

February 2, 2018

Via ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Request for Comment on Further Notice of Proposed Rulemaking, CG Docket No. 17-59
Advanced Methods to Target and Eliminate Unlawful Robocalls

Dear Ms. Dortch:

The American Bankers Association¹ (ABA) appreciates the opportunity to comment on the Federal Communications Commission's (Commission) Report and Order and Further Notice of Proposed Rulemaking (Report and Order) released on November 17, 2017.² In the Report and Order, the Commission permitted companies that provide telephone service (Voice Service Providers, or Providers) to block limited categories of automated calls in an attempt to limit consumers' receipt of unlawful "spoofed" calls—i.e., calls in which the caller ID displays a phone number different from that of the telephone from which the call was placed, done with "the intent to defraud, cause harm, or wrongly obtain anything of value."³ Specifically, the Commission permitted Voice Service Providers to block calls at the request of the subscriber of the number and calls purporting to originate from a number that is invalid, has not been allocated to any Provider, or is unassigned to any user. In addition, the Commission sought comment on "potential mechanisms to ensure that erroneously blocked calls can be unblocked as quickly as possible and without undue harm to callers and consumers," including through a "formal challenge mechanism."⁴

ABA supports the Commission's efforts to eliminate illegal automated calls, and we appreciate the Commission's measured approach toward authorizing the blocking of calls only under "well-defined circumstances" which suggest that the blocked calls are "highly likely to be

¹ The American Bankers Association is the voice of the nation's \$17 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard \$13 trillion in deposits, and extend more than \$9 trillion in loans.

² Report and Order and Further Notice of Proposed Rulemaking, Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59 (released Nov. 17, 2017) (hereinafter, Report and Order).

³ Truth in Caller ID Act of 2009 § 2, 47 U.S.C. § 227(e)(1).

⁴ Report and Order ¶ 57.

illegitimate.”⁵ The Commission’s authorization of call blocking under these circumstances—where the call purports to originate from an invalid or unassigned number—demonstrates that the Commission can take action to address illegal automated calls while minimizing the risk that financial institutions and other legitimate businesses will be harmed.

Nonetheless, as the Commission recognizes, granting Voice Service Providers the authority to block certain categories of presumptively unlawful calls presents some risk that lawful calls made by banks and other businesses may be erroneously blocked, depriving customers of important and desired information relating to their account.⁶ Financial institutions use automated voice calls and text messages to advise customers quickly of a number of time-critical, non-telemarketing communications. These include notifications of suspicious activity on the customer’s account, data security breaches, low account balances, delinquent accounts, and loan modification options. They also include confirmations of customer-initiated servicing requests and account changes, such as a change of address. It is critical that such calls be completed without delay.

As described in greater detail in our comment letter of June 30, 2017, ABA supports the creation of a “challenge mechanism” for banks and other callers, whose lawful calls are blocked in error, to report the blocking and regain prompt access to the number.⁷ We appreciate Commissioner Michael O’Rielly’s recognition that “it can be difficult and time consuming [for callers] to dispute and remove inappropriate blocks.”⁸ For example, one ABA member reported that at least one Provider is not connecting certain of the member’s calls to the intended recipients; other calls are mislabeled by the Provider as “scam likely” and thus unlikely to be answered by the recipient. The member has spent a number of months attempting to resolve these issues, but has not been successful.

ABA supports the creation of a challenge mechanism. At the same time, we note that the availability and use of this mechanism will not remove all of the barriers that currently limit a bank’s ability to engage in important communications with its customers. Most significantly, the Commission’s existing interpretations of the Telephone Consumer Protection Act (TCPA), particularly the Commission’s interpretation of the statutory definition of an “automatic telephone dialing system”⁹ (an autodialer), impair the ability of banks to use efficient dialing technologies to contact their customers with important messages. These interpretations have

⁵ *Id.* ¶ 9.

⁶ *See id.* ¶ 54.

⁷ *See* Letter from Jonathan Thessin, Am. Bankers Ass’n, to Marlene H. Dortch, Fed. Comm’n 4-6 (June 30, 2017), *available at* <http://www.aba.com/Advocacy/commentletters/Documents/cl-FCC-Robocalls2017.pdf>.

⁸ Report and Order and Further Notice of Proposed Rulemaking, Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59 (adopted Nov. 16, 2017) (statement of Commissioner Michael O’Rielly).

⁹ 47 U.S.C. § 227(a)(1) (defining “automatic telephone dialing system”).

encouraged the filing of class action lawsuits, and the resulting risk of substantial litigation costs has led financial institutions to limit or eliminate many communications that we believe would be welcomed by customers. We urge the Commission to act expeditiously to promulgate more sensible interpretations of the TCPA that are consistent with the text of the statute and congressional intent.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink that reads "Jonathan Thessin". The signature is written in a cursive, flowing style.

Jonathan Thessin
Senior Counsel, Center for Regulatory Compliance