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Congress Holds Hearings on Abusive Robocalls and Caller ID Spoofing - Possible Legislative or Regulatory Changes Requires Close Watch

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The Senate Commerce Committee and House Energy and Commerce Committee held back-to-back hearings late last month on abusive robocalls and caller ID spoofing and how to combat them. Committee members and witnesses both highlighted the fact that robocalls and ID spoofing have “exploded in recent years” and several noted that [“over 3 billion calls were placed \[in March\] alone”](#) and “about a quarter of these calls are scam calls.” Further, because the technology used to place robocalls and to spoof are evolving technically, the number of calls continues to grow. There was broad agreement on both committees that consumer education, aggressive Federal Communications Commission (“FCC”) and Federal Trade Commission (“FTC”) enforcement actions, and the use of new ID verification and robocall-blocking technologies are important tools in combating these calls. However, Republicans and Democrats and business and consumer witnesses are generally split on the question of whether legitimate businesses are part of the problem and whether the Telephone Consumer Protection Act (“TCPA”) needs to be reformed or conversely expanded through new legislation and regulations. This focus on abusive/illegal robocalls and split on the TCPA presents both risks and potential opportunities for businesses and, consequently, requires close watch.

The [Senate Commerce Committee’s April 18 hearing](#) featured testimony from a massive robocaller and caller ID spoofer, who was subpoenaed to appear and is the current subject of a [\\$120 million FCC forfeiture case](#); FCC and FTC enforcement officials who discussed what they are doing to combat illegal robocallers and spoofer; and a USTelecom official who testified on new ID verification and robocall-blocking technologies currently being offered to consumers, as well as those under development. The hearing also included representatives of the U.S. Chamber of Commerce and the National Consumer Law Center. They agreed that illegal robocalls are a huge problem but otherwise disagreed on other topics, including whether legitimate businesses are harmed by these calls or are part of the problem; whether TCPA class action litigation is harmful or helpful; whether or not the D.C. Circuit Court’s recent decision striking down portions of the FCC’s 2015 Omnibus Order provides “a sensible roadmap” for reinterpreting the TCPA; and whether the FCC and Congress should reform or expand the TCPA through new regulations and legislation.

In response to the testimony, Chairman John Thune (R-SD) and Senator Jon Tester (D-MT) agreed that illegal robocalls hurt both consumers and legitimate businesses, because call recipients are less likely to answer any calls — even ones they want, such as those providing important job and health information. Chairman Thune and Senator Brian Schatz (D-HI) also both expressed interest in helping the FCC stop illegal robocalls by extending the statute of limitations for violations of robocall rules and use of fake caller ID information to years and eliminating the requirement that a citation be issued first. Senator Schatz and other committee Democrats introduced a bill that day to make these statutory changes. There was less of a showing of bipartisan support in other areas. For example, while the USTelecom witness’ testimony on technology advances was generally well-received, Senators Richard Blumenthal (D-CT) and Ed Markey (D-MA) announced that they and other Democratic Senators introduced a bill that day directing the FCC to require telecom companies to verify that their call ID is accurate and to offer consumers optional free robocall-blocking technology. Similarly, Senator Markey, in response to witness comments on the D.C. Circuit Court decision, said “consent is the bedrock of the TCPA,” and while the decision “is a setback,” it does not change this bedrock principle. He also said he and 15 other



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Democratic Senators sent a letter that day to the FCC urging the agency to “establish a comprehensive definition of the term auto dialer so that affirmative consent is received from consumers before calls are made, restrict unwanted calls and texts to reassigned numbers, and reiterate that consumers always have the right to revoke consent.”

[The House Energy and Commerce Committee's April 27 hearing](#) on combating robocalls and caller ID spoofing featured a different set of witnesses and was more focused on technical and marketplace solutions consumers can use to protect themselves. Three of the four witnesses were with companies that have developed innovative technologies that identify caller ID spoofers and block robocalls. The fourth witness was from Consumers Union, and her testimony was similar to that of the consumer witness who testified before the Senate Commerce Committee.

Chairman Greg Walden (R-OR) highlighted recently enacted legislation that directed the FCC to expand and clarify the prohibition on misleading or spoofed caller ID information. He also said it was important to offer consumers multiple solutions to solve the problem of unwanted calls but added that while Congress could make further changes in the law, technology looks like the best solution to this problem.

By way of contrast, Democratic committee members, like their Senate counterparts, used the hearing to highlight newly or soon-to-be introduced Democratic bills. Ranking Member Frank Pallone (D-NJ) announced that he was releasing a comprehensive [discussion draft](#) of legislation that would: (1) respond to the D.C. Circuit Court decision by “prohibiting the making of an autodialed call instead of the use of an automatic telephone dialing system”; (2) require the FCC to implement consumer protections for exempted classes of robocalls or autodialed calls; (3) require the FCC to establish a nationwide reassigned number database and a safe harbor for calls made in error; (4) extend the statute of limitations to three years and eliminate the citation requirement; and (5) require the FTC and FCC to report to Congress annually on their progress on and recommendations for reducing unwanted calls by 50% annually year over year. Rep. Debbie Dingell (D-MI) said she was releasing a [discussion draft](#) that would repeal the common carrier exemption to give the FTC authority to pursue VoIP carriers that specialize in illegal robocalls and that Rep. Anna Eshoo (D-CA) was reintroducing her bill to repeal the Bipartisan Budget Act's TCPA exemption for those collecting debts on behalf of the federal government.

The congressional hearings highlighted the fact that illegal and abusive robocalls are a serious problem, and multiple solutions are required to combat them. Some of the solutions would help legitimate businesses and could help clear the way for badly needed TCPA reforms. However, there is also a risk that legitimate businesses will be adversely impacted by the solutions and face the prospect of new legislation to *expand* the TCPA, especially if Democrats sweep the November congressional elections. Consequently, as technology struggles to keep up, businesses should keep a close watch on these developments.

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