

**Before the
Federal Communications Commission
Washington, D.C.**

In the Matter of)	
)	
Targeting and Eliminating Unlawful Text)	CG Docket No. 21-402
Messages)	

**COMMENTS OF THE AMERICAN BANKERS ASSOCIATION, ACA
INTERNATIONAL, AMERICAN FINANCIAL SERVICES ASSOCIATION, CREDIT
UNION NATIONAL ASSOCIATION, MORTGAGE BANKERS ASSOCIATION,
NATIONAL ASSOCIATION OF FEDERALLY-INSURED CREDIT UNIONS,
NATIONAL COUNCIL OF HIGHER EDUCATION RESOURCES, AND STUDENT
LOAN SERVICING ALLIANCE TO THE NOTICE OF PROPOSED RULEMAKING**

Jonathan Thessin
Vice President/Senior Counsel
American Bankers Association
1333 New Hampshire Avenue, NW
Washington, DC 20036
(202) 663-5016

Leah Dempsey
Counsel
ACA International
Brownstein Hyatt Farber Schreck, LLP
1155 F Street N.W., Suite 1200
Washington, DC 20004
(410) 627-3899

Celia Winslow
Senior Vice President
American Financial Services Association
919 18th Street, NW
Washington, DC 20006
(202) 776-7300

Elizabeth M. Sullivan
Senior Director of Advocacy and Counsel
Credit Union National Association
99 M Street, SE #300
Washington, DC 20003
(202) 503-7184

Justin Wiseman
Vice President, Managing Regulatory
Counsel
Mortgage Bankers Association
1919 M Street, NW
Washington DC 20036
(202) 557-2854

Ann Petros
Vice President of Regulatory Affairs
National Association of Federally-Insured
Credit Unions
3138 10th St. N.
Arlington, VA 22201
(703) 842-2212

Shelly Repp
Senior Advisor and Counsel
National Council of Higher Education
Resources
1050 Connecticut Ave. NW
Washington, DC 20035
(202) 494-0948

Scott Buchanan
Executive Director
Student Loan Servicing Alliance
2210 Mt. Vernon Avenue
Suite 207
Alexandria, VA 22301
(202) 262-8348

November 10, 2022

INTRODUCTION AND SUMMARY

The American Bankers Association, ACA International, American Financial Services Association, Credit Union National Association, Mortgage Bankers Association, National Association of Federally-Insured Credit Unions, National Council of Higher Education Resources, and Student Loan Servicing Alliance (the Associations) appreciate the opportunity to comment on the Notice of Proposed Rulemaking (Notice) in the above-captioned proceeding.¹ In the Notice, the Federal Communications Commission (Commission) proposes to require mobile wireless providers (Providers) to block, at the network level, illegal text messages – specifically, text messages that purport to be from a legitimate business but may be sent by a scammer from invalid, unallocated, or unused numbers. The Commission would also require the blocking of texts sent from numbers on a Do-Not-Originate (DNO) list. The Notice also tentatively concludes that Providers should implement a caller ID authentication framework for text messages as a way to mitigate illegal number spoofing.

Our members report that bad actors illegally “spoof” phone numbers belonging to legitimate businesses when sending text messages – i.e., the bad actor sends a text message from a number that appears to belong to the legitimate business or sends a text message from the bad actor’s own number, making it appear that it is from a legitimate business, with the intent to defraud the recipient. We support the Commission’s proposal to require Providers to block text messages that are from invalid, unallocated, or unused numbers or those on a DNO list because those messages are highly likely to be illegal.

¹ *Targeting and Eliminating Unlawful Text Messages*, Notice of Proposed Rulemaking, FCC 22-72, CG Docket No. 21-402, 87 Fed. Reg. 61,271 (Oct. 11, 2022) [hereinafter, *Notice*].

At the same time, it is critical that the Commission’s rules do not impede the completion of text messages sent by legitimate businesses to their customers and other consumers.

Businesses often send informational text messages when circumstances require an immediate response. For example, financial institutions may send text messages when the customer is at the point-of-sale, but transaction monitoring analytics suggest that it may be a suspicious transaction, and the institution seeks to confirm that the customer—and not a bad actor—is making the transaction. If the customer does not receive the text message, he or she cannot complete the sale. Alternatively, if the bad actor is the one making the transaction, the customer cannot take steps to stop the fraud if the customer does not receive the institution’s text message.

Financial institutions also are expected by their regulators to employ multi-factor authentication to prevent unauthorized individuals from accessing a customer’s account.² To comply with this expectation, institutions often send a text message to customers when they attempt to access their account in order to verify the customer’s identity. Without access to the account, customers cannot determine the amount of funds available in their account or make other financial transactions.

To protect text messages sent by legitimate businesses, we urge the Commission to exclude “short code” text messages (text messages that businesses send from five- or six-digit numbers registered with CTIA, the trade association representing wireless companies)³ from any mandatory blocking, unless there is evidence that the sender is illegally spoofing the message. In particular, the Commission should require Providers to block only those texts that originate from

² See Fed. Fin. Insts. Examination Council, Authentication and Access to Financial Institution Services and Systems 6-8, <https://www.ffiec.gov/guidance/Authentication-and-Access-to-Financial-Institution-Services-and-Systems.pdf>.

³ Short Code Registry, *Frequently Asked Questions*, <https://www.usshortcodes.com/learn-more/faq> (last visited Nov. 10, 2022).

invalid, unassigned, or unused numbers or those on a DNO list until the Commission identifies a class of text messages that have clear indicia of illegality. We also urge the Commission to require Providers to provide immediate notification when a sender's text message has been blocked and to resolve disputes immediately, and no later than six hours after receiving the dispute. In addition, if the Commission decides to include IP-based text messages in its proposed caller ID authentication mandate, we urge the Commission to ensure legitimate IP-based text messages are not blocked.

ARGUMENT

I. THE ASSOCIATIONS SUPPORT MANDATORY BLOCKING OF TEXT MESSAGES FROM INVALID, UNALLOCATED, OR UNUSED NUMBERS, AND ASK THAT "SHORT CODE" TEXT MESSAGES BE EXCLUDED FROM ANY MANDATORY BLOCKING

As described above, the Commission proposes to require Providers to block text messages that purport to be from legitimate businesses but are from invalid, unallocated, or unused numbers and numbers on a DNO list. We support this requirement. As the Commission stated, a text message sent from a number that is invalid, unallocated, or unused, or a number that is on the DNO list, is "highly likely to be illegal."⁴

We also appreciate that the Commission seeks to calibrate its rule to minimize the erroneous blocking of lawful text messages.⁵ If the Commission requires Providers to block certain text messages, we ask the Commission to exclude "short code" text messages from the requirement unless there is evidence that the text message is the product of illegal spoofing. As described above, a short code is a five- or six-digit number that businesses use to send and

⁴ *Notice, supra* note 1, at ¶ 19.

⁵ *See id.*, ¶ 27 (recognizing that the Commission's text blocking proposals come with a risk that consumers could miss wanted text messages).

receive text messages.⁶ Short codes must be registered through CTIA’s short-code registry; therefore, they are highly unlikely to be spoofed and should be protected from blocking by the Commission’s rules.⁷

We also urge the Commission not to expand its text-blocking mandate unless it identifies a class of text messages that have clear indicia of illegality. Regulators, including those who regulate the financial services industry, recognize the value and convenience that text messages from businesses provide to consumers, and they have issued regulations to facilitate the transmission of lawful text messages.⁸ These consumer-benefiting text messages could be at risk if the Commission expands its text-blocking mandate beyond text messages that originate from invalid, unallocated, or unused numbers or are on DNO lists. We urge the Commission not to do so unless it identifies a class of text messages that are clearly illegal.

II. THE COMMISSION SHOULD REQUIRE MOBILE WIRELESS PROVIDERS TO PROVIDE IMMEDIATE NOTIFICATION OF BLOCKING AND TO RESOLVE DISPUTES NO LONGER THAN SIX HOURS AFTER RECEIVING THE DISPUTE

The Associations appreciate the Commission’s acknowledgement that text messages sent by legitimate companies may be erroneously blocked.⁹ We support the extension to text messages of the current requirements for Voice Service Providers to provide redress to erroneously blocked voice calls, including calls from invalid numbers or on DNO lists.¹⁰ Applied

⁶ Short Code Registry, *Frequently Asked Questions*, <https://www.usshortcodes.com/learn-more/faq> (last visited Nov. 10, 2022).

⁷ Banks report that they experience difficulty obtaining short codes from voice service providers. The Commission should encourage wireless providers to provide short codes to legitimate businesses when requested.

⁸ *See, e.g.*, Regulation F, 85 Fed. Reg. 76,734, 76,735 (Nov. 30, 2020) (regulating how financial services companies can send text messages to collect third-party debt).

⁹ *See Notice, supra* note 1, at ¶ 27.

¹⁰ *Advanced Methods to Target and Eliminate Unlawful Robocalls – Petition for Reconsideration and Request for Clarification of USTelecom-The Broadband Association*, Order on

to text message blocking, this would require each terminating Provider that blocks texts to identify a single point of contact (available on the terminating Provider's public-facing website) for text senders to contact when the sender's legitimate text is erroneously blocked.¹¹ In addition, when a text message sender makes a credible claim of erroneous blocking and the terminating Provider determines that the text message should not have been blocked, the terminating Provider would be required to cease blocking text messages from that number until circumstances change.¹² We also urge the Commission to require the terminating Provider to deliver any erroneously blocked messages.

In addition, we urge the Commission to require Providers to notify the sender immediately when the Provider has blocked the sender's text message. A sender of text messages can only take action to dispute an erroneous block if the sender knows that its text message has been blocked. Although the Commission determined not to require immediate notification when blocking voice calls sent from invalid numbers,¹³ notification in the context of texting is justified due to the critical role that informational texts play in facilitating account access, completing transactions, and alerting customers to potential fraud on their account, as described above in these comments.¹⁴

We also urge the Commission to require terminating Providers to resolve disputes immediately, and no longer than six hours after receiving the dispute. As described above, legitimate businesses send text messages when time is of the essence. When a financial

Reconsideration, Sixth Further Notice of Proposed Rulemaking, and Waiver Order, CG Docket No. 17-59, FCC 21-126, ¶ 23 n. 71 (rel. Dec. 14, 2021) [hereinafter, *Order on Reconsideration*].

¹¹ *Notice, supra* note 1, ¶ 27.

¹² *Id.*

¹³ *See Order on Reconsideration, supra* note 10, ¶ 23.

¹⁴ *See supra* Introduction and Summary, at 4.

institution attempts to send a text message to confirm that an attempted transaction is legitimate and not fraudulent, the customer must receive and respond to the text message immediately or the institution may stop the transaction from being completed. Similarly, when a company sends a text message to allow its customer to sign into his or her account (under multi-factor authentication), the customer must receive and respond to the text message immediately to gain access to the account. Under these circumstances, the Provider should resolve the dispute over the blocking immediately. In no event should the resolution occur more than six hours after the text sender's report of the blocking.

III. THE COMMISSION SHOULD ENSURE LEGITIMATE IP-BASED TEXT MESSAGES ARE NOT BLOCKED IF CALL AUTHENTICATION REQUIREMENTS ARE EXTENDED TO TEXT MESSAGES

In the Notice, the Commission tentatively concluded that Providers should implement caller ID authentication for text messages. The Associations look forward to the Commission's study of the feasibility of extending the "STIR/SHAKEN" caller ID authentication requirements to text messages. The Commission should also be open to alternative authentication solutions to prevent illegal spoofing of text messages.

The Commission asked if its proposed caller ID authentication mandate for text messages should apply to "over the top" (OTT) applications – i.e., applications that are delivered over IP-based mobile data networks, which bypass traditional telecommunications networks.¹⁵ The Associations believe that it is premature to extend blocking or authentication mandates to these OTT services. It is unclear whether the caller ID authentication framework proposed to apply to text messages sent over telecommunications networks could be applied to text messages sent over IP networks. Therefore, we urge the Commission to work with Providers to engage in

¹⁵ Notice, ¶ 33.

robust analysis and testing to determine if a caller ID authentication requirement could be applied to IP-based text messages. The Associations urge the Commission to ensure that if a caller ID authentication requirement is applied to text messages sent over IP networks, legitimate IP-based text messages are not blocked. The Commission also should provide a sufficiently long implementation period for any new rules so that vendors and other stakeholders in the IP texting ecosystem can modify their networks to ensure legitimate IP-based text messages are authenticated and not blocked.

CONCLUSION

We support the Commission's efforts to combat illegal text messages, including its proposal to require mandatory blocking of text messages that originate from unassigned, unallocated, or unused numbers or that are on DNO lists. We urge the Commission to exclude "short code" text messages from any mandatory blocking, unless there is evidence that the sender is illegally spoofing the message. The Commission also should not expand its text-blocking mandate beyond those texts that originate from invalid, unassigned, or unused numbers or numbers on DNO lists unless the Commission identifies a class of text messages that have clear indicia of illegality.

We urge the Commission to require Providers to provide immediate notification when a sender's text message has been blocked and to resolve disputes immediately, and no later than six hours after receiving the dispute. If the Commission determines to include IP-based text messages in its proposed caller ID authentication mandate, we urge the Commission to ensure legitimate IP-based text messages are not blocked.

Respectfully submitted,

s//Jonathan Thessin

Jonathan Thessin
Vice President/Senior Counsel
American Bankers Association
1333 New Hampshire Avenue, NW
Washington, DC 20036
(202) 663-5016

s//Leah Dempsey

Leah Dempsey
Counsel
ACA International
Brownstein Hyatt Farber Schreck, LLP
1155 F Street N.W., Suite 1200
Washington, DC 20004 (410) 627-3899
(410) 627-3899

s//Celia Winslow

Celia Winslow
Senior Vice President
American Financial Services Association
919 18th Street, NW
Washington, DC 20006
(202) 776-7300

s//Elizabeth M. Sullivan

Elizabeth M. Sullivan
Senior Director of Advocacy and Counsel
Credit Union National Association
99 M Street, SE #300
Washington, DC 20003
(202) 235-3390

s//Justin Wiseman

Justin Wiseman
Vice President, Managing Regulatory
Counsel
Mortgage Bankers Association
1919 M Street, NW
Washington DC 20036
(202) 557-2854

s//Ann Petros

Ann Petros
Vice President of Regulatory Affairs
National Association of Federally-Insured
Credit Unions
3138 10th St. N.
Arlington, VA 22201
(703) 842-2212

s//Shelly Repp

Shelly Repp
Senior Advisor and Counsel
National Council of Higher Education
Resources
1050 Connecticut Ave. NW #65793
Washington, DC 20035
(202) 494-0948

s//Scott Buchanan

Scott Buchanan
Executive Director
Student Loan Servicing Alliance
2210 Mt. Vernon Avenue
Suite 207
Alexandria, VA 22301
(202) 262-8348

November 10, 2022

APPENDIX

The American Bankers Association is the voice of the nation's \$23.7 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$19.6 trillion in deposits and extend \$11.8 trillion in loans.

ACA International represents approximately 1,800 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates, in an industry that employs more than 125,000 people worldwide. Most ACA member debt collection companies are small businesses. The debt collection workforce is ethnically diverse, and 70% of employees are women. ACA members play a critical role in protecting both consumers and lenders. ACA members work with consumers to resolve their past debts, which in turn saves every American household more than \$700 year after year. The ARM industry is instrumental in keeping America's credit-based economy functioning with access to credit at the lowest possible cost.

The American Financial Services Association (AFSA) is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with closed-end and open-end credit products including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

The Credit Union National Association, Inc. (CUNA) is the largest trade association in the United States representing America's credit unions, which serve more than 130 million members. Credit unions are not-for-profit, financial cooperatives established "for the purpose of promoting thrift among [their] members and creating a source of credit for provident and productive purposes."

The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry that works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans.

The National Association of Federally-Insured Credit Unions (NAFCU) advocates for all federally-insured not-for-profit credit unions that, in turn, serve nearly 124 million consumers with personal and small business financial service products. NAFCU provides its credit union members with representation, information, education, and assistance to meet the constant challenges that cooperative financial institutions face in today's economic environment. NAFCU proudly represents many smaller credit unions with relatively limited operations, as well as many of the largest and most sophisticated credit unions in the nation. NAFCU represents 77 percent of total federal credit union assets, 56 percent of all federally-insured credit union assets, and 74 percent of all federal credit union member-owners.

The National Council of Higher Education Resources' mission is to provide superior advocacy, communications, regulatory analysis and engagement, and operational support to its members so they may effectively help students and families develop, pay for, and achieve their career, training, and postsecondary educational goals.

The Student Loan Servicing Alliance (SLSA) is the nonprofit trade association that focuses exclusively on student loan servicing issues. Our membership is responsible for servicing over 95% of all federal student loans and the vast majority of private loans, and our membership is a mix of companies, state agencies, non-profits and their service partners. Our servicer members and affiliate members provide the full range of student loan servicing

operations, repayment support, customer service, payment processing, and claims processing for tens of millions of federal and private loan borrowers across the country.