

As Robocall Volume Breaks Records, FCC Could Open the Floodgates to Even More Robocalls

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Consumers Have Until June 13 to Urge FCC to Protect Consumers from Illegal Robocalls

WASHINGTON - According to the call-blocking app YouMail's Robocall Index, robocalls made to consumers in the month of May exceeded 4 billion, the highest one-month total on record. As the number of calls soars, the Federal Communications Commission (FCC) has opened an inquiry into a number of critical questions under the Telephone Consumer Protection Act (TCPA) that will determine whether this law remains viable as a protection against robocalls.

The questions presented by the FCC include:

- What constitutes an "automatic telephone dialing system" (autodialer)?
- How should the FCC treat calls to reassigned wireless numbers?
- How may a called party revoke prior express consent to receive robocalls?

What constitutes an autodialer?

The TCPA prohibits autodialed calls (ones made with an autodialer, formally known as an "automatic telephone dialing system") to cell phones without the called party's consent. Until recently, the FCC had clearly interpreted this prohibition as applying to the types of autodialers that businesses use today to make telephone calls or send out texts en masse. However, a decision by the U.S. Court of Appeals for the District of Columbia in March set aside the FCC's interpretation of this term as too expansive, and sent the matter back to the FCC for reworking. The FCC then issued a request for public comments on how to interpret the law and what constitutes an autodialer.

"The real threat is that the FCC will issue a definition so narrow that virtually nothing will be considered an autodialer," **said Margot Saunders, senior counsel at the National Consumer Law Center (NCLC).**

Last month, a coalition of business groups led by the U.S. Chamber of Commerce petitioned the FCC to clarify the definition of an autodialer. If the FCC lands on a definition that is too narrow, businesses represented by the Chamber can start to make more robocalls, a lot more.

"After a failed effort to expose consumers to more robocalls through the use of ringless voicemail technologies, the Chamber and its cohorts are once again working to weaken consumer protections from the scourge of unwanted robocalls," **said Saunders.**

How should the FCC treat calls to reassigned wireless numbers?

Wrong-number robocalls are particularly maddening and difficult to stop. In many cases, the reason a consumer is getting wrong-number robocalls is that someone to whom the number was previously assigned consented to receive robocalls, and the caller has not bothered to find out whether

the number has been reassigned. The FCC is considering whether to establish a database that will be highly accurate and that will show whether a number has been reassigned. With this step, the FCC would cut wrong number robocalls drastically—protecting consumers and enabling responsible callers to limit their liability. Businesses making robocalls would be expected to reference the database before dialing and would be held liable for calling any individual who has not expressed consent.

How may a called party revoke prior express consent to receive robocalls?

The right to revoke consent is perhaps the most critical protection for consumers — allowing them to maintain the right to stop robocalls. Even in cases where consent is provided to the calling party as a matter of contract, often hidden in the fine-print of consumer financial contracts, the consumer must maintain the right to say “stop,” and the automated callers must stop calling.

Consumers have until June 13 to submit comments to the FCC using docket number 18-152 and urge the Commission to maintain a common-sense definition of an autodialer, establish a reassigned number database, and allow consumers the right to revoke consent to receive robocalls even when consent is given as a matter of contract.

“NCLC will be submitting comments by the June 13 deadline, urging the FCC to maintain a strong stance against unwanted robocalls and to protect consumers’ right to peace and privacy,” **said Saunders**. She encouraged individuals who have been disturbed and interrupted by robocalls to submit their comments as well.

For more information, including tips for consumers to reduce robocalls, visit NCLC’s Robocalls & Telemarketing page.