

United States Senate
WASHINGTON, DC 20510

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December 11, 2020

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Pai:

We write to thank you for your recent work to prevent illegal robocalls and to request information about additional efforts that could help prevent U.S. consumers, especially seniors, from receiving these calls. While we appreciate your continued efforts to make it more difficult for bad actors to scam unsuspecting seniors, we are interested in learning more about the Federal Communications Commission's (Commission) decision to exempt call authentication compliant providers and intermediate providers from robocall mitigation program requirements. Failing to take this action may continue to leave consumers at grave risk of receiving these illegal calls.

According to data cited by the Commission, U.S. consumers received nearly four billion robocalls per month in 2018. Con artists rely on such calls to perpetuate elaborate schemes and impersonate government and businesses. And while the telecommunications industry and the federal government, including your agency, have taken actions to prevent illegal robocalls from reaching consumers, these calls seem to be unending. For example, the Commission recently proposed a record fine against a single telemarketing company responsible for more roughly one billion illegal robocalls over five months in 2019.

For this reason, Congress passed and the President signed into law the Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act. This law requires certain voice service providers to implement a call authentication framework to verify caller ID information. The law also requires other service providers to utilize a robocall mitigation program. In drafting rules to implement the TRACED Act, the Commission created a requirement for voice providers to certify their robocall mitigation program in a database. The agency also prohibits intermediate providers (who help to transmit a call to its destination) and terminating voice providers (who deliver the call to the intended destination) from directly accepting calls from voice service providers who do not appear in the database.

The majority of industry comments commended the Commission's draft rule prior to its adoption and others, like USTelecom, expressed their support for the rule while also urging the

Commission to require broader use of robocall mitigation programs. Specifically, they recommended extending the program requirement to all providers regardless of whether they use call authentication technologies. Proponents argued that while call authentication technology can verify whether the caller is truthfully calling from the number that appears on a caller ID, this technology's verification of phone numbers will not stop bad actors' calls from reaching customers. Therefore, extending the mitigation program mandate to all providers, they believe, would require everyone to take a more active role in preventing potential illegal robocalls. Also, some commenters requested that the Commission require intermediate providers, who serve as "middle men" in passing calls along the telephone network, to establish their own robocall mitigation programs. The expressed goal was to prevent an unintended loophole from allowing intermediate providers to take traffic from similarly-situated providers who do not take active measures to prevent facilitating illegal robocalls. However, the Commission declined to extend the mitigation program mandate and adopted the rule as previously drafted.

In order to help us further understand the Commission's actions, please respond to the following questions no later than January 8, 2021:

1. In declining to extend robocall mitigation program requirements to all service providers, regardless of whether they are implementing the call authentication technologies, the Commission also expressly declined to determine whether it had the authority to take such action. It also indicated that it could not yet know whether extending such a program would be an efficient use of providers' resources.
 - a. Does the Commission currently have the authority to require all service providers to implement robocall mitigation program requirements?
 - b. If not, what statutory authorities or specific directives would allow you to take such actions, should you choose to do so?
 - c. The Commission promised to revisit the conclusion not to extend the mitigation program if it determines that "additional robocall mitigation efforts are necessary in addition to [call authentication] after [it] is more widespread". What markers would help you to determine whether additional efforts are necessary?
2. The Commission's recent order prohibits intermediate providers from accepting voice traffic directly from any voice service provider not in the mitigation program's database, but it does not include requirements for traffic between intermediate providers. The agency opined that extending robocall mitigation program certification requirements to intermediate providers would not further robocall mitigation's goal, per the TRACED Act, of stemming the *origination* of illegal robocalls.

- a. If robocall mitigation program certifications requirements are not imposed on intermediate providers, how can others in the telephone network be sure that those providers are taking precautions to avoid passing along illegal robocalls?
- b. Do you believe the Commission currently has the authority to implement rules requiring intermediate providers to certify their compliance with the robocall mitigation program mandate? If not, what statutory authorities or directives would you need to take such actions?

We look forward to your prompt response.

Sincerely,

/s/ Robert P. Casey, Jr.
United States Senator

/s/ Richard J. Durbin
United States Senator

/s/ Amy Klobuchar
United States Senator