

March 18, 2024

The Honorable Cathy McMorris Rodgers
Chair
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Frank Pallone
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chair McMorris Rodgers and Ranking Member Pallone:

The undersigned groups representing a broad cross-section of the business community oppose H.R. 7116, the “Do Not Disturb Act.”

We strongly support and share the goal of thwarting unlawful actors that seek to defraud or commit other unlawful acts against consumers. Appropriately tailored efforts are critical to protect consumers from deception and other harms. H.R. 7116 is the wrong legislation to achieve this goal. This legislation would curtail the ability of businesses to communicate with their customers, and would inflict new lawsuit-induced costs.

H.R. 7116 would undo the Supreme Court’s *Facebook, Inc. v. Duguid*¹ decision and would enable the class action plaintiffs’ bar to bring an onslaught of Telephone Consumer Protection Act (TCPA) cases.

When enacted, the TCPA was intended to protect consumers from abusive and unwanted telemarketing calls, and the law is not designed to be a “barrier to the normal, expected or desired communications between businesses and their customers.”² However, the plaintiffs’ bar has exploited the TCPA to pry sizable judgements from companies working to comply with the statute, while consumers continue to receive unwanted calls from judgement-proof scammers who routinely flaunt the law.

Prior to the *Duguid* decision, small businesses were commonly sued for several million dollars apiece and large companies were paying up to \$75 million per suit.³ Even nonprofits were targeted. A blood bank, a state chapter of the Special Olympics, and the Breast Cancer Society have all faced TCPA suits.⁴ Of course, consumers received very little of this money. The vast majority of settlements went to the attorneys bringing the suits.

¹ 592 U.S. 395 (2021)

² H.R. Rep. No. 102-317, at 17 (1991).

³ See The Juggernaut of TCPA Litigation: The Problems with Uncapped Statutory Damages, U.S. Chamber Institute for Legal Reform at 12 (October 2013), http://www.instituteforlegalreform.com/uploads/sites/1/TheJuggernautofTCPALit_WEB.PDF (“What is clear is that the TCPA’s uncapped statutory damages pose a real threat to large and small well-intentioned American companies who have potentially millions of customers and who often need to communicate with those consumers.”).

⁴ See *Murphy v. DCI Biologicals Orlando, LLC, et. al.*, 797 F.3d 1302, 1308 (11th Cir. 2015); see also *Wengel v. DialAmerica Marketing, Inc.*, 132 F.Supp.3d 910 (E.D. Mich. Sep. 22, 2015); see also *Spiegel v. Reynolds et al.*, No. 17-3344 (7th Cir. Nov. 14, 2017).

After the *Duguid* decision, the number of these frivolous lawsuits dropped dramatically.⁵ However, they are once again on the rise.⁶ H.R. 7116 would encourage a sudden and exponential increase in unnecessary and costly litigation.

The calls and text messages that legitimate companies make convey important, time-sensitive information. Fraud alerts, low account balance alerts, data breach notifications, reminders to renew prescriptions or schedule a visit to the doctor, notifications of power outages, and automobile recall notices are consumer-benefitting calls that must be placed immediately to be of value to the recipient. Consumers are harmed when they do not receive these time-sensitive communications from legitimate businesses. Unfortunately, H.R. 7116 would encourage such a result.

H.R. 7116 would restrict important communications by expanding the types of calling and texting equipment covered by the TCPA, thereby expanding the number of calls requiring prior express consent before the call may be placed, and the definition of what constitutes a text message through overbroad and ambiguous new requirements. To avoid abusive litigation, some companies may choose not to make important calls or send informational text messages to their consumers at all.

Therefore, we must oppose H.R. 7116.

Sincerely,

ACA International
American Bankers Association
American Financial Services Association
American Property Casualty Insurance Association
American Resort Development Association
American Staffing Association
America's Credit Unions
Cloud Communications Alliance
Coalition of Higher Education Assistance Organizations
Electronic Transactions Association
INCOMPAS
Mortgage Bankers Association
National Association of Manufacturers
U.S. Chamber of Commerce
Voice on the Net Coalition

cc: Members of the House Energy and Commerce Committee

⁵ See Turning the TCPA Tide: The Effects of Duguid, U.S. Chamber Institute for Legal Reform at 4 (December 2021), <https://instituteforlegalreform.com/research/turning-the-tcpa-tide-the-effects-of-duguid/> (“Between October 1, 2020 and March 31, 2021, 975 TCPA-related federal cases were filed. Duguid was decided on April 1, 2021. In the six succeeding months, up to September 30, 2021, 674 TCPA-related cases were filed in federal court—a decrease of roughly 31 percent.”).

⁶ See BY THE NUMBERS: TCPA Class Action Filings Up Staggering 18.7 Percent Last Year – And There’s Even More to This Story (February 5, 2024), <https://www.natlawreview.com/article/numbers-tcpa-class-action-filings-staggering-187-percent-last-year-and-theres-even>.