

**BEFORE THE
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.**

**Testimony of Stephen A. Alterman
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H.R. 3035, The Mobile Informational Call Act of 2011

Good morning Chairman Walden, Ranking Member Eshoo and Members of the Committee. My name is Steve Alterman and I am President of the Cargo Airline Association. We appreciate the opportunity to testify today in support of the provisions of H.R. 3035, The Mobile Informational Call Act of 2011.

Introduction

The Cargo Airline Association is the nationwide trade organization representing the interests of the United States all-cargo air transportation industry.¹ Members of the Association are in the business of transporting cargo throughout the world to meet customer needs. Our members transport approximately 87.4% of domestic Revenue Ton Miles² and sort and deliver millions of packages nightly. At times, our members also may need to notify package recipients of scheduled deliveries or failed attempts to deliver specific packages. Typically, such notifications involve shipments where a signature is required; notifications that shipments are being held for pickup at a specified location; and COD shipments. These calls merely provide a

¹ Association members include ABX Air, Atlas Air, Capital Cargo, DHL Express, FedEx Express, Kalitta Air and UPS Airlines.

² FAA Aerospace Forecast, March 2011, p. 42.

customer service and do not contain any solicitation or product marketing. In addition, some of these calls are made to package recipients that are not the original ordering customer (for example, when a customer is purchasing a gift for an intended recipient).

In today's world, with more and more individuals relying solely on mobile phones, it is becoming even more important to permit informational calls to mobile devices. Indeed, anecdotal evidence indicates that upwards of 50% of all contact numbers provided are, in fact, cell phone numbers. Faced with these facts, the Cargo Airline Association and its member companies have a significant interest in the issues raised by H.R. 3035.

The Existing Statutory Scheme

The Telephone Consumer Protection Act (TCPA) contains the statutory framework for telemarketing and other calls made using automated telephone equipment, providing certain requirements for such automated calls and allowing limited exemptions where automated calls are permitted. In relevant part, Section 227(b)(1)(B) currently makes it unlawful to place a non-emergency telephone call to a residential wireline "using an artificial or prerecorded voice" without the recipient's consent unless the call is "exempted by rule or order of the Commission under paragraph (2)(B)." Paragraph (2)(B) provides certain exemptions to the consent requirement, including an exemption for calls to wirelines "that are not made for a commercial purpose" or "do not include the transmission of any unsolicited advertisement." Section 227(b)(1)(A) of the TCPA, however, prohibits the use of any automated dialing system or an artificial or prerecorded voice to a cellular phone absent an emergency or "prior express consent of the called party," establishing a more restrictive regime for both telemarketing and non-telemarketing automated calls to cellular phones.

The Association supports the intent of the TCPA, in that it aims to restrict unsolicited telemarketing calls to residential and cellular telephones. At the same time, we agree that the TCPA properly grants to the Federal Communications Commission (“FCC” or “the Commission”) the regulatory authority to enact limited exemptions from this general ban. It has done so to permit non-telemarketing, informational calls to “land-line” equipment, but has not done so with respect to mobile phones absent the specific consent of mobile phone user. Left unclear is whether the provision of a cellular phone number to a retail store is sufficient to permit delivery companies who obtain these phone numbers from the retail establishments to contact the customers’ mobile phones with delivery information by use of automated phone calling equipment. Enactment of H.R. 3035 would resolve this ambiguity to permit purely informational calls to mobile phones from companies such as Federal Express and UPS to the intended recipients of goods ordered from retailers.

Congress Should Enact H.R. 3035 to Permit Pre-Recorded Informational Calls to Mobile Phones

As noted above, members of the all-cargo air carrier industry provide a customer service both by notifying recipients of an intended delivery date and by informing recipients that an attempted delivery has failed. In the latter case, such calls may also notify the consumer where a package can be picked up if a delivery has failed. This public service has already been exempted by the FCC from the TCPA with respect to calls to residential wirelines.³ However, the FCC has never expanded this exemption to calls made to cell phones.

Because calls to cell phones may involve a per-call charge to the recipient, the Association recognizes the original sensitivity to providing pre-recorded calls to cell phones. However, the cellular world is changing and Congress should recognize these changes. As a

³ See, for example, FCC 10-18, NPRM, CG Docket No. 02-278, 11, fn. 63.

practical matter, in today's world, there is an ever-shrinking difference between residential wireline phones and cell phones. Indeed, a growing percentage of the population is abandoning residential service and using cellular equipment as the primary service provider. In turn, contracts for cellular service have migrated to mirror contracts for residential service, with most service plans providing for a monthly service charge, rather than a charge for each call. In short, there today is little difference between wirelines and cell phones and the mobile phone ban for informational calls is unnecessary from a financial standpoint.

Moreover, in the case of customer service calls made by Cargo Airline Association members, the phone numbers are not randomly generated, but are given to carriers by the package senders or those placing the orders – presumably so they or the intended recipient can be contacted in the event they need to be called with information about the package delivery.⁴ By giving the shipper a contact number, the recipient should be found to have authorized calls to that number, whether by the shipper or any other member of the supply chain. For example, if a consumer orders an item online and provides a mobile number as their contact number, the consumer obviously consents to the retail merchant contacting them regarding their order, as well as to other parties that facilitate fulfillment and delivery of that order. This information exchange is purely transactional, and from the carrier perspective, the consent significantly boosts the ability to deliver packages efficiently and effectively.

Finally, we believe that it is important that any legislation recognize, to the extent possible, the advancing technology of the modern world. Therefore, to avoid any issues in the future, we respectfully request that the proposed legislation be slightly amended to specifically

⁴ Although air cargo industry members do not use any equipment that randomly or sequentially generates numbers to be called, we support the proposed definitional change to the term “automatic telephone dialing system” to limit the term to equipment that generates and dials random or sequential telephone numbers.

provide that text messages be included in the scope of “calls” allowed to be made to mobile devices under the terms of the H.R. 3035.

Conclusion

In view of all the facts and circumstances described above, the Association urges the enactment of H.R. 3035 to permit purely informational calls, including text messages, to mobile phones by automated recording devices. Such action will retain the intended ban on so-called telemarketing calls while authorizing informational calls that are clearly in the public interest.

Thank you very much. I would be happy to answer any questions.