

April 25, 2018

The Honorable Bob Latta
Chairman
Subcommittee on Digital Commerce and
Consumer Protection
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Jan Schakowsky
Ranking Member
Subcommittee on Digital Commerce and
Consumer Protection
Committee on Energy and Commerce
U.S. House of Representatives
2322A Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Latta and Ranking Member Schakowsky,

The undersigned trade associations and industry groups, who represent thousands of financial institutions and other businesses across the country, appreciate the opportunity to comment on the House Energy and Commerce Subcommittee on Digital Commerce and Consumer Protection hearing entitled “Do Not Call: Combating Robocalls and Caller ID Spoofing.”

Illegal and fraudulent robocalls can be a time-consuming and annoying burden on consumers. Congress should rightfully evaluate how it can prevent these invasive and burdensome calls and remove bad actors from the marketplace. However in doing so, it is important to distinguish between fraudulent and illegal robocalls and calls from legitimate businesses seeking to communicate with their members and customers.

Today, many businesses call or text their members and customers in an effort to communicate time-sensitive, critical information, such as low balance notifications, due date reminders, and fee avoidance alerts. Consumers want and expect these types of communications in the most convenient way possible, including via cell phone. Unfortunately, the Telephone Consumer Protection Act (TCPA), while enacted in 1991 to reduce consumers’ costs at a time when cell phone users were charged by the minute, has had the unintended consequence of stifling pro-consumer, non-telemarketing communications. The TCPA has become rife with litigation, with a 1,272 percent increase in TCPA lawsuits from 2010 to 2016. This litigation risk has led businesses to limit—and, in certain instances, to eliminate—communications consumers want and expect to receive.

On March 16, 2018, the U.S. Court of Appeals for the D.C. Circuit issued a decision in *ACA International v. Federal Communications Commission (FCC)*, vacating portions of a 2015 FCC Order interpreting various sections of the TCPA. This ruling gives the FCC an opportunity to re-examine the TCPA, and prescribe new guidelines for the industry.

It is critical the FCC seize this opportunity to clarify the definition of an Automatic Telephone Dialing System (ATDS) so that it is consistent with the statute and take other action to ensure that consumers whose mobile phone numbers have been reassigned continue to receive important communications. Doing so will permit businesses to provide beneficial communications to their members and customers without the threat of costly litigation driven by serial plaintiffs and attorneys who have taken advantage of the ATDS definition recently vacated by the D.C. Circuit.

We urge the Subcommittee to encourage the FCC to take prompt action in these matters, and to continue its efforts to establish a free or low-cost reassigned numbers database and provide a safe-harbor for businesses that use the database.

Legitimate businesses need clarification and standards for how to best serve their members and customers, and are equally concerned about the level of fraudulent and illegal actors in this space. We support the FCC's efforts to deter bad actors while facilitating the ability of legitimate businesses to contact consumers promptly and efficiently. We look forward to working with the Subcommittee as it pursues this issue.

Sincerely,

American Bankers Association
Consumer Bankers Association
Credit Union National Association
Electronic Transactions Association
Independent Community Bankers of America
National Association of Federally-Insured Credit Unions
National Council of Higher Education Resources
Student Loan Servicing Alliance