

**DISSENTING STATEMENT OF
COMMISSIONER AJIT PAI**

Re: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278

If there is one thing Americans can agree on, it's that nobody wants to get robocalls. Whether you are sitting down for dinner or trying to unwind at the end of a long day, the last thing you want is to hear "Rachel from Cardholder Services" on the other end of the line.

This is the main reason why Congress passed the Telephone Consumer Protection Act (TCPA) in 1991—to crack down on the illegal telemarketing calls and robocalls that consumers hate. But last summer, the FCC twisted the law's words to target entirely legitimate, live, non-telemarketing calls between businesses and their customers.

It turns out that the FCC's decision created a problem for the federal government. The federal government relies on a host of private businesses to communicate with the American public, including by placing calls to collect on debts owed to or guaranteed by the United States. The FCC's new approach rendered those calls unlawful.

Rather than asking Congress to overturn the agency's order on this point, the Obama Administration took a different tack—one hostile to consumers. It snuck into last year's budget deal a special exemption for federal debt collectors.¹

Just think about what that means: The federal government has deliberately allowed federal debt collectors to robocall consumers at their homes and on their cellphones without their prior express consent. As it is, Americans hate picking up the phone to hear the tinny sound of a robotic voice. I tend to doubt their irritation will lessen when they learn that voice is calling to collect cash on behalf of the government.

Just think about what else that means: Yet again, the government is using the law to benefit politically favored constituencies. "The law" in this area used to mean one set of rules that applied equally to all. Now, the game has changed; "the law" nominally restricts everyone but singles out the few, the happy few, that band of robocallers, for special treatment.

The FCC itself accommodated this kind of rent-seeking in the *TCPA Transformation Order*. It nominally prohibited any business from using any technology other than a "rotary-dial phone" to call consumers.² But it then exempted prison payphone providers,³ banks,⁴ and healthcare companies⁵ from this prohibition. Now we can add federal debt collectors to the list of companies with special privileges.

¹ Bipartisan Budget Act of 2015, Pub. L. No. 114-74, § 301, 129 Stat. 584.

² *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Declaratory Ruling and Order, 30 FCC Rcd 7961, 7975, para. 18 (2015).

³ *Id.* at 7884–89, paras. 38–46.

⁴ *Id.* at 8023–28, paras. 127–39.

⁵ *Id.* at 8028–32, paras. 140–48.

Perhaps the Administration thinks that bestowing largesse upon favored industries is just the way business is done in Washington. Perhaps it thinks that subjecting Americans to intrusive robocalls is worth it on the off-chance that it yields a return, however slight, for the U.S. Treasury.

Whatever the reason, I don't think it's right. And I don't think it's what the American people want. We should be exercising our discretion to mitigate the law's impact as much as possible, and yet we are not. I respectfully dissent.