



April 29, 2019

The Honorable Michael F. Doyle
Chairman
Committee on Energy and Commerce
Subcommittee on Communications &
Technology
U.S. House of Representatives
Washington, DC 20515

The Honorable Robert Latta
Ranking Member
Committee on Energy and Commerce
Subcommittee on Communications &
Technology
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Doyle and Ranking Member Latta:

On behalf of ACA International, I am writing regarding the hearing, ““Legislating to Stop the Onslaught of Annoying Robocalls,” in the Energy and Commerce Subcommittee on Communications & Technology. ACA International is the leading trade association for credit and collection professionals representing approximately 2,500 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs more than 230,000 employees worldwide.

ACA members are also consumers, and like many consumers, greatly dislike fraudulent and illegal robocalls. Accordingly, we appreciate that the Subcommittee is working to stop those making such abusive calls. We also appreciate the Federal Communications Commission’s (FCC) efforts to combat illegal robocalls through enforcement actions, including levying millions of dollars of fines against bad actors. These efforts are certainly worthwhile and deserve the serious attention they have been given by the FCC and Congress. However, since scammers by their very nature are operating outside the bounds of the law and have no intention to follow the law as it is now or in the future, very often they do not pay the fines levied against them for bad behavior as recently noted in the *Wall Street Journal*.¹ On the other hand, unclear requirements under the Telephone Consumer Protection Act (TCPA) have cost legitimate businesses seeking to follow the law millions of dollars in class action settlements, even though the lion’s share of those funds are often given to attorneys not consumers.²

¹ Krouse, Sarah, *The FCC Has Fined Robocallers \$208 Million. It’s Collected \$6,790*, available at <https://www.wsj.com/articles/the-fcc-has-fined-robocallers-208-million-its-collected-6-790-11553770803> (March 28, 2019).

² U.S. Chamber Institute for Legal Reform, *TCPA Lawsuits are HOW Expensive??*, available at <https://www.instituteforlegalreform.com/resource/tcpa-lawsuits-are-how-expensive>. “The average cost of a TCPA settlement in 2018 was \$6,600,000.”

The accounts receivable management industry is a highly regulated industry complying with applicable federal and state laws and regulations regarding debt collection, as well as ethical standards and guidelines established by ACA. The collection activities of ACA members are regulated at the state level and by the Bureau of Consumer Financial Protection (CFPB or Bureau), which supervises and examines Large Market Participants in the industry. Furthermore, the industry is awaiting federal rules under the Fair Debt Collection Practices Act, which are expected to provide guidance about communication with consumers in the next few weeks. ACA members contact consumers exclusively for non-telemarketing reasons to facilitate the recovery of payment for services that have already been rendered, goods that have already been received, or loans that have already been provided. The use of modern technology is critical for the ability to contact consumers in a timely and efficient matter, and often the sooner in the collection process that a consumer is put on notice of a debt, the better off they are.

The Stopping Bad Robocalls Act Threatens Legitimate Businesses and Misses the Mark in Targeting Bad Actors

Unfortunately, through certain sweeping efforts to stop bad actors some policymakers are either intentionally or unintentionally impeding legitimate calls that include important information such as account updates, school closings, loss of utilities, and other exigent information for consumer. As a whole, H.R. 946, the Stopping Bad Robocalls Act, misses the mark in targeting those harming consumers. Instead, the outcome of the legislation will have a negative impact on consumers' ability to receive information they need from legitimate businesses. Specifically, the overly broad characterization of what is considered a "robocall" and the proposed expanded definition of what is considered an autodialer fly in the face of what court decisions have already reasoned to be arbitrary and capricious.³ Under the Stopping Bad Robocalls Act, it is possible that nearly any call other than one coming from a rotary phone could be considered a "robocall." In looking at consumers' preferred methods of communications and the advances in today's technology that have made consumers' lives better by being more informed about pressing matters in a more timely way, returning to an error of only allowing communications by outdated technology is clearly not beneficial. Unfortunately, the Stopping Bad Robocalls Act would create a dangerous environment obstructing dialogue about important matters and set consumers back decades in their ability to be informed.

Consumers often need the information that ACA members provide to maintain their financial health. This open communication can lead to the most favorable outcome for consumers. We appreciate the House Financial Services Committee's recent recognition of this concept during the federal government shutdown in a letter that acknowledged, "...once negative information is reported to consumer reporting agencies, affected employees are likely to see a reduction in their credit scores. This may limit their ability to access credit or result in higher interest rates and more costly terms on credit in the future. Prudent workout arrangements that are consistent with safe-and-sound lending practices are generally in the long-term best interest of the financial

³ *ACA Int'l, et al. v. FCC*, 885 F.3d 6 (D.C. Cir. 2018) (mandate issued May 8, 2018) (affirming in part and vacating in part Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, WC Docket No. 07-1 Rcd 7961 (2015)).

institution, the borrower, and the economy.”⁴ The ability to communicate with consumers is pertinent to have these critical discussions.

This lack of clarity created by the Stopping Bad Robocalls Act would also have a disproportionately harmful impact on small businesses and smaller financial institutions, which already have a difficult time navigating how to comply with onerous requirements for what is considered an autodialer.⁵ This is compounded by the opaque ways that consent, already provided, could be revoked under the Stopping Bad Robocalls Act creating confusion for both consumers and businesses. Furthermore, it is critical to ensure that small businesses and all callers have a seat at the table to formulate any “call authentication” mechanisms, including those discussed in the legislation, to ensure that legitimate callers are not faced with unreasonable or unworkable burdens in trying to make critical informational calls.

Also, under the legislation the term “called party” would be defined as “with respect to a call, the current subscriber of the telephone number to which the call is made, determined at the time when the call is made.” ACA has sought clarity on this same issue from the FCC by urging it to interpret called party as the party that the caller reasonably expected to reach as the intended recipient. This makes the most sense to be able to have reasonable reliance on the prior express consent given for the intended recipient. The FCC now has the opportunity to amend past flawed analysis about this. However, the provisions in the Stopping Bad Robocalls Act are a step in the wrong direction from doing that.

Congress Should Support Clarity Surrounding the TCPA

We ask that the Subcommittee, in addition to considering the problems created by illegal actors making robocalls, also consider the importance of legitimate business calls currently impeded by onerous TCPA requirements. Specifically, ACA would like the Subcommittee to consider these points.

- TCPA interpretations remain onerous and create unclear compliance expectations that leave businesses vulnerable to frivolous class action litigation. The FCC must act to clarify its interpretations of the TCPA as directed by the D.C. Circuit Court of Appeals (D.C. Circuit) after the decision in *ACA Int'l v. FCC*⁶;
- New call blocking and labeling technologies are unfairly impeding calls from credit and collection professionals and other legitimate businesses, in some instances in deceptive

⁴ Letter from Chairwoman Maxine Waters about the federal government shutdown, available at https://financialservices.house.gov/uploadedfiles/shutdown_letter_to_industry_011819.pdf (January 18, 2019).

⁵ Ex parte Notice of SBA Office of Advocacy, Consumer and Government Affairs Bureau Seeks Comment on Interpretation of the Telephone Consumer Protection Act in Light of the D.C. Circuit’s ACA International Decision, CG Docket Nos. 18-152, 02-278. “The SBA Office of Advocacy addressed the confusion surrounding the TCPA as it pertains not only to consumers but small business owners. The SBA Office of Advocacy stated, ‘In an environment where fifty to seventy [percent] of a business’ customers might only be reachable by mobile phone, it is important that the FCC move quickly to establish clear guidance to small business compliance without depriving customers of required or desired communications.’”

⁶ *ACA Int'l, et al. v. FCC*, 885 F.3d 6(D.C. Cir. 2018) (mandate issued May 8, 2018) (affirming in part and vacating in part Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, WC Docket No. 07-1 Rcd 7961 (2015).

ways, or ways that engage in slanderous labeling of legitimate calls (*See Attachment*); and

- Several regulators including the U.S. Department of the Treasury (Treasury), the Small Business Administration (SBA) Office of Advocacy; and the CFPB have recognized the importance of legitimate businesses having the ability to communicate with consumers.

Regulators Have Stressed the Need for Clarity Concerning the TCPA

As the Treasury recently acknowledged in its report, *A Financial System That Creates Economic Opportunities Nonbank Financials, Fintech, and Innovation*, “Debt collectors and debt buyers play an important role in minimizing losses in consumer credit markets, thereby allowing for increased availability of and lower priced credit to consumers.”⁷ In addition to the overall economic benefits the industry provides, the Treasury also addresses how the ability to communicate with consumers is harmed by the TCPA. In the report, the Treasury states, “Current implementation of the TCPA constrains the ability of financial services firms to use digital communication channels to communicate with their customers despite consumers’ increasing reliance on text messaging and email communications through their mobile devices.”

Similarly, the SBA Office of Advocacy addressed the confusion surrounding the TCPA as it pertains not only to consumers but small-business owners. The SBA Office of Advocacy stated, “In an environment where fifty to seventy [percent] of a business’ customers might only be reachable by mobile phone, it is important that the FCC move quickly to establish clear guidance to small business compliance without depriving customers of required or desired communications.”⁸ Furthermore, the CFPB noted in a letter to the FCC that, “Consumers benefit from communications with consumer financial products providers in many contexts, including receiving offers of goods and services and notifications about their accounts. Recent years have seen rapid increases in the use of smart phones, text messages, email, social media, and other new or newer methods of communication. With the advent and deployment of these communication technologies, it is important to review how statutes and regulations apply to them.”⁹

While illegal actors certainly deserve scrutiny from Congress and the FCC, as highlighted, multiple regulatory agencies have also recognized there are significant benefits to consumers when they can communicate with legitimate businesses and institutions. The D.C. Circuit Court, as previously noted, struck down the FCC’s previous interpretation of the TCPA, finding parts of it arbitrary and capricious including the broad definition of autodialer. Unfortunately, the Stopping Bad Robocalls Act is a step backwards in providing the additional clarity the courts have asked the FCC to provide. It is not helpful in clarifying a severely outdated statute enacted

⁷ U.S. Department of Treasury, *A Financial System That Creates Economic Opportunities Nonbank Financials, Fintech, and Innovation* (July 2018), available at <https://home.treasury.gov/sites/default/files/2018-07/A-Financial-System-that-Creates-Economic-Opportunities---Nonbank-Financi....pdf>.

⁸ Ex parte Notice of SBA Office of Advocacy, Consumer and Government Affairs Bureau Seeks Comment on Interpretation of the Telephone Consumer Protection Act in Light of the D.C. Circuit’s ACA International Decision, CG Docket Nos. 18-152, 02-278.

⁹ Comments of the Bureau of Consumer Financial Protection, In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act and CG Docket No. 02-278 Interpretations in Light of the D.C. Circuits CG Docket No. 18-152 ACA International Decision (June 13, 2018).

in 1991 that has not kept up with modern technology and consumers' preferences or targeting fraudulent actors making robocalls. Instead, it will make it harder for legitimate businesses to contact consumers, and for those consumers to learn about information they need to preserve their ability to access credit, health services, and a large variety of other exigent information.

Thank you for holding the hearing and your attention to these important matters.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Need', with a stylized flourish at the end.

Mark Need
Chief Executive Officer