

# Back to the Future: 1991 Congressional Hearing Shows us How Far the TCPA Has Strayed From What It Was Originally Intended to Regulate

Article By:

Womble Bond Dickinson (US), LLP

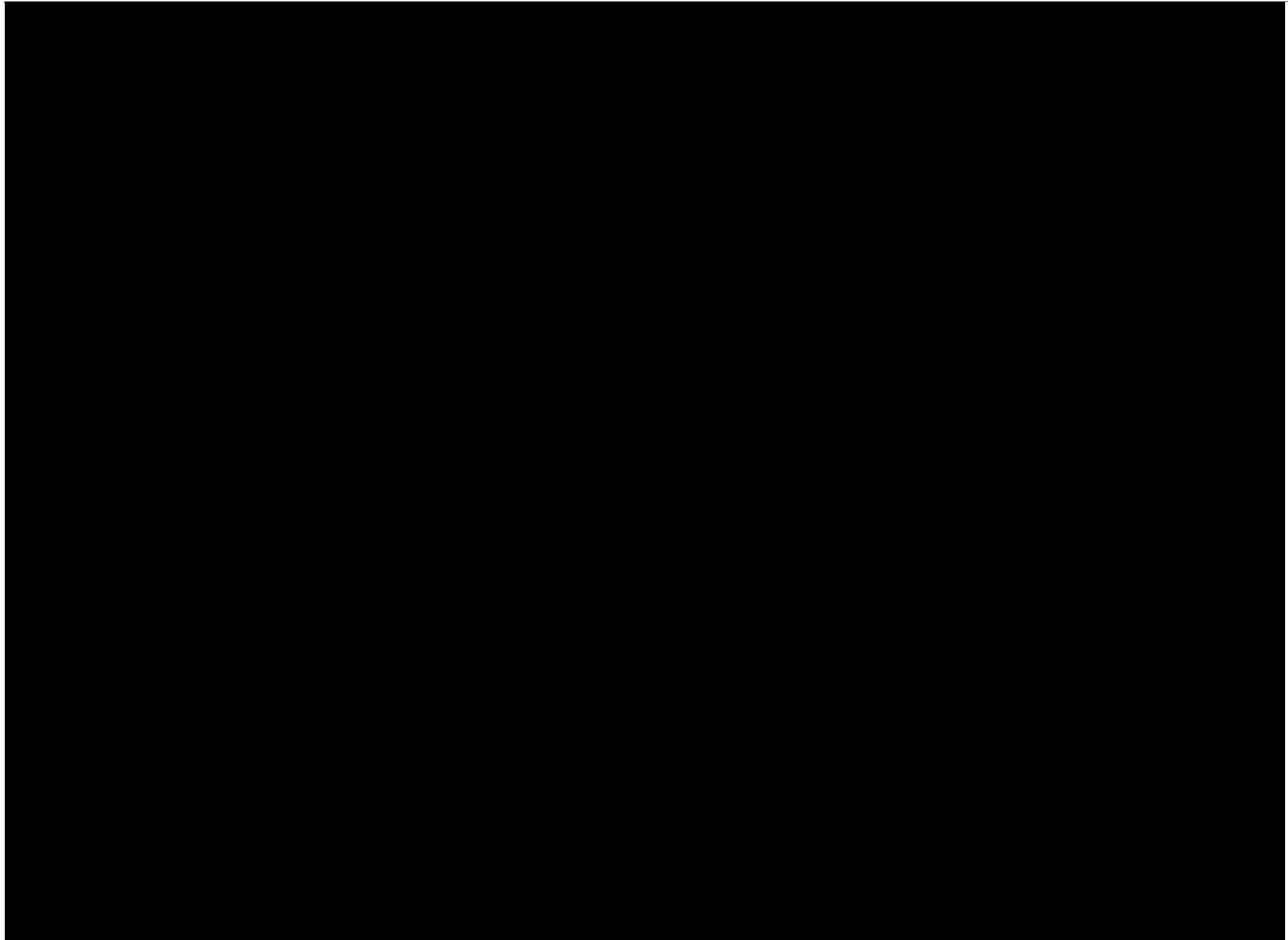
---

[In Part III of TCPAland's review of the comments submitted to the FCC](#), I noted that some of the consumer-side comments submitted to the FCC pointed to a 1991 Senate Subcommittee Hearing in which “predictive dialers” were supposedly discussed. This hearing was used to make the point that this technology was in existence at the time the TCPA was passed in 1992, and was therefore intended to be regulated by Congress.

As I mentioned in Friday’s article, I was going to personally watch that hearing and provide you with my breakdown. And as promised, I dutifully sat down over the weekend and watched the recording of [that two and a half hour hearing](#).

So it turns out the commentators were right. Sort of. It’s true that “predictive dialers” were mentioned, but not with respect to the functionality that is central the question being considered by the FCC: the ability to dial from a list. Instead, the “predictive dialer” functionalities that were addressed were: (1) dialing in advance of the ability of the telemarketer to take the call of the person who answers the phone; and (2) setting an abandonment rate.

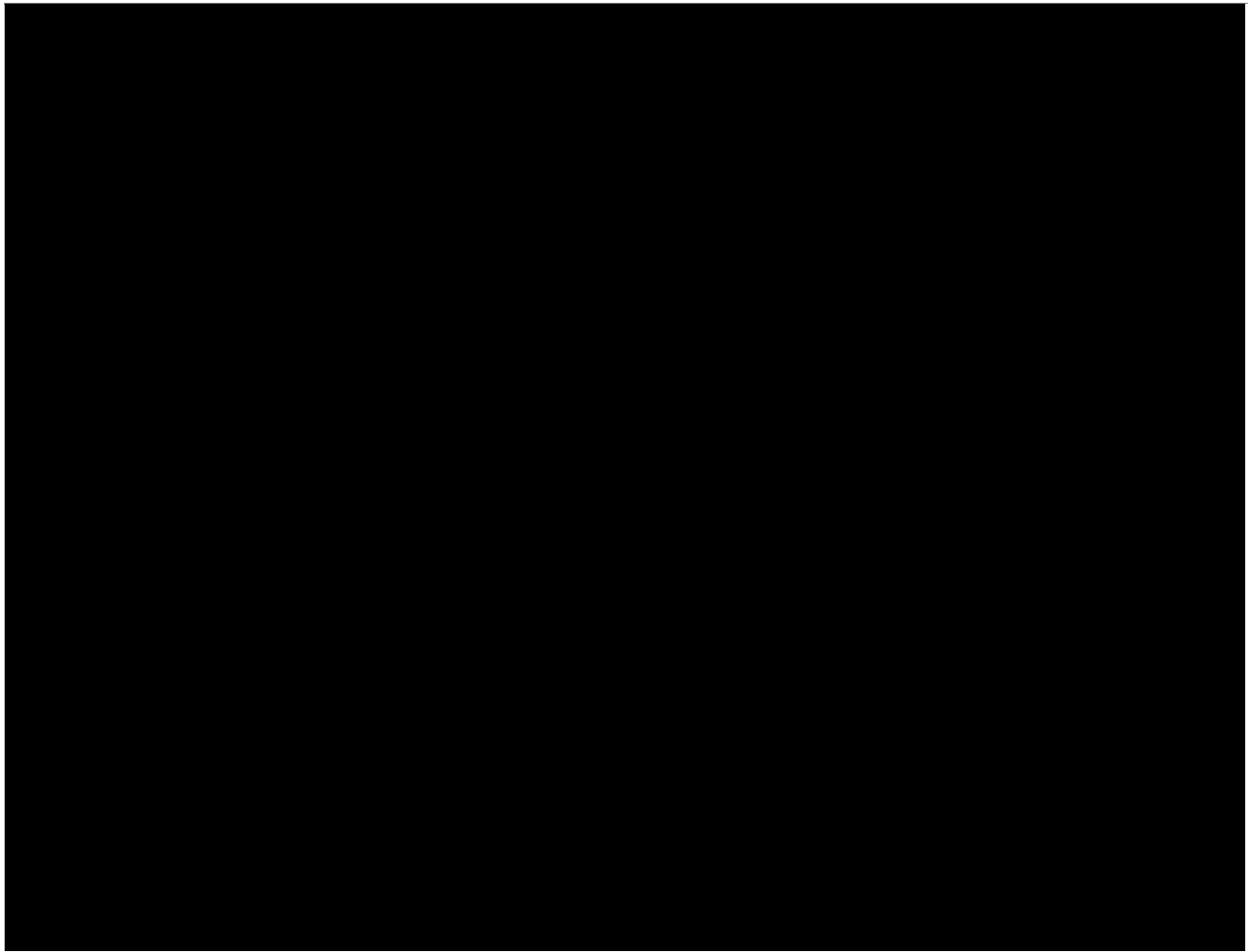
Specifically, what the consumer-side commentators were referring to was the impassioned testimony of this guy (at the 46 minute mark) who is holding a tape recorder up to the mic:



That's Robert Bulmash of Private Citizen, Inc. ([who you'll remember from Part III of our comment review is the organization that wants the TCPA to regulate all use of smartphones](#)) whose proclaimed mission is dealing with the “telenuisance industry” and protecting the privacy of citizens.

It's true that Bulmash spoke about predictive dialers, but when he used those words, he wasn't referring to devices that dial from lists. Instead, the specific functionality he was discussing was the ability of these “predictive dialers” to dial and connect a call before a telemarketer is available to answer it. So it's far from clear that this testimony supports the notion that Congress knew about and intended to regulate devices that dial from lists when it passed the TCPA in 1992. In fact, dialing from lists wasn't mentioned by Bulmash at all (or by anyone else I heard testify during that hearing).

Notably, to the extent that the Senate Subcommittee heard any testimony about dialing functions, it was namely in reference to *dialing sequential numbers*. Specifically, this guy testified about the harms that result from sequential dialing by telemarketers:



That's Thomas Stroup, President of the Telocator Network of America (a telephone carrier trade organization), who testified about the harms suffered by carriers and their subscribers due to sequential number dialing by telemarketers. Also, check out the sweet 'stache and the glasses of the guy sitting next to him!

But I digress. You see, at the time this hearing took place, carriers were assigning large blocks of sequential numbers to cell phones and pagers. So when a telemarketer's sequential number generator hit those blocks of numbers, it would literally tie up the entire network's cell and pager lines, and shut down the entire service. He gave the example of a Hawaiian carrier that was shut down for a full 20 minutes while a telemarketer sequentially dialed through the block of numbers used by that carrier, seizing up the carrier's terminal and rendering it useless.

Ultimately, aside from the neat history lesson and all the delightful 90's attire, this is very compelling stuff and really supports the notion that Congress was intending to regulate a very specific type of device that had the capacity to randomly or sequentially generate telephone numbers to be dialed – not devices that dial from lists.

And what was abundantly clear throughout this entire hearing is that the focus by the Legislators was on *telemarketing*. Indeed, there was nary any mention of debt collection, or any other type of call other than telemarketing. Even the late John McCain was in the mix:



That's him probing whether the regulation on telemarketing should also extend to calls made by charitable organizations.

Watching the Subcommittee hearing was a really fascinating little history lesson that helped put the current battle over the definition of an ATDS and the scope of the TCPA in general into perspective. What was crystal clear to me throughout the hearing was that, when the TCPA was passed, it was aimed at regulating telemarketers, and specifically addressing the harms caused by random and sequential telephone number generators. But of course, you didn't hear a peep about this in any of the consumer-side comments.

Copyright © 2025 Womble Bond Dickinson (US) LLP All Rights Reserved.

---

National Law Review, Volume VIII, Number 295

Source URL: <https://natlawreview.com/article/back-to-future-1991-congressional-hearing-shows-us-how-far-tcpa-has-strayed-what-it>