



June 21, 2023

Chairwoman Maria Cantwell
Senate Commerce, Science and Transportation
Committee
Washington, D.C. 20510

Ranking Member Ted Cruz
Senate Commerce, Science and Transportation
Committee
Washington, D.C. 20510

Dear Chairwoman Cantwell and Ranking Member Cruz:

On behalf of ACA International, the Association of Credit and Collection Professionals (“ACA” or “Association”), I am writing regarding the Senate Commerce, Science and Transportation Committee “Nomination Hearing: FCC.”

ACA represents approximately 1,700 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, however, are small businesses. The debt collection workforce is ethnically diverse and 70% of employees are women.

Background about ACA International

ACA members play a critical role in protecting consumers and providing liquidity to lenders. ACA members work with consumers to resolve their debts, which in turn saves every American household, on average, more than \$700, year after year. The accounts receivable management (“ARM”) industry is instrumental in keeping America’s credit-based economy functioning with access to credit at the lowest possible cost. For example, in 2018 the ARM industry returned over \$90 billion to creditors for goods and services they had provided to their customers. And in turn, the ARM industry’s collections benefit all consumers by lowering the costs of goods and services—especially when rising prices are impacting consumers’ quality of life throughout the country.

ACA members also follow comprehensive compliance policies, are diligent about employing strong compliance management systems, and have high ethical standards to ensure consumers are treated fairly and the wide range of federal and state laws that govern collections are followed. The Association contributes to this end goal by providing timely industry-sponsored education as well as compliance certifications. In short, ACA members are committed to assisting consumers as they work together to resolve their financial obligations, all in accord with the Collector’s Pledge that all consumers are treated with dignity and respect.

ACA members support the Federal Communications Commission's ("FCC" or "Commission") efforts to target illegal scam calls and text messages. Illegal fraudsters should be eliminated from the marketplace. However, certain FCC policies have done little to stop bad actors who do not care about the law, and instead have resulted in limiting legitimate informational calls that consumers need. ACA supported the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act ("TRACED Act"), because of its efforts to target bad actors harming consumers. However, carriers and the FCC have not kept up with their end of the bargain in this important law. Instead of providing clear standards for transparency and redress options when calls and texts from legitimate businesses are blocked, the FCC has allowed for opaque and incomplete standards that result in carriers continuing to block needed calls with information consumers must know about their finances, health care or other topics. We ask that Congress consider the following concerns:

FCC's Work on Text Message Blocking

This spring, the FCC proposed (1) to require terminating mobile wireless providers to investigate and potentially block texts from a sender after they are on notice from the Commission that the sender is transmitting suspected illegal texts, (2) to apply the National "Do Not Call" Registry's restrictions to text messages, and (3) to restrict the ability of entities to obtain a consumer's single consent and use that consent as the basis for multiple callers to place marketing calls to the consumer.

The Commission should not impede the completion of text messages sent by legitimate businesses to their customers and other consumers. To protect text messages from legitimate companies, the Commission should require mobile wireless providers to notify the sender immediately when the provider has blocked the sender's text message and to resolve disputes no longer than six hours after receiving the dispute. ACA and a large group of other stakeholders outlined actions (available [here](#) (PDF)) the FCC can take to protect legitimate callers and consumers.

A sender of text messages can only take action to dispute an erroneous block if they know that their text message has been blocked. Unfortunately, the FCC's erroneous thinking in this area and in its Report and Order inaccurately stated that carriers are "already providing adequate notice when they block texts." The Commission should require immediate notification of blocking.

Call Blocking Activity

In May, the FCC issued another call blocking order and further notice for combatting illegal robocalls. The FCC unfortunately has missed the mark on requiring carriers to put effective processes in place to ensure call blocking comes with transparency and redress options for callers, which Congress required in the TRACED Act. A large group of impacted callers has outlined several concerns as they work towards seeking appropriate redress.¹

¹ <https://policymakers.acainternational.org/>

Congressional Discussions

Last week, Ranking Member Frank Pallone, Jr. (D-N.J.) issued a statement, “denouncing the ongoing epidemic of abusive robocalls practices,” which he says have been exacerbated by the Supreme Court’s ruling in *Facebook, Inc. v. Duguid*, which interpreted the Telephone Consumer Protection Act’s (“TCPA”) definition of “autodialer” or “ATDS.” The Supreme Court correctly found that to qualify as an ATDS under the TCPA, a device must have the capacity to either store a telephone number using a random or sequential number generator or produce a telephone number using a random or sequential number generator. In other words, equipment that can store or dial telephone numbers without using a random or sequential number generator does not qualify as an ATDS under the TCPA.² While the plaintiffs’ bar surely regrets the clarity that the 9-0 decision from the Supreme Court provided on this issue, it is an important development for a host of businesses making informational calls with much needed information for consumers. It has also decreased class action litigation under the TCPA.³

Fraudulent calls aimed to harm consumers should be limited. However, the wide variety of financial services calls that consumers need about account updates, information about stolen credit cards, and other critical financial information should be supported by Congress.

We understand the serious problems that fraudulent nuisance calls present for consumers, and it is important to consider public policy objectives to limit these calls. However, the truth is that illegal scam artists do not care about the law and as evidenced in recent years, do not pay fines even when presented with them. More should be done to address this issue without laws or regulations that in an overreaction actually stop legitimate calls and texts with needed information for consumers.

Thank you for your attention to the concerns of the ARM industry. Please let me know if you have any questions.



Scott Purcell
Chief Executive Officer
ACA International

² In April 2021, the U.S. Supreme Court issued a 9-0 decision in *e your browser tools to copy the text, then click Close. Facebook, Inc. v. Duguid*, 141 S. Ct. 1163, finding that many lower courts were improperly interpreting what types of technology were considered an ATDS. The Supreme Court justices were clear that Congress drafted the TCPA to address abusive telemarketing, not to punish legitimate business callers.

³ WebRecon Stats Dec '22 & Year in Review, available at https://webrecon.com/webrecon-stats-dec-22-year-in-review/?utm_source=ActiveCampaign&utm_medium=email&utm_content=WebRecon+Stats+Dec++22+%26+Year+in+Review&utm_campaign=Dec+2022+Newsletter&vgo_ee=AqSuxCM3%2B72kAO9%2FZXuiVzpLB9tk6tN1Fm%2BmFY3WWOeL8u0%2BWBCfKIYwvb2riYN9. (noting that For the full year 2022, FDCPA (-31.3%) and TCPA (-10.8%) were both down significantly over 2021).