



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF THE
CHAIRWOMAN

December 3, 2021

The Honorable Raja Krishnamoorthi
Chairman
Subcommittee on Economic and Consumer Policy
Committee on Oversight and Reform
U.S. House of Representatives
2105 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Krishnamoorthi:

Thank you for your letter regarding the efforts of the Federal Communications to address spam text messages. I agree that unwanted text messages are a problem that requires greater attention. In addition, I believe that efforts to control junk robotexts and robocalls may require greater legal authority as the scammers behind them evolve their efforts.

Earlier this year, I asked FCC staff to look into what additional actions the agency can take regarding unwanted texts in order to stay ahead of this issue—and prevent these texts from showing up on mobile devices in the first place. In October, I shared with my colleagues a proposal to require wireless carriers to block illegal texts before they reach consumers and to apply Caller ID authentication technologies to robotexts. I am hopeful that my colleagues at the agency will support this initiative and that the agency will be able to adopt rules to implement it.

At the same time, the FCC has enforcement authority to address violations of agency policy and rules. The Telecommunications Consumers Division, which is part of the agency's Enforcement Bureau, is responsible for overseeing enforcement activity regarding unwanted calls and texts. These unwanted, unlawful communications are a frequent subject of consumer complaints. The division presently has 35 full-time employees, including managers, 17 of whom are assigned to work exclusively (or nearly exclusively) on robotext and robocall matters. These staff work on multiple projects at once and as a result the agency does not have a consistent method of apportioning the time they spend specifically on robotext matters. Moreover, given how enforcement activities are structured, the Telecommunications Consumer Division does not have data to report regarding pending or closed investigations from July 2021 in the format you request.

However, following my designation as Acting Chairwoman, I also set up a Robocall Response Team with roughly 50 staff from across the agency, including attorneys, engineers, economists, and policy specialists. This team has assisted with a wide range of actions to help reduce robocalls. These include pursuing the largest proposed fine in the agency's history under

the Telephone Consumer Protection Act, standing up the Robocall Mitigation Database and evaluating the submissions, and implementing STIR/SHAKEN call authentication technology for voice calls. I have asked this group to assess the state of robotext complaints in an effort to identify patterns that may lead to further enforcement or rulemaking activity. I also have asked them to identify if a new tool we are using to stop robocalls—cease and desist letters—may also help with bad actors responsible for robotexts. In addition, I have asked them to study the technical issues associated with the introduction of Caller ID authentication technologies like STIR/SHAKEN, that are used to stop illegal robocalls before they reach consumers, to robotexts. As noted above, this is also the subject of a rulemaking that I am hopeful the FCC will adopt shortly.

On top of this, I have asked our staff to explore with the Industry Traceback Group that was set up pursuant to the TRACED Act to study if the methods they are using to help identify the source of illegal robocalls may also be applied to robotexts. This group has been an especially helpful partner when it comes to tracing junk calls and while it is outside the scope of the law that created them, I am hopeful their efforts may also provide information about the origin of nuisance texts.

However, the FCC faces new challenges when it comes to stopping both robocalls and robotexts through enforcement under the Telephone Consumer Protection Act. In general, this law prohibits unwanted calls or texts to wireless numbers if they are sent using an autodialer. At present, it is the primary source of legal authority for FCC enforcement action regarding robocalls and robotexts. But in April the Supreme Court decision in *Facebook, Inc. v. Duguid* adopted a narrower interpretation of the definition of autodialer than had been followed by many lower courts, litigants, and the FCC. This means that fewer calls and texts to wireless numbers may now be subject to the prohibitions in the Telephone Consumer Protection Act. In addition, the FCC's Enforcement Bureau has found that scammers who may be responsible for robotexts are increasingly using equipment that does not satisfy the definition of an autodialer under the law. In light of these new legal and technical limitations, I believe the FCC will need to focus on preventing robotexts in the first place, rather than just trying to punish those responsible for them after the fact.

I hope this information has been helpful. I would be happy to have further discussion about any legislative ideas you may have to help prevent both robocalls and robotexts. I also have instructed FCC staff to keep the Subcommittee informed of any changes to the status of the matters referenced above.

Sincerely,

A handwritten signature in black ink, appearing to read "Jessica Rosenworcel", with a long horizontal flourish extending to the right.

Jessica Rosenworcel