

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

April 28, 2015

Dear Chairman Upton and Ranking Member Pallone:

On behalf of financial institutions of all sizes and charters represented by the undersigned trade associations, we are writing to express serious concerns about the Targeting Rogue and Opaque Letters Act (TROL Act) as reported by the Commerce, Manufacturing and Trade Subcommittee. While we commend the Subcommittee's effort to develop legislation to address bad faith patent demand letters, the TROL Act as reported would not alleviate the adverse effects that patent trolls have on our members, their customers and our economy. We do not support moving forward with the current version of the bill.

Financial institutions of every size have been targeted by patent trolls, who in most cases assert patents of dubious quality through vaguely worded demand letters or intentionally vague complaints. The TROL Act would require demand letters to contain more details about the patent, who owns it and what is being infringed. It would also authorize that the Federal Trade Commission (FTC) and State Attorneys General to enforce these requirements and bring actions against those that send "bad faith" demand letters.

However, as we have previously communicated to the Subcommittee on several occasions, the definition of what constitutes "bad faith" is very narrow and would require a showing that the sender made "knowingly false or knowingly misleading" statements or omissions; made statements or omissions with "reckless indifference" or made them with "awareness of the high probability" that they would deceive and that the sender intentionally avoided the truth. This is a very difficult standard to meet and would make the transparency requirements virtually unenforceable and would not deter "abusive" demand letters directed at our members.

Tying enforcement against an abusive demand letter to a showing of bad faith is the approach that has been adopted in most of the 21 state laws enacted so far, and several more may be adopted before the end of the year. But the standard and definition included in the TROL Act sets an impossibly high bar and it should either be conformed to the good faith and bad faith criteria in the state laws or eliminated from the bill. Unfortunately, amendments to do just that were not adopted at the Subcommittee markup.

At the same time the states have developed legal concepts regarding demand letter and patent trolls that are constructive, but the bill would preempt and nullify those state laws. It does not make sense to do this and then put in place a weaker and ineffective Federal standard.

Abuses of the patent system by patent trolls through vaguely worded demand letters hurt everyone and they will not stop unless Congress acts on effective legislation. We hope to

April 28, 2015

Page 2

continue to work with the Committee, other Committees and Congress as a whole to achieve this goal. However, we cannot support the TROL Act in its current form.

Sincerely,

American Bankers Association
The Clearing House Payments Company
Credit Union National Association
Financial Services Roundtable
Independent Community Bankers of America
National Association of Federal Credit Unions

CC: Members of the Energy and Commerce Committee