



October 24, 2023

Senator Ben Ray Luján  
Chair of the Subcommittee on  
Communications, Media and Broadband  
Washington, D.C. 20510

Senator John Thune  
Ranking Member of the Subcommittee on  
Communications, Media and Broadband  
Washington, D.C. 20510

Dear Chairman Luján and Ranking Member Thune:

On behalf of ACA International, the Association of Credit and Collection Professionals (ACA), I am writing regarding the Subcommittee on Communications, Media and Broadband hearing titled “Protecting Americans from Robocalls.” 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 133,000 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 International members play a critical role in protecting both consumers and lenders. ACA International members work with consumers to resolve consumers’ 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 International members also follow comprehensive compliance policies and high ethical standards to ensure consumers are treated fairly. The Association contributes to this end goal by providing timely industry-sponsored education as well as compliance certifications. In short, ACA International 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) 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 are blocked from legitimate businesses, the FCC has allowed for opaque and incomplete standards that allow carriers to continue blocking needed calls with must know information. 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 FCC 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 FCC 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, along with a large group of other stakeholders has outlined ([here](#)) actions 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 the sender knows that its text message has been blocked. Unfortunately, the FCC's erroneous thinking in this area in its Report and Order inaccurately stated that carriers are "already providing adequate notice when they block texts." The FCC should require immediate notification of blocking.

### **Call Blocking Activity**

In May, the FCC put out another call blocking order and further notice for combating illegal robocalls. Unfortunately, the FCC has missed the mark on requiring carriers to put effective processes in place to ensure call blocking is done with transparency and redress options, as Congress required in the TRACED Act. A large group of impacted callers outlined a number of concerns as

they work towards seeking appropriate redress.<sup>1</sup> As these comments outline, calls that consumers have consented to are being blocked based on faulty analytics. ACA has suggested specific technical changes to the FCC that can improve this and ensure that legitimate calls are completed. Consumers are harmed when calls that they need and want to receive are blocked because of one-size fits all analytics that are not tailored to bad actors.

## **Mislabeling**

As ACA has also highlighted in filings with the FCC,<sup>2</sup> several industries report that the informational calls that they place, including fraud alerts and servicing calls, continue to be mislabeled as “spam” based on the analytics of voice service providers or their third-party analytics service providers. This can discourage customers from answering the call or lead voice service providers or third-party analytics service providers to block the call. Both of these results prevent consumers from receiving important and often time-sensitive information.

## **Revoking Consent**

The FCC’s 2015 TCPA Order clarified that consumers may revoke consent using any reasonable means and barred callers from designating the exclusive means of consent.<sup>3</sup> This past summer, the FCC proposed to codify this requirement. The notice specifically proposes codifying its “previous decision that consumers only need to revoke consent once to stop getting all robocalls and robotexts from a specific entity.” The FCC, however, does not cite any previous decision where it has ruled that a single revocation stops everything. The FCC here also seems to be creating a new regulation rather than codifying an existing ruling. Most concerning, the FCC proposes to require callers to honor revocation requests within 24 hours of receipt. This is a dramatic departure from existing practice that, coupled with banning the use of exclusive procedures and deeming the revocation to apply to all future robocalls and robotexts, creates an impracticable standard.

The FCC predicates its 24-hour rule on the use of automated systems to process revocation or opt out requests. Requests to revoke consent do not, however, always utilize automated systems and the FCC’s rules will allow a number of different channels to submit such requests. Even where automated systems are used, they only work to quickly process requests when consumers utilize prescribed means, which the proposed rules would disallow. For example, text messages almost universally enable consumers to cancel further messages by texting STOP. If a consumer instead texts a word that the system is not programmed to recognize or sends a phrase, sentence, or emoji, the requests will not be processed automatically. Even if the consumer uses the prescribed method, the

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<sup>1</sup> <https://policymakers.acainternational.org/wp-content/uploads/2023/08/ABAJointTradesCommentCallBlocking-FCCEighthNPRM-August2023.pdf>.

<sup>2</sup> *Id.*

<sup>3</sup> Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, WC Docket No. 07-135, Report and Order, 30 FCC Rcd 7961 (2015) (“2015 TCPA Order”).

<sup>3</sup> Notice para. 8.

sender may process the revocation request only with respect to the category of information or channel of communication involved in the original message.

The proposed rule that a single revocation stops all future robocalls and robotexts requires coordination and communication throughout the enterprise and among the various third-party vendors a company may use for communications. The confluence of precluding exclusive means, an unlimited scope of revocation, and the 24-hour rule creates a standard that is impossible to meet in many cases, and at the very least creates compliance uncertainties.

### **Congressional Discussions**

Congressman Frank Pallone, Jr. (D-NJ) 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 definition of “autodialer.” 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.<sup>4</sup> 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.<sup>5</sup> Fraudulent calls aimed at harming consumers should be limited. However, the wide variety of financial services calls that consumers need including account updates, information about stolen credit cards, and other must know financial information should be supported by Congress.


We understand the serious problem that fraudulent nuisance calls present for consumers, and it is important to consider public policy objectives to limit them. 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 without laws or regulations that in an overreaction actually stop calls and texts with needed information.

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

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<sup>4</sup> 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.

<sup>5</sup> 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](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).

A handwritten signature in black ink, appearing to read "Scott Purcell". The signature is fluid and cursive, with the first name "Scott" written in a smaller, more compact script than the last name "Purcell", which features a large, prominent loop for the letter 'P'.

Scott Purcell  
Chief Executive Officer  
ACA International