47 U.S.C. § 153(59) (emphasis added). Thus, the power to regulate interstate communication by wire is only the power to regulate interstate transmission, not the content of the communication, the conduct of the communicator, or the protection against injuries caused by harassing or fraudulent communications. *See La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 360 (1986) (discussing the dual system of state and federal regulation of telephone *service*); *see also City of New York v. FCC*, 486 U.S. 57, 65 (1988) (holding that the FCC has preempted state laws regarding *technical standards* for cable

television signals).

Accordingly, prohibiting telephone abuses, such as obscene or fraudulent calls, even if they cross state lines, has long been the terrain of the states. *See* Ind. Code § 35-45-2-2 (prohibiting harassment by obscene messages); Ind. Code § 24-5-0.5-1 *et seq.* (Indiana Deceptive Consumer Sales Act). *See also* *People ex rel. Spitzer v. Telehublink Corp.*, 756 N.Y.S.2d 285 (N.Y. App. Div. 2003) (undertaking state consumer protection enforcement action where violation occurred via interstate telephone calls); *Commonwealth v. Events Int'l, Inc.*, 585 A.2d 1146, 1148, 1151 (Pa. Commw. Ct. 1991) (same).

Even the FCC has expressly acknowledged that “states have a long history of regulating telemarketing practices.” In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, 18 F.C.C.R. 14014, at 14060 ¶ 75 (Jul. 3, 2003) (hereinafter, “2003 FCC Report”). And it has stated that “the Communications Act does not govern” issues related to consumer protection. In re Policy and Rules Concerning the Interstate, Interexchange Marketplace, 12 F.C.C.R. 15014, at 15057 ¶ 77 (Aug. 20, 1997) (emphasis added).

Laws restricting telemarketing, robocalling, and faxing regulate caller conduct and are related to consumer protection, not communication service. They do not interfere with Congress’ goal of providing a rapid, efficient, reasonably priced national telecommunications service, even when applied to interstate calls. They do not regulate the provision of telephone services, the physical facilities of telephone services, or the price of telephone services. They merely protect residential privacy and the imposition of unwanted costs on consumers, which are traditional concern of the states. Indeed, Indiana is not alone in its concerns about telemarketing calls in general and autodialed phone calls in particular. By 1991, more than 40 separate states had enacted legislation restricting autodialing devices and unsolicited telemarketing. *See* S. Rep. No. 102-178 (1991), *reprinted in* 1991 U.S.C.C.A.N. 1968, 1970.

Recognizing the concerns motivating these laws, Congress enacted the TCPA in 1991 to supplement state laws. *See* S. Rep. No. 102-177, at 1-3. In doing so, Congress noted that less than 0.01% of the population “likes” receiving telemarketing calls. The TCPA enacted a few restrictions against using autodialers (such as to call hospital emergency rooms) and sending unsolicited faxes and authorized the FCC to consider regulations to protect individual telephone privacy. *See* 47 U.S.C. § 227(b)(1)(A)(i), (b)(1)(C), (b)(2) (1991). The FCC responded with a rule requiring telemarketers to maintain company-specific no-call lists, which proved a monumental failure in the protection of residential privacy. *See, e.g., F.T.C. v. Mainstream Mktg. Services, Inc.*, 345 F.3d 850, 858-59 (10th Cir. 2003).

Because the TCPA was designed to supplement state law rather than supplant it, nothing in the text of the TCPA purports to preempt state laws governing harassing interstate telephone calls. To be sure, TCPA legislative findings and history suggest that some Senators erroneously *assumed* that states were already precluded by the FCA from regulating interstate telemarketing calls. *See* S. Rep. No. 102-177, at 3 (1991); *see also id.* at 9 (“Federal action is necessary because States do not have the jurisdiction to protect their citizens against those who [place] interstate telephone calls.”); 137 Cong. Rec. S16204, 16205 (1991) (statement of Sen. Hollings) (“State law does not, and cannot, regulate interstate calls.”); 105 Stat. at 2394 (“Over half the States now have statutes restricting various uses of the telephone for marketing, but telemarketers can evade their prohibitions through interstate operation.”). Yet even these statements are ambiguous and likely refer to enforcement difficulties rather than preemption difficulties. Even if they mistakenly assume prior preemption, that mischaracterization does not *itself* create preemption—or a preference for nationally uniform regulation—not already extant.

In fact, to the extent Congress erroneously assumed that some preemption of state law might already exist, the TCPA expressly disclaimed it:

(f) Effect on State law**(1) State law not preempted**

Except for the standards prescribed under subsection (d) of this section and subject to paragraph (2) of this subsection, nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulations on, or which prohibits--

- (A) the use of telephone facsimile machines or other electronic devices to send unsolicited advertisements;
- (B) the use of automatic telephone dialing systems;
- (C) the use of artificial or prerecorded voice messages; or
- (D) the making of telephone solicitations.

47 U.S.C. § 227(f)(1).

3. Efforts to preempt states under the TCPA have been unsuccessful until recently

Under the TCPA, in 2003 the FCC issued a rule creating a federal do-not-call program. *See generally* In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order, 18 FCC Rcd. 14014 (2003) (hereinafter, "Report and Order").

In that Report and Order, the FCC declined to preempt state laws itself and acknowledged that the non-preemption clause quoted above may protect any state laws prohibiting interstate calls. *See* 2003 FCC Report, at ¶ 60. Yet it speculated that "any state regulation of interstate telemarketing calls that differs from our rules almost certainly would conflict with and frustrate the federal scheme and almost certainly would be preempted," and invited petitions seeking preemption of state laws. Report and Order ¶ 84. Its inaction since then, however, demonstrates that the FCC has likely been persuaded otherwise.

In 2004 and 2005, several telemarketing interests asked the FCC to declare Indiana's Do-Not-Call Law preempted under the TCPA. *See* Petition for Declaratory Ruling, *In re Consumer Bankers Association*, FCC CG Docket No. 02-278 (filed November 19, 2004) (seeking declaratory ruling declaring Indiana telemarketing laws preempted by FCC rules); Joint Petition for Declaratory Ruling, *In re Alliance Contact Services*, FCC CG Docket No. 02-278 (filed April 29, 2005) (seeking declaratory ruling stating that FCC has exclusive regulatory jurisdiction over interstate telemarketing). The FCC received thousands of comments on these petitions, not only from commercial speakers but also from groups whose messages would constitute core speech protected by the First Amendment. *See generally* FCC CG Docket No. 02-278. In the face of briefing by Indiana (and other States) and various consumer protection advocates, the FCC has ignored its own rulemaking rhetoric and apparently found TCPA preemption arguments so unconvincing that it has *never even bothered to rule* on these petitions. After nearly seven years, it is reasonable to infer that the FCC has concluded that the TCPA does not preempt State laws prohibiting interstate telephone harassment, yet has decided to allow the petitions to die quietly rather than to announce that its initial assumptions were incorrect.

What is more, Congress and other federal agencies have already ensured that there is *not* a uniform national telemarketing policy. *See* 15 U.S.C. § 6102 (authorizing the FTC to create a different set of rules for telemarketing on behalf of charities); 16 C.F.R. § 310.7(b) (expressly *not* preempting state telemarketing laws with respect to charities); *see also* 47 U.S.C. § 227(f)(1) (expressly acknowledging that states will continue to “regulat[e] . . . telephone solicitations,” after a federal do-not-call system is established); 47 U.S.C. § 227(c)(3)(J) (requiring that any FCC database “*shall . . . be designed to enable States to use the [Commission’s database] . . . for purposes of administering or enforcing State law*”) (emphasis added).

Against this backdrop it is no surprise that almost every court to have considered the

matter has rejected the argument that the TCPA preempts state telephone harassment laws as applied to interstate calls. See *Int'l Sci. & Tech. Inst., Inc. v. Inacom Communications, Inc.*, 106 F.3d 1146, 1153 (4th Cir. 1997) (“Congress stated that state law is not preempted by the TCPA.”); *Van Bergen v. Minnesota*, 59 F.3d 1541, 1548 (8th Cir. 1995) (“[T]he [TCPA] includes a preemption provision expressly *not* preempting certain state laws.”) (emphasis added); *State ex rel. Stenehjem v. FreeEats.com, Inc.*, 712 N.W.2d 828, 834-35 (N.D. 2006) (“[R]ead logically and grammatically, the [savings clause] states that nothing in the TCPA preempts . . . any state law ‘which prohibits’ calls within the enumerated list.”), *cert. denied*, 549 U.S. 953 (2006); *Utah Div. of Consumer Prot. v. Flagship Capital*, 125 P.3d 894, 898 (Utah 2005) (holding that the TCPA did not preempt Utah’s autodialer law).

Nonetheless, Indiana is currently embroiled in litigation where a federal district judge has declared Indiana’s autodialer law, Indiana Code section 24-5-14-5, preempted by the TCPA. See *Patriotic Veterans, Inc. v. State ex rel. Zoeller*, No. 1:10-cv-723-WTL-TAB, 2011 WL 4479071 (S.D. Ind. Sept. 27, 2011). In *Patriotic Veterans*, Judge Lawrence cited no text from either the FCA or the TCPA that preempts state law, but instead ruled that the TCPA non-preemption clause quoted above (47 U.S.C. § 227(f)(1)), *implicitly* preempted Indiana’s autodialer law as applied to interstate calls conveying political messages. *Id.* at *2, *4. This ruling is plainly in tension not only with other TCPA precedents cited above, but also with Supreme Court authority that requires lower courts to presume that there is *no* federal statutory preemption, and that this presumption can be overcome only by an *affirmative* statement of preemption, *not* by negative implication. See, e.g., *Altria Group v. Good*, 555 U.S. 70, 77 (2008). Accordingly, Indiana is appealing this one-of-a-kind ruling, and has asked the district court for a stay of its injunction pending appeal.

4. Indiana's success in regulating harassing telephone calls and faxes

It is important to observe that the *Patriotic Veterans* lawsuit has come about precisely because Indiana has such an effective matrix of laws that prohibit telephone harassment. Indiana is known for its strict protection of residential privacy from telemarketers. Since 2002, the Attorney General has fielded 27,577 valid complaints under the Telephone Privacy Act and Autodialer Law. Of these, 4,668 have been settled via an Assurance of Voluntary Compliance, 21,488 have been resolved by other means, and investigations are ongoing in 1,401. When it comes to restricting telephone sales calls, Indiana's Telephone Privacy Act "is one of the best in the country because it has so few exemptions." Maureen Groppe, *National no-call list may be lax*, The Indianapolis Star, Feb. 28, 2003 (citing views of Bob Bulmash of Private Citizen).

Scientific survey evidence confirms the efficacy of the Telephone Privacy Act. Shortly after the Telephone Privacy Act became enforceable in 2002, Dr. Tom W. Smith, the Director of the General Social Survey Program at the National Opinion Research Center and a leading international expert on the design and conduct of surveys, collaborated with Walker Information to design and conduct a survey to determine the impact of the Telephone Privacy Act on the level of telemarketing calls in Indiana. The survey showed that for people on the do-not-call list, calls on average declined from 12.1 per week (demonstrating the existence of the original telemarketing problem) to 1.9 per week post-enforcement, a decline of over 80%. By way of comparison, non-registered households continued to receive 7.7 calls per week post-enforcement. This led Dr. Smith to conclude that the Telephone Privacy Act "led to a huge decline in telemarketing calls, remains highly successful, and is extremely effective."

The popularity of the do-not-call law has only increased over time. In July 2008, the do-not-call list contained 1,957,697 numbers, approximately 75.5% of Indiana households. On

October 1, 2011, Indiana's no-call registry contained 2,068,589 unique telephone numbers. Indeed, the recent amendment to state law permitting registration of cell and VOIP numbers proved so popular that the Attorney General decided to extend the third quarter registration deadline for the Do-Not-Call list from May 17 to May 23, 2011. The end result was 189,253 new numbers registered on the third quarter list that took effect on July 1, 2011. Plainly, Hoosiers take very seriously their right to refuse calls from telemarketers.

The success of the Indiana no-call-law has had an unexpected side-effect related to autodialers. With the airwaves cleared of telephone sales calls, the unlawful use of autodialers by political interest groups (whose purely political messages are not "telephone sales calls" governed by the no-call law) became impossible to ignore. In 2006, after receiving complaints from citizens about the use of autodialers by political groups to send pre-recorded messages, the Attorney General warned Indiana's political parties that they could expect enforcement actions if they violated the Autodialer Law. When the Attorney General received yet more complaints in the months prior to the November 2006 election, he filed lawsuits against several responsible entities and individuals.

These lawsuits generated further negative publicity for political groups who use autodialers to call Indiana residents and hardened the will of Hoosiers not to tolerate such calls. Of the 8,799 valid complaints received since January 1, 2009, 4,553, or 51.7%, have reported the use of autodialers. In the last two years alone, of 10,376 valid complaints filed with the Office of Attorney General about unwanted telemarketing, 72% have come from autodialed calls, emphasizing Hoosier unwillingness to accept such intrusions. In view of the profound unpopularity of autodialed, pre-recorded calls, including those conveying political messages, Indiana's three main political parties came together on January 5, 2010, and signed what has become known as the "Treaty of 2010," whereby each pledged not to use autodialers. Plainly,

politicians and political interest groups take a tremendous risk of incurring public wrath when they use autodialers and pre-recorded messages to contact Indiana residents. One consequence may be that the only groups willing to use this technology will be those dedicated to disguising the source of the call.

5. Rather than replace the TCPA's non-preemption clause, Congress should make only a slight change to clarify that federal law does not preempt state law regulating harassing telephone calls and faxes

As currently drafted, HR 3035 would eliminate the savings clause in 47 U.S.C. § 227(f) and replace it with the following text: "No requirement or prohibition may be imposed under the laws of any State with respect to any subject matter regulated under this section, except for telephone solicitations." This text would cause many problems for state enforcement of telephone privacy laws and expose Indiana residents to untold residential privacy interruptions.

To begin, this text is vague. What, exactly, is the "subject matter regulated under this section"? Does it include, for example, calls conveying political messages, which the TCPA expressly disclaims as a subject of regulation? And how far does the purported exception "for telephone solicitations" extend? Does it include fax or text message solicitations? Does it permit states to regulate solicitation calls by charities, when state law defines such calls to be "telephone solicitations"? And does this exception preclude arguments that state laws regulating telephone solicitations are preempted by other components of the Federal Communications Act? Does it prevent states from imposing fines or bringing actions in state courts? Particularly in light of the State's extensive experience defending Indiana's telephone harassment laws from preemption attacks, there is no doubt that such loose language could be twisted even by unskilled lawyers in ways Congress does not intend.

Second, on its face this proposed text would preempt many applications of state laws concerning junk faxes, unwanted text messages and automated calls, and possibly application of no-call registry laws to charities. In this regard, H.R. 3035 not only demeans the principles of federalism that have worked for so long; it also ignores decades of success with dual regulation in many areas of consumer protection. And to the extent it precludes some applications of state no-call registry laws, it would even override the express requests of individuals not to be bothered in their homes. People have the right to protection of residential privacy. *Frisby v. Schultz*, 487 U.S. 474, 484 (1988) (“The State’s interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society.”) (quoting *Carey v. Brown*, 447 U.S. 455, 471 (1980)). Callers, on the other hand, do not have the right to call those who do not want to be called, no matter the subject of the call. *See, e.g., Nat’l Coal. of Prayer, Inc. v. Carter*, 455 F.3d 783, 790 (7th Cir. 2006); *Bland v. Fessler*, 88 F.3d 729, 735 (9th Cir. 1996); *Van Bergen v. Minn.*, 59 F.3d 1541, 1551-53 (8th Cir. 1995).

Rather than vitiating state regulation concerning harassing calls and faxes, Congress should be strengthening it. While preemption of such state laws has not been a problem up to this point, Indiana’s recent litigation experience demonstrates that states and their residents cannot take their residential privacy protections for granted any longer.

The best way for Congress to eliminate uncertainty concerning preemption of state telephone and fax harassment laws is to remove the word “intrastate” from 47 U.S.C. § 227(f)(1), as follows:

(f) Effect on State law

(1) State law not preempted

Except for the standards prescribed under subsection (d) of this section and subject to paragraph (2) of this subsection, nothing in this section

or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive requirements or regulations on, or which prohibits--

- (A) the use of telephone facsimile machines or other electronic devices to send unsolicited advertisements;
- (B) the use of automatic telephone dialing systems;
- (C) the use of artificial or prerecorded voice messages; or
- (D) the making of telephone solicitations.

This modification would eliminate any textual distinction between interstate and intrastate laws, and thereby clarify that *no* state laws are preempted by the TCPA, even as applied to interstate calls. And while it would be even better to go the next step and clarify that nothing in the Federal Communications Act restricts interstate application of state laws regulating telephone harassment, the slight modification suggested above should suffice to convince telemarketers and courts alike that states have every right to preclude invasions of residential privacy, and impositions of costs on unwitting consumers, by means of telephones and fax machines.

Mr.TERRY. That is appreciated.
Mr. Altschul?

STATEMENT OF MICHAEL ALTSCHUL

Mr.ALTSCHUL. Good morning. And thank you, Mr. Terry, Ranking Member Eshoo, and members of the subcommittee. On behalf of CTIA, I thank you for the opportunity to participate in this morning's hearing.

CTIA was here and proud to support the original TCPA 20 years ago, and we welcome the introduction of this bill, H.R. 3035, as we believe it helps illustrate how profoundly the wireless industry has changed over the past 20 years.

A number of you in your statements have talked about the phenomenal growth and acceptance of wireless. I thought for show-and-tell I would bring the state-of-the-art phone from 1992. And 1 month after the TCPA was passed into law, Motorola's MicroTac Lite was introduced to the public in January. This claimed to be the first phone that you could fit into your pocket—it required quite a pocket—and cost as much as \$2,500. And, by the way, service prices in 1992, on a permanent basis, were 10 times higher than they are today.

So, obviously, over the past 20 years, there has been phenomenal change and growth in the industry and Americans' acceptance of wireless. We have gone, as you know, from 7 million to over 300 million subscribers. And we are proud as an industry that America now leads the world in delivering next-generation wireless services at a lower price per minute of use than in any other country in the developed world.

For the purposes of today's hearing, it is perhaps this point—how wireless has been adopted as the primary source of communications for millions of Americans—that may justify a fresh look at the TCPA restrictions on the delivery of informational calls to mobile devices and the challenge we all face in crafting a law that will permit wanted commercial communications while preventing unwanted communications.

Others have noted how more than 25 percent of Americans have cut the cord. In some locations, the numbers are substantially higher, as high as 40 percent. Obviously, this shift creates challenges for companies and government agencies that want to provide informational calls to individuals who are not reachable in any other way and may value timely notifications of the kinds of alerts and information that others on the panel have described.

I want to focus the remainder of my time on three issues of unique importance to the wireless industry.

First—and it is a personal peeve of mine—along with customers, wireless carriers are victimized by violations of the TCPA by unscrupulous boiler-room operators seeking to sell extended car warranties and the like. In cases where they can locate and identify the source of these messages, wireless carriers have vigorously brought suit to shut down these scams. And we are proud that we have cooperated with State attorney generals and the Federal Trade Commission in investigating and prosecuting TCPA cases.

Unfortunately, while we do all we can to identify and shut down TCPA violations, the FCC continues to catalog TCPA reports as

wireless complaints. We believe it is unfair for the Commission to count these complaints, which originate outside the wireless network and have nothing to do with wireless carriers' conduct and behavior, as wireless complaints in their quarterly reports. And, for this reason, we urge the subcommittee to compel the FCC to disaggregate TCPA data from reporting of wireless complaints.

Second, the FCC has an open proceeding in which it has sought comment on proposals to harmonize its TCPA rules with the FTC's telemarketing sales rules. In this proceeding, we are concerned that requiring wireless carriers to obtain their customers' express written consent to receive autodialed or prerecorded non-marketing calls could overturn the Commission's precedent permitting wireless carriers to send free-to-the-end-user calls and messages to their customers without additional consent.

As you may know, the industry has recently committed to deliver usage notifications to wireless users when they near plan thresholds to prevent bill shock and overage or international roaming charges, and we don't want anything to interfere with our ability to do that.

Third and finally, there have been a series of class-action lawsuits filed against Twitter; Facebook; banks, including Barclays and American Express, that threaten the industry's efforts to protect privacy and comply with the Mobile Marketing Association's consumer best practices. These suits allege that the best practice of sending a text message to confirm receipt and acceptance of a customer's request to quit or stop violates the TCPA. It is unreasonable, and it is another matter we would like this committee to look into.

So thank you for your consideration of these suggestions.
[The prepared statement of Mr. Altschul follows:]

Testimony of
Michael Altschul, General Counsel, CTIA – The Wireless Association®
before the House Subcommittee on Communications & Technology
regarding the Mobile Informational Call Act of 2011
November 4, 2011

Good morning Chairman Walden, Ranking Member Eshoo, and members of the Subcommittee. On behalf of CTIA – The Wireless Association®, thank you for the opportunity to participate in this morning’s hearing on the Mobile Informational Call Act.

CTIA was proud to support the original Telephone Consumer Protection Act, and we welcome the introduction of H.R. 3035 by Representatives Terry and Towns, as we believe it helps to illustrate just how profoundly the wireless industry has changed over the last twenty years. These changes have been momentous, as wireless has evolved from a niche voice service to the primary source of broadband communications for millions of Americans. The U.S. wireless industry now leads the world in delivering next generation wireless services, and America’s wireless consumers enjoy lower prices per minute of use than their counterparts in Europe, Canada, Japan, or South Korea. For purposes of today’s hearing, it is perhaps the first of these points, the adoption of wireless service as the primary source of communications for millions of Americans, and the changes that have flowed from innovative rate plans and the greater affordability of wireless service, that may justify a fresh look at the TCPA’s restrictions on the delivery of informational calls to mobile devices.

When the TCPA was enacted in late 1991, there were roughly seven million wireless subscribers in America, taking voice-only service from two “cellular” carriers in each market, and prices, on a per minute basis, were ten times higher than they are today.¹ In addition, because cellular calls originally were excluded from the prevailing system of intercarrier compensation, wireless customers were charged for all calls to and from their wireless phone. Almost twenty years

¹ The Federal Communications Commission’s 15th Annual Wireless Competition Report, at Table 20, shows that the average revenue per minute fell from approximately 44 cents per minute in 1993 to five cents per minute in 2009. This number continues to fall, as Bank of America Merrill Lynch recently published a figure of three cents as the average revenue per wireless minute in the US, down from their previously-published estimate of four cents as of year-end 2010. See Glen Campbell, Bank of America Merrill Lynch, 3Q Global Wireless Matrix, published September 28, 2011, at 2.

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later, there are more than 300 million wireless subscribers, many of whom rely on their wireless phones not only for voice services but also for texting, Internet access, and an expanding range of wireless broadband services.

Because of the real reduction in the price of a wireless call, the popularity of rates plans that offer “buckets” of minutes and unlimited calling on nights and weekends, innovative devices and applications, and the added convenience that wireless offers to consumers who value personal and untethered communications, a substantial portion of the population has moved or is moving to “cut the cord” and rely completely on their wireless phones as their only means of communication. Recent data from the Centers for Disease Control finds more than one in four American households have gone wireless-only and in some locations these numbers are substantially higher. While the data suggests that “rural households appear to ascribe a higher economic valuation to wireless telephony,”² with the highest overall rates of wireless-substitution found in Arkansas, Mississippi, and Texas, three states that are significantly rural, the phenomenon is also true in many large urban centers such as Wayne County, Michigan and Dallas County, Texas, where wireless-only households now account for more than 40 percent of the population.³

This shift creates challenges for companies and government agencies that want to provide legitimate informational calls to individuals who are not reachable in any other way and who may value such calls to receive timely information such as notification about a data breach, fraud alert, change in flight time, or some other sort of time-sensitive account information. The TCPA’s disparate treatment of informational calls depending upon whether a company is calling a wireline or wireless phone number – something most entities will likely have no insight into –

² Jeffrey Macher and John Mayo, “Achieving Rural Universal Service in a Broadband Era: Emergent Evidence from the Evolution of Telephone Demand,” October 2011, at 6. See http://www.gcbpp.org/files/EPV/EPV_MayoMacher_RuralUniversal102011.pdf.

³ National Center for Health Statistics, Wireless Substitution: State-level Estimates from the National Health Interview Survey, January 2007-June 2010, at 9-10. See <http://www.cdc.gov/nchs/data/nhsr/nhsr039.pdf>.

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is increasingly out of date given the shift in the way consumers think about their mobile devices.

Even consumer advocates acknowledge that some narrowly-crafted adjustments to the TCPA may be appropriate.⁴ I know you'll hear from others on the panel about these aspects of H.R. 3035 and thus I want to focus the balance of my testimony on a set of issues that may be unique to the wireless industry and which we urge you to consider as you contemplate modernizing the TCPA.

First, along with their customers, wireless carriers are victimized by violations of the TCPA by unscrupulous "boiler-room" operators seeking to sell extended car warranties and the like. In cases where they can locate and identify the source of these messages, wireless carriers have vigorously brought suit against the perpetrators, and the industry has cooperated with the Federal Trade Commission in its investigation and prosecution of TCPA cases. While wireless carriers are doing what they can to identify and shut down TCPA violations, the Federal Communications Commission catalogs consumers' TCPA reports as "wireless complaints."

At CTIA, we understand consumer annoyance over these calls and repeatedly have pledged to the Commission our full cooperation in efforts by the FCC and the Federal Trade Commission to bring enforcement action against these serial violators of the TCPA.⁵ However, we believe it is unfair to the industry for the Commission to continue to count these instances, which originate outside of the wireless network and have nothing to do with wireless carriers' behavior, as "wireless complaints." The FCC's refusal to properly characterize these consumer complaints significantly and misleadingly expands the apparent rate of consumer complaints about the

⁴ "Consumer Groups Attack Proposed Revisions to Telemarketing Rule," Communications Daily, November 1, 2011, at 4, quoting Consumers Union regulatory counsel Iona Rusu: "There may be some valid reasons to update the rules that protect consumers from unsolicited cell phone calls — safety recalls and data breach notices, for example."

⁵ See letters from Steve Largent to FCC Chairman Kevin Martin, July 18, 2008, letter from Steve Largent to Acting FCC Chairman Michael Copps, May 7, 2009, and CTIA statements available at <http://blog.ctia.org/2010/06/02/additional-thoughts-on-the-fccs-consumer-survey/> and <http://blog.ctia.org/2010/10/14/ctia-the-wireless-association%20ae-statement-on-the-fcc-meeting/>.

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wireless industry. This is important since absent inclusion of TCPA-related complaints, the total number of complaints about wireless service received by the FCC have been declining since 2005, dropping roughly in half -- from 12/1000ths of one percent to slightly more than 6/1000ths of one percent of industry subscribership. CTIA urges the Subcommittee to use the Terry-Towns legislation or the opportunity presented by Chairman Walden's FCC process reform legislation to compel the FCC to disaggregate TCPA data from its quarterly and annual wireless complaint data.

Second, the Commission has an open proceeding (CG Docket No. 02-278) in which it has sought comment on proposed revisions to its TCPA rules for purposes of harmonizing those rules with the FTC's Telemarketing Sales Rule. CTIA filed comments in this proceeding that noted our concern that requiring parties to obtain the telephone subscribers' express written consent to receive autodialed or prerecorded calls, including consent to receive non-telemarketing calls, even in instances where there is an established billing relationship, could overturn Commission precedent permitting wireless carriers to send free-to-the-end-user autodialed calls or prerecorded messages to their customers without additional consent. Any such effort to restrict carriers' ability to contact their subscribers could imperil recent industry-driven efforts to deliver usage notification messages to consumers when they may be approaching plan thresholds that would otherwise result in overage or international roaming charges.

Third, industry efforts to protect consumer privacy and comply with the Mobile Marketing Association's Best Practices⁶ potentially conflict with obligations under the TCPA. In civil actions filed recently against Twitter, Facebook, Barclays Group, and American Express, trial lawyers have alleged that the act of sending a consumer a text message that simply confirms that a company received and processed that consumer's request to opt-out of a certain program or offering constitutes a violation of the TCPA. As with efforts to obtain express consent and protect user privacy through the use of double opt-in mechanisms, acknowledging receipt of a "STOP" message by sending the customer a text message is a reasonable business practice that

⁶ <http://www.mmaglobal.com/bestpractices.pdf>.

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provides consumers with confirmation that their request has been received, and those who employ it should not become targets for litigation. To the extent that there is an incongruity between the MMA guidelines and the TCPA, which was enacted before the availability of text-messaging services, we urge you to resolve it by clarifying the TCPA to protect consumers in a manner consistent with the MMA guidelines.

On behalf of CTIA, thank you for your consideration of these suggestions. We look forward to working with you to address these matters as the Subcommittee moves forward with its work on H.R. 3035.

Mr.TERRY. Thank you for your testimony, and all of you for your testimony.

At this time, we are going to begin our questions.

Attorney General Zoeller, I am going to start with you. And this is friendly. But I am concerned about State preemption, too. So what I would like to ask you is if you would help us work with language that would make States feel comfortable that we are not preempting your individual State laws.

I want to point out the flip side and why we need to work together on this. One is, as I understand, one of the laws in Indiana specifically allows autodialed calls from schools. Well, the FCC, if that school is texting about a snow day, whether it is a university or just a public school, may be in violation with an autodialer, subject to, as Mr. Altschul said, a \$500 fine per student. So we have to work that—I wanted to point that out.

Would you be able to help us draft some language that would protect Indiana and States' laws, at the same time making sure that when they comply with the State law they are not in violation of Federal rules and regulations?

Mr.ZOELLER. Absolutely. No, we have no concerns about how the rest of the country and the Federal Government regulates. It is our experience, though—and I think if it sounds like I have reservations about the promises—that we were here representing the State of Indiana when the TCPA was enacted, and there were assurances that there would be no preemption. And, 2 weeks ago, a Federal court struck down an Indiana statute on preemption grounds.

So we would be very willing to work with the committee—

Mr.TERRY. Good.

Mr.ZOELLER [continuing]. But recognize that we worked last time, and the same people who supported this bill have been attacking our statutes for the last decade until they finally preempted our statute.

Mr.TERRY. OK.

Ms. Hand, you raise some concerns, and, frankly, just like Ranking Member Eshoo's constituent did and some reporters as well, that this is opening up the Pandora's box. And, in your comments, you said that our intent was to cause that. And I just want to place on the record, we worked with leg staff specifically saying, let's draft language that prohibits the unsolicited marketing, teleservices, random calls like you were talking about. We worked hard to make sure that wasn't true. So I got to tell you, I took a little offense when you said that was my intent in drafting this. It is completely the opposite.

So you have a concern, Ms. Eshoo has a concern, I have heard concerns from people back home when they read about this bill about getting the unwanted telemarketing. Will you work with me to develop language so that we can have language that is clear that bans or continues to ban—I still think our language still bans those type of calls. Would you work with us on that?

Ms.HAND. Certainly. We want to be a part of the conversation, and we want to work with you to ensure that consumers continue to be protected. So we appreciate you extending that.

Mr.TERRY. OK. We want to make sure that our intent here is that people, when they want information, are able to receive that without the sender being subject to lawsuits and fines, and continue to ban unwanted calls. So I appreciate your willingness to work with us on it.

At this time, I am going to yield back my time and recognize the ranking member, Anna Eshoo.

Ms.ESHOO. Thank you, Mr. Chairman.

And thank you again to the panel. I think the collective testimony has been instructive, and I thank you for it.

To Attorney General Zoeller, it is an honor to have an AG here. The TCPA sets a floor, and not a ceiling, allowing States to experiment and give consumers more protections, should they wish to do so. And I think that you have spoken very clearly about the wishes of your constituents and the actions that your State has taken, and I salute you for that.

Now, by contrast, this bill would take away the States' ability to provide additional protections to your consumers by prohibiting any State laws addressing the subject matters regulated in the bill. Is that your view of it?

Mr.ZOELLER. Well, the particular concern is the use of the word "intrastate," which is exactly how in the lawsuit—

Ms.ESHOO. And you said that in your testimony. Uh-huh.

Mr.ZOELLER. So, the fact that it says "intrastate" has been read by the Federal courts to allow the argument that we are preempted on interstate. So, really, I heard the floor and not the ceiling, but when we are preempted, we are preempted. So it was the floor and the ceiling.

Ms.ESHOO. Thank you.

And to Ms. Hand, as currently written, I understand that this bill would narrow the TCPA's definition of an automatic telephone dialing system. And based on your reading of the bill, wouldn't this create a loophole that enables live telemarketing calls?

Ms.HAND. Yes, this is correct. As currently defined in the bill, the bill proposes to define automatic telephone dialing systems as machines that randomly or sequentially generate telephone numbers. And so what this would do, in effect, is that the industry standard for dialers would not be included. It would exclude what is known as predictive dialers, which are predominantly used by telemarketers and debt collectors.

So it would, in effect, reverse the original intent of the Cell Phone Consumer Protection Act, so it is very concerning.

Ms.ESHOO. And I think that this is a closely held value that came out of the TCPA legislation. So I think that is where an awful lot of upset is coming from.

Ms. Schwartz, thank you for your testimony. As I noted in my opening statement, prior express consent, those are really important words. They have an important meaning to consumers. If you have the express consent to reach a customer's mobile phone, what prevents you from delivering them these important informational messages today under existing law?

Ms.SCHWARTZ. I think you are right about the prior—pardon my voice; I woke up without one this morning.

Nothing prevents you when you have prior consent. Sometimes there are new accounts and then people have changed behavior and they have closed down their landlines.

So my whole focus is reaching people, sharing information that is pertinent to them keeping their homes, and engaging with them when they have been reluctant to do so or want to do so but have not been effective. So, on both sides—

Ms.ESHOO. But what prevents you from doing that today under existing law, what you are describing, what you want to do with, you know, the work of your organization?

Ms.SCHWARTZ. Well, we go to landlines and we go to mail to get to borrowers, but we don't go to cell phones because we don't have that prior consent or have sought to violate it.

Ms.ESHOO. I wanted to ask a question of the chairman. Is the Association of Credit and Collection Professionals supporting the bill? Does anyone know?

Mr.TERRY. I didn't look at the 29 letters there.

Ms.ESHOO. OK.

To Mr. Altschul from the Wireless Association, thank you. And I think that it is wonderful that you brought the old set and talked about the changes that have taken place. It is nothing short of stunning, the changes that have taken place in a short period of time.

You noted that prices, on a permanent basis, were 10 times higher in 1991 than they are today. But text messaging is one feature that didn't exist 20 years ago. Would you agree that it is fairly common for consumers to pay on a per-message basis? And what is the average cost of receiving such a message today?

Mr.ALTSCHUL. I don't know that information. I would be happy to provide it. I know that there was a hearing about 2 years and a couple of our member carriers did provide information to Congress.

The overwhelming majority, if I recall their testimony correctly, the overwhelming majority of customers do have some kind of bucket of texts. But there still are customers, like my mother, who don't and would have an a-la-carte charge for receiving a text message.

Ms.ESHOO. Thank you, Mr. Chairman. I yield back.

Mr.TERRY. Thank you.

Mr. Stearns, you are recognized.

Mr.STEARNS. Thank you, Mr. Chairman.

I was the author of the Do Not Call List when I was chairman of the Commerce and Consumer Protection—at that point, it was Trade. And then, once we passed that, then we had to, the next session of Congress, pass another law to make sure to extend it. And I have found that it is the most popular bill that I have ever passed, and it is perhaps one of the most popular bills that has ever passed Congress because everybody was just lauding it.

So I think, when we move into this, we have to understand some of the nuances between the land-based lines and the cell phone. So let me just go across the panel and ask this question, yes or no. I think many of us don't want to allow intrusive telemarketing calls to consumers any more than many of you do. And we just want to make sure that you don't have your cell phone being an-

swered time and time again with a computerized call, telemarketing.

Do you think there are ways we can clarify that autodialers and prerecorded voice messages should not be used to make telemarketing calls to consumers?

Ms. Schwartz?

Ms. SCHWARTZ. Yes, we support that clarification, that you should not be subjected to telemarketing calls.

Mr. STEARNS. So you think we can clarify and make that. OK.

And Mr. Alterman?

Mr. ALTERMAN. Absolutely, I agree.

Mr. STEARNS. OK.

Ms. Hand?

Ms. HAND. Well, I think while there might be some clarifications that can be made, I would like to reiterate that current law currently allows contact with the consumer, and there is a very bright line here with respect to consent.

Mr. STEARNS. So, technically, you think between autodialers and prerecorded voice messages we can make a clarification so that these don't end up being telemarketing calls. Do you think we can do that?

Ms. HAND. Yes, we can do that, but consumer consent should absolutely be preserved.

Mr. STEARNS. And how would we do that?

Ms. HAND. Well, I am happy to continue working with staff to work out the technical languages. But we just want to make sure that consumers have an absolute ability to opt out of receiving any prerecorded or—

Mr. STEARNS. BY CALLING THE FEDERAL TRADE COMMISSION ON A TOLL-FREE NUMBER AND SAYING—

Ms. HAND. I am sorry?

Mr. STEARNS. They could call the Federal Trade Commission and ask them to make sure that my number is not included in that? Is that one suggestion?

Ms. HAND. Potentially. I mean, we would have to think about it, and we would have to work with staff.

Mr. STEARNS. OK.

Go ahead, Mr. Zoeller. Your comment?

Mr. ZOELLER. I think the key would be as long as States were allowed to have additional restrictions.

Mr. STEARNS. OK.

Mr. ALTSCHUL. Prohibition on telemarketing calls has worked well and is broadly supported.

Mr. STEARNS. OK.

Ms. Hand, your testimony suggests that current law empowers a consumer to demand that incessant calls stop and that the proposed legislation removes that protection.

Can you point to me specifically to where that protection exists today for, say, landline calls and what provision specifically eliminates that protection?

Ms. HAND. Well, it is actually what is not included in the bill. And so, I refer to an FCC ruling, a 2008 ruling by the FCC in January of 2008, where the FCC recognizes—and the specific language, if I may just point to it—the FCC recognizes the right of

consumers to request calls to stop. And so, the FCC in the 2008 ruling said that, absent instructions to the company, persons who knowingly release their phone numbers have, in effect, given an invitation or a permission to be called. So, in other words, consumers have the right to ask to stop receiving calls.

The bill doesn't address that, and so, in essence, there is no enforcement mechanism. If a consumer were to receive a robocall, they could ask to stop, but there currently would be no enforcement mechanism to stop those calls under the current language of H.R. 3035.

Mr.TERRY. Would the gentleman yield for one moment?

Mr.STEARNS. Sure, I would be glad to.

Mr.TERRY. Yes, that is a great point that you bring up and, Ms. Hand, you bring up, and Mr. Markey has brought it up. And that is one of the areas that we are willing to work on.

Ms.HAND. Thank you.

Mr.STEARNS. Ms. Hand, another question. Do you agree that consumers benefit from the informational calls discussed by Ms. Schwartz and Mr. Alterman? And how can the proposed legislation be modified to allow such calls without opening the door to harassing—and I think you have touched on that.

But, Mr. Alterman and Ms. Schwartz, do you agree with what Ms. Hand is saying in this area of changing the legislation?

Ms.SCHWARTZ. I think abusive and repetitive calls should not be permitted, just as they are already under protection on the FDCPA. But I think it is very important to be allowed, if you already have a business relationship, to alert people of opportunities to fix their loan before they go to foreclosure by a cell phone.

Mr.STEARNS. OK.

Mr. Alterman?

Mr.ALTERMAN. Yes, let me make one thing perfectly clear: We do not want to make repetitive calls, and we would absolutely have no problem with language that would do that.

I would like to make one comment, because a comment was made earlier that airlines already have the ability to notify people by this. And our industry, unfortunately, is one step removed. The phone numbers that are given are given to retailers, such as L.L.Bean. We get the phone numbers from them as part of the same transaction, but it is unclear—I could with a straight face argue that that constitutes consent, but it is unclear.

And this bill would make it clear that—we would like this bill to make it clear that—that is all we want to do; we just want to tell someone there is a package ready.

Mr.STEARNS. Thank you, Mr. Chairman.

Mr.TERRY. Thank you.

Mr. Doyle?

Mr.DOYLE. Thank you, Mr. Chairman.

As I said in my opening remarks, I think the bill was well-intentioned, but obviously I think we have a lot of work to do here.

As I read this bill, if a person provides their phone number as a means of contact at any point during a business relationship with a company, then that constitutes prior express consent.

I just bought a washer and dryer 2 weeks ago at an appliance store, and they wanted to give me, like, a 40-minute notice before

they were going to arrive at my house so that somebody would be there. And they asked me for my phone number, and I gave it to them.

Now, I don't ever want to hear from that appliance store anymore if they have TVs on sale or computers or whatnot, and I certainly don't want to start getting text messages from that company.

So I guess what I want to ask Ms. Schwartz and Mr. Alterman and Mr. Altschul is, why do you think the mere giving of a phone number in a business relationship, you know, like the example I have just cited, why do you think that should imply that I want to hear from those companies in the future?

Ms.SCHWARTZ. Well, sir, that is an interesting analogy. I look at this completely from the mortgage experience. When you take out a 30-year mortgage and have a relationship with your bank or loan servicer, you should figure out the effective ways to communicate with each other. And if you don't have a landline and you don't communicate, you will go to foreclosure if you are not making your payments and you don't have an opportunity to talk to your counterparty to understand all of the options available to avoid that.

Mr.DOYLE. But isn't it as simple as—you know, people want to know how can we do this. It is simple: Ask. I mean, why don't you just—I mean, right now, TCPA and FCC rules allow people to say upfront, "I want you to be able to contact me." And so it seems to me that, you know, your constituencies, you know, the mortgage business and whatever, you should just ask the consumer when you have that first contact with them, will you give us permission—or, do you give us permission to contact you if we have some information about our products or our services? And the person says, yes, I give you my permission. And I think that solves the problem. Just ask the consumer if they want to hear from people, and if the consumers say yes, case closed.

But I have to tell you—and I especially worry about young people. Now, my kids, they can't afford these high bundled plans, Mr. Altschul, so they have these prepaid phones. And they don't talk on the phone anymore. If I want to talk to one of my kids, I have to text them or they don't answer me back, OK? I can't send emails or call their phone numbers; they just don't respond.

But I know the plans. It is like you have so many texts you are allowed for one price, and then it goes—you know, because we end up paying every time they go over their text messages and they call crying to us that they don't have the money to pay their phone bill.

The industry has already voluntarily said, you know, they are going to start notifying people when they are getting close to using up their plans so that they don't have the sticker shock, you know, when their bill comes. I mean, imagine—

Mr.ALTSCHUL. We have done that on a free-to-the-end-user basis, by the way, so it won't generate usage calls—

Mr.DOYLE. Exactly. But imagine the calls you are going to start to get when these young kids start to get these text messages from these telemarketers that they don't want and it starts to run their bill up, either over their prepaid plan—and they are going to be calling your companies complaining, you know, that they owe all this money for calls that they don't want to accept.

So, I mean, Lee, I think this is simple. I think we just ask consumers if they want to hear from these folks. And if they indicate they do—I know when I go online and order a product, there is always a box there that says, would you like to hear from us on any future sales our company has? And I get to check the box, and then I get emails from that company.

But I am saying, to me, I think it is pretty straightforward. Just ask people if they want to hear from you, and if they say yes, then they want to hear from you. If they say no, they don't want to hear from you, and don't call them. And I think that would solve the problem.

Mr.TERRY. We would appreciate working with you.

Ms.SCHWARTZ. May I follow up with that, sir?

Mr.DOYLE. Yes, sure. I have 40 seconds.

Ms.SCHWARTZ. My only point is, when you buy a house 4 or 5 years earlier and your life changes and you are not in contact—and there are millions of people who are not in contact on their home loan today who are in trouble. And so any effective tool to reach them and have an effective conversation and invite them to participate is a meaningful way to—

Mr.DOYLE. And I think if you would say to that consumer when they buy the house, if there is a situation where we could provide different options for you if you have financial trouble, would you like us to be able to tell you what those things are, people can make that choice.

Thank you, Mr. Chairman.

Mr.TERRY. Mr. Chairman?

Mr.WALDEN. Well, thank you, Mr. Chairman. I appreciate your chairing this hearing and bringing this issue to our attention. Obviously, there are a lot of views on how you might get this done. And I know it is not your intent to open the door to random telemarketing calls. That is not what this is about.

Mr.TERRY. No.

Mr.WALDEN. I have found it interesting, though—and I have been in the back in some meetings but also trying to keep an ear to the testimony—that there does seem to be this persistent issue about the way technology has changed. There are now more cell phones than there are citizens of this country in use in this country. People are cutting their landlines, and there are some legacy rules here.

Now, I don't want random text messages from companies just to market to me. I don't want random cell phone calls. But I did note when our colleague from Tennessee talked about just the nature of FedEx being able to automate the call that says, "We are going to deliver the package to your house," I have encountered that where they call our landline but nobody is home, and so you get the call later and they couldn't leave the package, so now I have to call them, trace them down, figure out where to go get it and go through this drill. If there were a way that they could have just called my cell phone, then I would know, OK, I can run back to the house, or whatever is my home life.

And so I am trying to figure out, is there a way to thread this needle that we don't open this door that I don't think anybody on this committee wants to open, on sort of random telemarketing

calls to cell phones, but that allows that understanding of how technology has changed? Because if I understand this right, if there is a human dialing the number, that is OK. But if I pull it up on a computer screen and push a button, that is not OK.

Now, I got to tell you—and I realize it is probably the race between gray and gone, the loss of memory, but I have trouble remembering people's phone numbers anymore because I pull out one of these devices and right here are my favorite phone numbers and my friends, family, or staff, and I just push, you know, "Brian" or "Ray" or whomever and it dials it automatically.

Now, would that kind of a—is that an automatic dialer? It is not. Some of you say it is not; some say it is. Right? OK.

Well somewhere, though, if I had to reach 30 people, I might have a system and basically say, call Bill, Ed, Ray, whoever is available, and I will talk to the first one you find. Is that the autodialer we are talking about here? So it is just—if they are all my friends or whatever. I don't know.

So I think there is a way to get at modernizing the law without opening the door to unwanted solicitations and informational calls and all that stuff.

So, anyway, I would yield to the chairman.

Mr.TERRY. All right, thank you. And I do think you hit on probably the ultimate point here. We focus on the technology change from wirelines to wireless, but the reality is the trap we are in is the technology of an operator dialing versus manually dialing versus clicking and having a computer program that would automatically dial, like, the school notices or all of that.

So that is the technology that is hanging up the TCPA right now and is the good and the bad, and we have got to figure out how to draw that line. So I appreciate that.

At this point, Mr. Barrow.

Mr.BARROW. I yield my time to the gentleman from Massachusetts, Mr. Markey.

Mr.MARKEY. I thank the gentleman very much.

So I am the House author of the Telephone Consumer Protection Act of 1991, which is amended by this act. And I feel as strongly today as I did 20 years ago that consumers should not be subject to intrusive calls from telemarketers, whether they are at home or on their mobile phones.

So we were looking, at that time, about people who were just ticked off that they were getting called just every night just around dinnertime. Just an amazing coincidence that they didn't call at 2:00 in the afternoon or 11:00 in the morning, but it was always just as people were sitting down to dinner, when parents were reading to their kids, when people were trying to unwind from a long day. And that is when everyone just started to call and the phone would just start ringing.

So we banned autodialing and prerecorded calls to land lines and mobile phones, with certain exceptions. And we established the Do Not Call List, the law creating a zone of privacy that remains hugely popular with consumers to this day.

So here is my question. Maybe, Ms. Hand or Attorney General, maybe you could help me with this. As we discuss this, let's just say Members of Congress get home late from wherever they go,

OK, and they just start calling whatever their local takeout taxi is. And one day they are calling to have Italian food sent over; another day, Chinese, Ethiopian. Well, let's just say, by the end of the year they have called 20 different restaurants to have takeout taxi bring it over—you know, pizza, whatever.

Now, under this proposed change, what would the relationship now be between those 20 restaurants and you at home, in terms of their ability to call you with the good news that the pu pu platter is now on sale or, you know, the new eggplant parmesan? Would that now make it possible for them to call you with all the great news that each one of the 20 have, even though you wanted a one-time relationship with them on the cheese pizza or, you know, the Chinese or other food?

So help me with that. What happens under this proposed change in terms of my relationship with the restaurants in the greater Boston area?

Ms.HAND. Well, Mr. Markey, you raise a really good point. Under the language of the bill as it currently is, this would now qualify as an established business relationship.

Mr.MARKEY. That one-time call?

Ms.HAND. That one time. You have called, you have made a purchase, and you have provided contact information. This would suffice to be an established business relationship for the purpose of receiving robocalls on your cell phone.

Mr.MARKEY. Is that correct?

Mr.ZOELLER. Yes. And what I would like to point out is, in Indiana, we did not include a prior-business-relationship exception. So, in Indiana, you would not continue to get any other calls. They don't have a prior-business-relationship exemption so you don't get—when you are listed on our Do Not Call, you don't get calls.

Mr.MARKEY. Would that be a nightmare situation for families, where every night they get a call in a different language letting them know that their favorite food—

Mr.ZOELLER. Well, I can tell you, in Indiana, if you would have not allowed for that prior-business-relationship exemption in the original act, you would have been much more popular than you are today.

Mr.MARKEY. Yes. Yes.

So if you give over your phone number—so now it is just your phone number, you know, is handed over to someone just to even get information. Now, under this proposed change, would just handing over your phone number now create a pre-existing business relationship for all purposes, even though you might not have even purchased something?

Mr.ZOELLER. Well, under the Federal statute. But, again, as long as we are not preempted, it would not create—because we don't have the exemption in Indiana. If you preempt us, though, and we have to follow the Federal model, Indiana would get the 12, on average, calls per week that most people in the country do that have a Federal Do Not Call but not a tough law like we have in Indiana.

Mr.MARKEY. So what is your answer to that, Ms. Schwartz? How do we protect it? You know, you want mortgage information because the individual's largest single, you know, investment in their

lives could be at stake. But you hear all the other stuff that could now happen coming in under that exemption.

So what would you do to protect against the tsunami of calls that would inundate people's cell phones? And people would have to pay for the right to have the text or have the phone call coming into them because it is on their bill.

Ms.SCHWARTZ. I am certainly not an expert on the breadth of the complex legal side of this, although it sounds like telemarketing to me. And I thought that was explicitly not—or that there was a protection against that in this bill. So I would thread the needle a little more closely to make sure that doesn't happen.

Mr.TERRY. Thank you, Mr. Markey.

Mr.MARKEY. OK, that is great. Now, could I be recognized on my own time? I have been using—

Mr.SHIMKUS. Reserving the right to object.

Mr.TERRY. Why don't we come back?

Mr.MARKEY. All right, I will wait for my turn to come back.

Mr.TERRY. Mr. Shimkus?

Mr.SHIMKUS. Thank you, Mr. Chairman. This has been a good panel and a great discussion because I think you can see where we are all trying to wrestle with this.

Everyone has stories. I am from rural America. Propane is the heating fuel of choice. I have a constituent who dropped their landline. And the system was, with the propane industry, that when you would go low on propane, they would then dial you and say, hey, you are running low, you better fill up your propane. But since they dropped the landline, they couldn't get notified. And so, in the middle of the night, they ran out of propane, and, you know, that was not a good time to run out of propane, in the middle of the night in mid-December.

So I think we are talking about making consent easier, where we understand the business relationship more defined so that, as Michael Doyle said—and I am glad he finally got a washer and a dryer. I have been hoping he would buy one for the last 10 years here. But, as he said, we want to make sure we establish a business relationship—if there is a business relationship and they opt in and say, "We want to continue to have this communication," then we need to have this. And these constituents of mine want the propane company to be able to call them on their cell phone if their propane is running low. And so, that is what this is about.

I have two questions, but I want to go to the attorney general first, because his story in answer to a question is really encompassing, kind of, our debate here in Washington.

And maybe you want to restate it. You said you were pretty well promised that the State of Indiana would have been left alone in your ability to deal with this. However, the courts got involved; is that right? Can you explain that real quickly again?

Mr.ZOELLER. Well, the case of—I think the telemarketing companies had a client named the Patriotic Veterans Association, and they were wanting to blast out these robocalls to literally hundreds of thousands of people in Indiana because they had their numbers. They had given money to various charities over the years. They wanted to blast out these prerecorded phone calls.

And the court, looking at the language of the TCPA, recognized that, just as this bill does, says that it is not to be preempted for intrastate. Therefore, since they did not mention interstate, if they choose to use robocalling equipment outside of our domestic robocallers in Indiana, they are free to do so because the Federal Government, although well-intended by Mr. Markey and others, had opened up the door to preemption.

Mr.SHIMKUS. Right.

Mr.ZOELLER. So, after a decade of fighting us, they finally got a Federal judge to preempt our enforcement of our own statute.

Mr.SHIMKUS. And that is a continuing debate we have here, about the unintended consequences. Going to the court and then changing the intent of the law, and then we have to come back and refine it. And that is a good thing to have on record on other issues that we debate here in Washington, D.C. And I enjoyed that—I will use that example in the future.

Ms. Hand, Indiana's law allows autodialed calls from schools to parents and does not distinguish between calls to landlines and calls to cell phones. Do you think Indiana's law is unreasonable?

Ms.HAND. Absolutely not. I think if the State legislature determines what is appropriate for its residents, that should hold and the State's law should not be preempted.

Mr.SHIMKUS. Yes.

And my time is running and we have votes, so, Mr. Alterman, talk about the benefit of text messaging. I have young kids still. Texting is the communication mode now. It was emails, it was phones, now it is texting. So talk about the importance of text messages.

Mr.ALTERMAN. I think that it is just—as things develop, as technology develops and the way our society develops, it is just becoming a more basic way of communicating. And some people like phones, some people like text messages. Text messages are a little less intrusive sometimes because nothing rings and you can answer them whenever. So it is becoming more of a way of contacting people.

Mr.SHIMKUS. Although I think I woke up my son at 5:00 a.m. This morning because it vibrated. Kids sleep with their phones these days.

So, anyway, thank you very much.

I yield back, Mr. Chairman.

Mr.TERRY. Thank you, Mr. Shimkus.

And we do have votes on the floor, which is—timing is perfect.

Mr. Barrow, I—well, I recognize Mr. Markey.

Mr.MARKEY. I thank the Chair.

So I guess what we all want is, kind of, some commonsense rule here that doesn't have your phone ringing all night long, huh?

Mr.TERRY. Agreed.

Mr.MARKEY. And if, you know, looking back 20 years at all the changes that have taken place, you know, we might want to tweak it here or there, that is one thing. But I think people love the peace and quiet of their home. And I also think that, when you are talking about people's new devices, since they have to pay for the right to have all of these communications—and it is a little bit of a safety zone for people right now. That is, the only people who know

your cell phone number are the people you give it to. You know, it is not in the phone book, it is not for everyone to know. And you can walk around not thinking that you are back at home, that this phone is going off 40 or 50 times because it is just some kind of public, you know, phone booth.

So I think if we can work together to accomplish, kind of, the limited goals that people might have but not to open this thing wide but still to preserve for the attorney general and others the right to be able to give Hoosiers a little bit of additional protection if they would want to do so because of the independent nature of that State, that they just might want to give a little bit more protection to their consumers. And that is—

Mr.TERRY. Those are all things we would agree with, I would agree with.

Mr.MARKEY. Beautiful.

Mr.TERRY. So let's work together. Appreciate that, Mr. Markey. And, Mr. Barrow, do you have any questions?

Mr.BARROW. No, sir. I gave my time to Mr. Markey.

Mr.TERRY. Yes, twice.

So thank you all. I think it has been a very productive hearing and gives us a path forward, with your advice and counsel.

So, at this time, we are now adjourned.

[Whereupon, at 10:25 a.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

Statement of
Representative John D. Dingell
Committee on Energy and Commerce
Subcommittee on Communications and Technology
Hearing on "H.R. 3035, the Mobile Informational Call Act of 2011"

November 4, 2011

Thank you, Mr. Chairman. This morning we are considering H.R. 3035, the Mobile Informational Call Act of 2011, which would amend the Telephone Consumer Protection Act (TCPA). Passed in 1991, the TCPA has the virtue of being one of the most popular laws Congress has ever enacted, and I aim to see to it that the Act is protected and improved, but only where necessary and prudent.

Now, I commend my friends, Messrs. Terry and Towns, for trying to make sure that consumers can be contacted on their mobile phones by businesses for legitimate purposes. I recognize that the communications landscape has changed since 1991, and many consumers these days exclusively use mobile phones. With that said, however, I am wary of opening up the TCPA for fear of unintended consequences.

I will ask our witnesses a series of questions about specific provisions in H.R. 3035 that concern me. In brief, I am worried the bill, as drafted, contains an overly broad definition of "prior express consent" and preempts certain state consumer protection laws. I remain committed, however, to working with my colleagues in a bipartisan fashion to craft consensus legislation that responsibly addresses my concerns and those of others on the Committee.

Thank you for your courtesy, and I yield back the balance of my time.

Faith Schwartz
 Executive Director, HOPE NOW Alliance

Response to Questions from The Honorable John D. Dingell

Is it your understanding that the Telephone Consumer Protection Act (TCPA) currently prohibits solicitation calls placed to a person's cellular telephone? Yes or no.

The TCPA was enacted to control "the use of automated equipment to engage in telemarketing." (Sen. Rep. No. 102-178 at 1, 1991 U.S.C.C.A.N. 1968, 1969 (1991)). As such, telemarketing calls are prohibited if they are made without prior express consent and dialed by automated means.

Is it your understanding that the TCPA prohibits calls made by any automatic telephone dialing system or using an artificial or prerecorded voice from being placed to a person's cellular telephone? Yes or no.

Such calls are permitted if made with prior express consent or for an emergency.

Is it your understanding that H.R. 3035 would amend the TCPA to allow calls of a commercial purpose to be made to a person's cellular telephone, provided such person has granted prior express consent to such calls? Yes or no.

No. The Mobile Informational Call Act does not required express prior consent for non-telemarketing calls made for a commercial purpose.

Further, is it your understanding that H.R. 3035 amends the TCPA to define "prior express consent" as having been given when a person provides a telephone number – cellular or otherwise – as a means of contact? Yes or no.

Yes.

So, under H.R. 3035, it is conceivable that I could give my cellular number to a pharmacy to enroll in a rewards program and start receiving automated commercial calls from that pharmacy because I will have given my prior express consent? Isn't that right? Yes or no.

Yes, as long as the call does not does not constitute a telephone solicitation.

Moreover, I would have to pay for such automated commercial calls to my cellular phone, correct? Yes or no.

That would depend on the mobile phone plan in which you are enrolled.

Now, I am somewhat concerned by section 4 of H.R. 3035. Is it your understanding that section 4 preempts all state telemarketing, auto-dialer, and facsimile laws? Yes or no.

No. The Mobile Informational Call Act does not preempt state telemarketing laws.

Steve Alterman
Cargo Airline Association
Subcommittee on Communications and Technology
Hearing on H.R. 3035, the Mobile Informational Call Act
Responses for the Record

The Honorable John D. Dingell

1. Is it your understanding that the Telephone Consumer Protection Act (TCPA) currently prohibits solicitation calls placed to a person's cellular telephone? Yes or no.

Yes

2. Is it your understanding that the TCPA prohibits calls made by any automatic telephone dialing system or using an artificial or prerecorded voice from being placed to a person's cellular telephone? Yes or no.

Yes.

3. Is it your understanding that H.R. 3035 would amend the TCPA to allow calls of a commercial purpose to be made to a person's cellular telephone, provided such person has granted prior express consent to such calls? Yes or no.

Yes.

4. Further, is it your understanding that H.R. 3035 amends the TCPA to define "prior express consent" as having been given when a person provides a telephone number – cellular or otherwise – as a means of contact? Yes or no.

No, only in the context of "an established business relationship".

5. So, under H.R. 3035, it is conceivable that I could give my cellular number to a pharmacy to enroll in a rewards program and start receiving automated commercial calls from that pharmacy because I will have given my prior express consent? Isn't that right? Yes or no.

No.

6. Moreover, I would have to pay for such automated commercial calls to my cellular phone, correct? Yes or no.

No, not unless your plan is based on an individual call basis.

7. Now, I am somewhat concerned by section 4 of H.R. 3035. Is it your understanding that section 4 preempts all state telemarketing, auto-dialer, and facsimile laws? Yes or no.

No.

Answers to Questions for the Record
U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY
regarding
“HR 3035, The Mobile Informational Call Act of 2011”
Hearing held: November 4, 2011

Answers submitted by:
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The Honorable John D. Dingell

- 1. Is it your understanding that the Telephone Consumer Protection Act (TCPA) currently prohibits solicitation calls placed to a person's cellular telephone? Yes or no.**

Yes. The Telephone Consumer Protection Act prohibits solicitation calls placed on a person's cellular telephone.

- 2. Is it your understanding that the TCPA prohibits calls made by any automatic telephone dialing system or using an artificial or prerecorded voice from being placed to a person's cellular telephone? Yes or no.**

Yes. The Telephone Consumer Protection Act prohibits calls made by any automatic telephone dialing system or using an artificial or prerecorded voice from being placed to a person's cellular telephone.

- 3. Is it your understanding that H.R. 3035 would amend the TCPA to allow calls of a commercial purpose to be made to a person's cellular telephone, provided such person has granted prior express consent to such calls? Yes or no.**

No or not exactly. HR 3035 would amend the TCPA to allow calls of a commercial purpose to be made to a person's cellular telephone, without obtaining the person's prior express consent. Under HR 3035, because HR 3035 defines "prior express consent," to a standard that really becomes "implied consent" an individual would not have to grant consent to receive such calls.

- 4. Further, is it your understanding that H.R. 3035 amends the TCPA to define "prior express consent" as having been given when a person provides a telephone number – cellular or otherwise – as a means of contact? Yes or no.**

Yes; HR 3035 changes the current definition of prior express consent such that regardless of whether oral or written consent has been given "prior express consent" would be redefined to mean: "A person who provides a telephone number as a means of contact evidences consent under this paragraph." What is significant here is that under current law, oral or written approval has to be given by a person to evidence prior express consent. HR 3035 would change this express requirement to be implied consent because simply providing a telephone number as a means of contact would evidence consent.

- 5. So, under H.R. 3035, it is conceivable that I could give my cellular number to a pharmacy to enroll in a rewards program and start receiving automated commercial calls from that pharmacy because I will have given my prior express consent? Isn't that right? Yes or no.**

Yes, this is correct.

- 6. Moreover, I would have to pay for such automated commercial calls to my cellular phone, correct? Yes or no.**

Yes, conceivably. When the calls are made to cell phones, the recipient must pay for them. An individual would thus have to pay for commercial calls to their cellular phone either on a per call basis or debited

against a limited 'bucket' of minutes allotted to a person in a cellular phone plan. Depending on the kind of plan an individual has these commercial calls could cause some expense to a person.

7. Now, I am somewhat concerned by section 4 of H.R. 3035. Is it your understanding that section 4 preempts all state telemarketing, auto-dialer, and facsimile laws? Yes or no.

Yes. The language as written in HR 3035 would preempt all state law. The proposed language of H.R. 3035 states: "No requirement or prohibition may be imposed under the laws of any State with respect to any subject matter regulated under this section, except for telephone solicitations." This language would preempt all state laws concerning junk faxes, unwanted text messages and automated calls. In addition, it would preempt any state Do Not Call law that imposes any requirements on charities, or contains any provision on telephone solicitations different from or stronger than those in the TCPA, such as state telemarketing holiday provisions.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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December 14, 2011

The Honorable Gregory F. Zoeller
Attorney General
State of Indiana
Indiana Government Center South
302 West Washington Street, 5th Floor
Indianapolis, IN 46204

Dear Attorney General Zoeller,

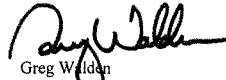
Thank you for appearing before the Subcommittee on Communications and Technology on Friday, November 4, 2011, to testify at the hearing on H.R. 3035, "Mobile Informational Call Act of 2011."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for 10 business days to permit Members to submit additional questions to witnesses, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and then (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Friday, December 30, 2011. Your responses should be e-mailed to the Legislative Clerk, in Word or PDF format, at Kirby.Howard@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Greg Walden
Chairman

Subcommittee on Communications and Technology

cc: Anna G. Eshoo, Ranking Member,
Subcommittee on Communications and Technology

Attachment

The Honorable John D. Dingell

1. **Is it your understanding that the Telephone Consumer Protection Act (TCPA) currently prohibits solicitation calls placed to a person's cellular telephone? Yes or no.**

Yes, the TCPA currently prohibits the use of an automatic dialing system to call cell phones regardless of whether such calls are made for solicitation purposes. The TCPA also prohibits calls to numbers on the National Do-Not-Call registry, which includes cell phone numbers that have been placed on the registry.

2. **Is it your understanding that the TCPA prohibits calls made by any automatic telephone dialing system or using an artificial or prerecorded voice from being placed to a person's cellular telephone? Yes or no.**

Yes.

3. **Is it your understanding that H.R. 3035 would amend the TCPA to allow calls of a commercial purpose to be made to a person's cellular telephone, provided such person has granted prior express consent to such calls? Yes or no.**

No, HR 3035 would allow calls of a commercial purpose without prior express consent.

4. **Further, is it your understanding that H.R. 3035 amends the TCPA to define "prior express consent" as having been given when a person provides a telephone number – cellular or otherwise – as a means of contact? Yes or no.**

Yes, HR 3035 would define prior express consent to include a person providing a telephone number for any purpose.

5. **So, under H.R. 3035, it is conceivable that I could give my cellular number to a pharmacy to enroll in a rewards program and start receiving automated commercial calls from that pharmacy because I will have given my prior express consent? Isn't that right? Yes or no.**

Yes.

6. **Moreover, I would have to pay for such automated commercial calls to my cellular phone, correct? Yes or no.**

Yes.

7. **Now, I am somewhat concerned by section 4 of H.R. 3035. Is it your understanding that section 4 preempts all state telemarketing, auto-dialer, and facsimile laws? Yes or no.**

Yes.

Submission of Michael Altschul, CTIA – The Wireless Association®

Responses to Questions from the Honorable John Dingell

- 1. Is it your understanding that the Telephone Consumer Protection Act (TCPA) currently prohibits solicitation calls placed to a person's cellular telephone? Yes or no.**

Yes, in general, because the TCPA makes it unlawful to make any call to a cellular telephone (other than an emergency call or a call made with the prior express consent of the called party) using an "automatic telephone dialing system" as defined in 47 U.S.C. 227 or an artificial or prerecorded voice. However, the TCPA would only prohibit a hand-dialed solicitation call to a person's cellular telephone number if such number is on the Do-Not-Call List.

- 2. Is it your understanding that the TCPA prohibits calls made by any automatic telephone dialing system or using an artificial or prerecorded voice from being placed to a person's cellular telephone? Yes or no.**

Yes, unless the call to the cellular telephone is an emergency call or a call made with the prior express consent of the called party.

- 3. Is it your understanding that H.R. 3035 would amend the TCPA to allow calls of a commercial purpose to be made to a person's cellular telephone, provided such person has granted prior express consent to such calls? Yes or no.**

No, H.R. 3035 would permit a call made to a mobile phone number for a commercial purpose that does not constitute a telephone solicitation even in the absence of express prior consent.

- 4. Further, is it your understanding that H.R. 3035 amends the TCPA to define "prior express consent" as having been given when a person provides a telephone number – cellular or otherwise – as a means of contact? Yes or no.**

Yes.

- 5. So, under H.R. 3035, it is conceivable that I could give my cellular number to a pharmacy to enroll in a rewards program and start receiving automated commercial calls from that pharmacy because I will have given my prior express consent? Isn't that right? Yes or no.**

Yes. However, as the FTC's "Fair Information Practices" make clear, a consumer's consent can only be based on the scope of the disclosure provided to obtain the consent. Under this principle, a pharmacy would need to disclose its intent to make commercial calls in order to obtain the consumer's consent to allow such calls.

- 6. Moreover, I would have to pay for such automated commercial calls to my cellular phone, correct? Yes or no.**

Yes, although some wireless carriers may offer "free to end user" service (much like "800" calls) for commercial calls.

- 7. Now, I am somewhat concerned by section 4 of H.R. 3035. Is it your understanding that section 4 preempts all state telemarketing, auto-dialer, and facsimile laws? Yes or no.**

No, I do not read H.R. 3035 as preempting state laws governing telephone solicitations.