

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

Opening Statement of Rep. Henry A. Waxman
Ranking Member, Committee on Energy and Commerce
Hearing on “H.R. 3035, the Mobile Informational Call Act of 2011”
Subcommittee on Communications and Technology
November 4, 2011

Thank you Chairman Walden for holding this hearing on the Mobile Informational Call Act of 2011. You and Ms. Eshoo have put together another balanced panel and it is appreciated.

The Telephone Consumer Protection Act (TCPA) was signed into law by President Bush in 1991. In the twenty years since its enactment there have been dramatic changes in phone technology. Most notably, in 1991, less than eight million Americans subscribed to mobile phone service. Today there are well over 300 million wireless subscribers.

And every day, more Americans are “cutting the cord” and relying on their mobile phones exclusively. It makes sense to take a look at whether existing law unduly restricts the ability of consumers to receive information they want from businesses with which they have a relationship.

In conducting this inquiry, however, we need to proceed cautiously. Congress enacted the TCPA based on the bipartisan premise that “residential telephone subscribers consider automated or prerecorded telephone calls, regardless of the content or the initiator of the message, to be a nuisance and an invasion of privacy.” Although mobile phone usage has skyrocketed, I suspect that most Americans still have a high degree of concern about unwanted telephone calls, regardless of where they receive them.

Indeed, Congressional actions to protect Americans from unwanted telephone solicitations have proven wildly popular. Over 200 million consumers have signed up for the Do Not Call List and concerns about unwanted calls to residential landlines and mobile phones still generate large numbers of consumer complaints at the state and federal level.

Fundamentally, we need to look at this issue from the perspective of wireless consumers. By amending the law as H.R. 3035 proposes, are we modifying consumer control over wireless phones? Are we changing expectations regarding privacy? Are we increasing costs?

Although some consumers have unlimited texting and calling plans, millions do not. Will consumers have a clear ability to avoid unwanted calls and texts on their wireless phones when such communications increase their costs? Will consumers understand that when they turn over their wireless phone number to the auto dealership, they are agreeing to receive future, auto-dialed, and prerecorded calls and texts about recalls, warranty updates, scheduled oil changes, or even from third party bill collectors?

We also need to understand better whether existing law already allows consumers to receive calls on their wireless phones from businesses and others. Several experts have suggested that this is permissible under existing law.

For example, if a school wants to use an automatic dialer or prerecorded message to call parents' cell phones, or send them text messages about a snow day, this is permissible under existing law with a parent's prior express consent, which the school could obtain readily. Similarly, autodialed and prerecorded updates from power companies, airlines, banks, and cable companies are all allowed with the prior express consent of their customers. All a consumer has to do is provide a wireless phone number to the calling party and grant consent for the use of such methods.

Finally, H.R. 3035 appears to preempt a variety of existing state laws in a significant way. H.R. 3035 would amend the TCPA to preempt all state laws about fax advertisements, autodialers, and artificial or prerecorded voice messages.

I know that preemption of state laws can sometimes be good for businesses, but it is not clear to me how preemption would help consumers or deter telemarketing abuses.

I look forward to hearing from our expert panel. Thank you.