

April 17, 2018

The Honorable John Thune  
Chairman  
Committee on Commerce, Science &  
Transportation  
U.S. Senate  
512 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Bill Nelson  
Ranking Member  
Committee on Commerce, Science &  
Transportation  
U.S. Senate  
512 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairman Thune and Ranking Member Nelson,

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 Senate Commerce, Science, and Transportation Committee's hearing entitled "Abusive Robocalls and How We Can Stop Them."

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 Committee 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 Committee 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