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June 28, 2011

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Genachowski:

On December 3, 2010, I signed a letter to you expressing concerns with certain changes contemplated by the Federal Communications Commission (FCC) in the Notice of Proposed Rulemaking regarding the Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278 (NPRM).

Congress has placed a high priority on protecting consumers from unsolicited telemarketing calls. With passage of the Telephone Consumer Protection Act (TCPA) and later the Do-Not-Call Implementation Act (DNCIA), Congress tasked the FCC, in coordination with the Federal Trade Commission, with enacting rules which would restrict certain types of solicitation over the telephone. The FCC's compliance with these pieces of legislation to date has been mixed. However, I am concerned that broad interpretation and implementation of these rules have had consequences that were not intended by Congress.

Specifically, I encourage the Commission to clarify that current-generation "predictive dialers" used by debt-collectors and other non-telemarketing businesses are not "autodialers". Congress passed the TCPA to protect consumers from aggressive telemarketing practices, including the use of autodialing equipment to make unsolicited calls to random telephone numbers. Unfortunately, the FCC decided in 2003 that predictive dialers fall within the TCPA's definition of an "automatic telephone dialing system", and therefore are subject to the same restrictions as autodialing equipment. Treating predictive dialers separately will ensure that necessary restrictions on autodialing do not needlessly impact legitimate business practices that do not use this form of autodialing.

Predictive dialers are used today by many businesses, including the financial services industry and debt purchasers and collectors, for non-telemarketing purposes to call consumers with useful information related to pre-existing business relationships (e.g., to resolve outstanding accounts or other issues). They are accurate and efficient devices that enhance compliance capabilities and eliminate human error. They can restrict calls to certain numbers, certain individuals, certain hours, or to a certain number of times per telephone number, thus ensuring compliance with the myriad of state and federal laws and regulations that govern companies' contacts with consumers. For example, debt collectors use predictive dialers to notify consumers about outstanding debts and encourage them to make payment arrangements so as to avoid the expense and
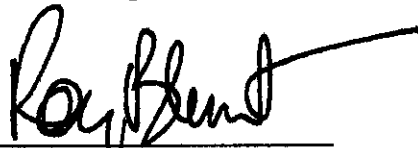
inconvenience of collection litigation. The current generation of predictive dialers does not raise concerns about calling random numbers – the practice that Congress intended to prevent when it enacted the TCPA.

Predictive dialers in use today do not have the capacity to randomly or sequentially generate telephone numbers without fundamentally changing the architecture of the hardware and software. And companies using predictive dialers for non-telemarketing calls, including debt collectors, have absolutely no incentive to dial numbers randomly.

Additionally, I request that the FCC ensure that any new obligations resulting in this NPRM do not contravene the Commission's previous determination that a customer who provides his or her phone number as contact information evinces consent to be reached at that number. Finally, I would ask that you confirm that the FCC is currently reviewing the predictive dialer issue in connection with the pending "robocall" NPRM. If necessary, I will seek additional comment on the matter.

I look forward to hearing from you on this important issue.

Sincere regards,

Roy Blunt
United States Senator