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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

WEBSITE: <http://commerce.senate.gov>

July 24, 2018

The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
445 12th Street Northwest
Washington, D.C. 20554

Dear Chairman Pai:

We write to you in support of the Federal Communication Commission's (FCC) recent efforts to crack down on abusive and illegal robocalls, and we applaud the enforcement actions taken by the FCC to protect consumers. Additionally, we appreciate the FCC's recent move, following the D.C. Circuit ruling that overturned portions of a past overly broad FCC interpretation, to seek feedback on key outstanding Telephone Consumer Protection Act (TCPA) issues.

The FCC's past interpretations of the TCPA have resulted in uncertainty about how those calling in good faith can comply with FCC regulations, making it more difficult for consumers to receive communications they want and need. This chills legitimate communications and leads to increasing class action litigation that often does little to help consumers. The FCC must make it more workable for legitimate businesses to stay in communication with consumers in a timely and effective manner, while continuing its fight to eliminate annoying, illegal, and fraudulent calls and texts.

The D.C. Circuit's recent opinion in *ACA International v. FCC* set aside the FCC's overly broad interpretation of what devices qualify as an automatic telephone dialing system (ATDS). The opinion also set aside the FCC's 2015 approach to the problem of reassigned numbers, including a presumption that a caller will know a number is reassigned after one attempted call, even if that attempted call is not answered.

We urge the FCC to take quick action to clarify important issues under the TCPA. It is imperative that the FCC develop an updated TCPA framework that both protects consumers and provides those calling in good faith with a reasonable means of communicating with their customers. Such an approach should be consistent with Congressional direction in the 1991

TCPA and should reflect innovative technologies that are emerging to help consumers manage calls. Congress passed the TCPA to, among other things, protect the privacy of cell phone users at a time when wireless technology was in its infancy, to protect emergency and public safety-related phone lines from being tied up by autodialed calls, and to control the shifting of telemarketers' advertising costs to consumers by the use of random and sequential number generators to run mass calling campaigns. Congress did not intend for the TCPA to be a "barrier to the normal, expected or desired communications between businesses and their customers."

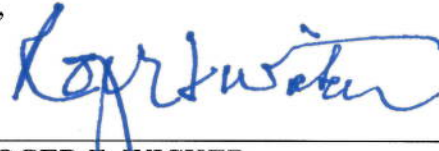
Consistent with Congress' intent and the text of the TCPA, the FCC should further confirm that, to be an ATDS, equipment must use a random or sequential number generator to store or produce numbers and dial those numbers without human intervention, and find that only calls made using actual, not theoretical, ATDS capabilities are subject to the TCPA's restrictions.

As the FCC has reported, unwanted robocalls are consistently a top consumer complaint to the agency. We share the frustration of our constituents with the persistence of unlawful robocalls. Clear rules will allow the FCC to punish illegal actors, while permitting those calling in good faith to understand what they must do to remain in compliance; these are both positive outcomes for consumers.

Sincerely,



JOHN THUNE
Chairman



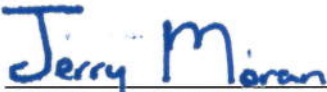
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