



July 24, 2019

Via ECFS

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

Re: Third Further Notice of Proposed Rulemaking, Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59, WC Docket No. 17-97, 84 Fed. Reg. 29,478 (June 24, 2019)

Dear Ms. Dortch:

The undersigned representatives of health care providers, pharmacies, electric utility companies, grocers, retailers, banks, credit unions, and other financial services providers (the Associations)¹ appreciate the opportunity to comment on the Federal Communications Commission's (Commission) Third Further Notice of Proposed Rulemaking (Notice).²

The Commission has historically prohibited call blocking, because companies that provide telephone service (Voice Service Providers, or Providers) are required, with limited exceptions, to connect calls that pass through their networks (call completion rules).³ In the Notice, the Commission seeks to encourage implementation of a framework for authenticating calls (SHAKEN/STIR framework) by proposing a safe harbor from liability under the call completion rules for Voice Service Providers that choose to block calls, or a subset of calls, that are not

¹ A description of each trade association is provided in the Appendix.

² Third Further Notice of Proposed Rulemaking, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, 84 Fed. Reg. 29,478 (June 24, 2019).

³ See Communications Act of 1934, 47 U.S.C. § 202 (2016) (prohibiting Voice Service Providers from discriminating in their provision of services to consumers); *Anderson v. New York Tel. Co.*, 320 N.E.2d 647, 649 (N.Y. 1974) (Gabrielli, J., concurring) (“The telephone company is a public utility which is bound to make its equipment available to the public for any legal use to which it can be put”); Notice of Proposed Rulemaking and Notice of Inquiry, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, 82 Fed. Reg. 22,625, 22,626 (May 17, 2017) (referencing the “Commission’s historic prohibitions on call blocking”).

authenticated under that framework.⁴ The Commission also proposes to mandate adoption of SHAKEN/STIR if major Voice Service Providers do not do so voluntarily by December 2019,⁵ and to create a mechanism to provide information to consumers about the effectiveness of Providers’ “robocall solutions.”⁶

I. Summary of Comment

The Associations support the Commission’s goal to eliminate illegal automated calls and agree that implementation of the SHAKEN/STIR framework is an important step toward achieving that goal. Under this framework, a call is “signed,” or attested, by the Voice Service Provider that originates the call, and the call is validated by a validation service at the terminating end of the call. The framework also establishes a mechanism to transmit with the signed call information that the originating Voice Service Provider has about the entity that placed the call. This framework facilitates Voice Service Providers’ evaluation of whether the calling party is authorized to use the number appearing in the recipient’s Caller ID, which in turn, will help protect consumers from fraud.

The SHAKEN/STIR framework must be designed to ensure that important, and often time-sensitive, calls that Association members and other organizations place to their customers are not blocked. These calls include alerts from a child’s school (*e.g.*, regarding unplanned closures or emergencies), updates about electric utility outages, public safety notifications, healthcare and prescription reminders, data breach and fraud alerts, service disruption notifications, urgent product safety recall notifications, and loan servicing and collections-related calls. It is critical that these calls be completed without delay.

To minimize the blocking of these calls, we recommend that the Commission direct Voice Service Providers not to block unsigned calls until the SHAKEN/STIR framework has been fully implemented. Moreover, once the framework has been fully implemented, the Commission should permit Providers to block only calls that have not been properly authenticated under the framework *or* those that have been authenticated, but where the Provider has concluded with a high degree of certainty that the call was placed illegally. In addition, for a Voice Service Provider to be protected by the safe harbor, the Commission should require Providers that block calls to notify the calling party and to remove erroneous blocks within 24 hours of learning of the block.

The Commission also has proposed a requirement for Voice Service Providers that block calls to maintain a “Critical Calls List” of numbers that the Provider may not block.⁷ However, we urge the Commission to expand the categories of calls that should be included on a Critical Calls List. In addition to emergency service numbers, the list should include numbers from which the following categories of calls are initiated: fraud alerts, data breach notifications, remediation messages, electric utility outage notifications, product safety recall notices, healthcare reminders and prescription notices, and mortgage servicing calls required by Federal or State law.

⁴ *Advanced Methods to Target and Eliminate Unlawful Robocalls*, No. CG17-59, 2019 WL 2461905 ¶¶ 51-58 (June 7, 2019) [hereinafter *Declaratory Ruling and Further Notice*].

⁵ *Id.* ¶¶ 71-74.

⁶ *Id.* ¶ 83.

⁷ *See id.* ¶ 63.

We also recommend that the Commission, in assessing the effectiveness of Voice Service Providers' solutions to the problem of illegal automated calls, measure and report annually on the number of calls that Providers have blocked erroneously, including (but not limited to) the number of calls erroneously blocked under the SHAKEN/STIR framework.

II. Voice Service Providers Should Not Be Permitted to Block Unsigned Calls Until the SHAKEN/STIR Caller ID Authentication Framework Has Been Fully Implemented

As the Commission has observed, only a few Voice Service Providers have implemented the SHAKEN/STIR framework.⁸ Most Voice Service Providers, particularly smaller Providers, have not begun implementing this framework. In addition, the governance authority overseeing the SHAKEN/STIR framework is still under development. The telecommunications solutions company "iconectiv" was selected in late May to be the administrator of the SHAKEN/STIR framework,⁹ but key aspects of the framework remain under review by iconectiv and industry stakeholders. For example, there is no consensus or uniform approach regarding how a call's authentication status should be presented when a call is delivered to its recipient.

One result of the still-incipient nature of the SHAKEN/STIR framework is that a call that has been signed by the originating Voice Service Provider may be routed through another Provider that has not adopted SHAKEN/STIR. Once the call passes through the non-adopting Provider, it will not be recognized as signed.

In addition, companies that place large volumes of calls may utilize a number of Voice Service Providers, and for any particular call, may use the Provider that can transport the call for the least cost (an arrangement called "least cost routing"). Under this arrangement, one Voice Service Provider will obtain from the United States' number administrator access to the phone number (or phone numbers) used to place outbound calls for the company, and other Providers will carry calls placed from those numbers. Under the SHAKEN/STIR framework as it currently exists, the Provider carrying the call is not able to validate the origin of the call, which may result in the call being blocked. Industry is working on potential solutions that allow the Provider carrying the call to validate the call's origin, but no standards are currently in place.

We urge the Commission to direct Voice Service Providers not to block unsigned calls prior to full implementation of the SHAKEN/STIR framework. "Full implementation" should be considered met only when all Voice Service Providers are able to authenticate calls. As suggested in the Notice, when a call is placed but the originating or terminating Provider has not yet implemented the SHAKEN/STIR framework, a Provider that blocks the call should not be protected by a safe harbor.¹⁰ If unsigned calls are blocked prior to full implementation of the

⁸ See News Release, Fed. Comm'n's Comm'n, FCC Chairman Announces Another Step in Fight Against Spoofed Robocalls 2 (May 13, 2019), <https://docs.fcc.gov/public/attachments/DOC-357422A1.pdf> (noting that some Voice Service Providers need to "catch up" with implementation of the SHAKEN/STIR framework).

⁹ Press Release, ATIS, Mitigating Illegal Robocalling Advances with Secure Telephone Identity Governance Authority Board's Selection of iconectiv as Policy Administrator (May 30, 2019), <https://sites.atis.org/insights/mitigating-illegal-robocalling-advances-with-secure-telephone-identity-governance-authority-boards-selection-of-iconectiv-as-policy-administrator/>.

¹⁰ See *Declaratory Ruling and Third Notice* ¶ 53 (proposing that Voice Service Providers be permitted to block "only calls for which attestation information is available—the originating provider has implemented

SHAKEN/STIR framework, then calls that are signed — but not recognized as signed — could be blocked, depriving consumers of important information from legitimate businesses.

III. When the SHAKEN/STIR Framework Is Fully Implemented, the Commission Should Only Permit Blocking of Calls that Are Not Authenticated or Are Placed Illegally

Once the SHAKEN/STIR framework has been fully implemented, Voice Service Providers should be permitted to block only those calls (1) that have not been properly authenticated under SHAKEN/STIR; or (2) where the Provider can determine with a high degree of certainty that the call was placed illegally through application of objective, defined criteria. For example, the Commission could permit Voice Service Providers to block an authenticated call that is traced back to a caller that has illegally spoofed its outbound calls in the past or otherwise placed calls illegally.

It is critical that Voice Service Providers apply objective, defined criteria to determine whether to block an authenticated call. Providers should not be permitted to block an authenticated call that, in the Provider’s subjective view, may be “unwanted.” In its June 2019 Declaratory Ruling, the Commission authorized Voice Service Providers to block calls “based on any reasonable analytics designed to identify unwanted calls.”¹¹ As the Associations explained previously in our letter of May 30, 2019, to the Commission, the blocking of allegedly unwanted calls could result in the erroneous blocking of lawful and important calls from legitimate businesses to their customers.¹² As described above, these include alerts from a child’s school, information about utility outages and service disruption notifications, public safety notifications, healthcare and prescription reminders, data breach and fraud alerts, product safety recall notifications, and servicing and collections-related calls. For each of these categories of calls, a company initiates a large volume of outbound calls from a number in a short period of time, which is one analytical factor used by Voice Service Providers and third-party services to determine whether a call is labeled as “Potential Spam,” “Suspected Spam,” “Spam Number,” “Nuisance Label,” or “Debt Collector.”¹³ Voice Service Providers should not block an authenticated call in reliance on such analytical factors, absent a high degree of certainty that the call was placed illegally.

The Commission also should discourage Voice Service Providers from labeling calls as “debt collector.” Unlike the call labels of “spam” and “nuisance” — which should describe *illegally* placed calls — servicing and collections-related calls are lawful and beneficial to consumers. It is well-established that the earlier a creditor is able to communicate with a financially distressed borrower, the more likely that the creditor will be able to offer the borrower a loan modification, interest rate reduction, or forbearance on interest and fees, which will help limit avoidable late

SHAKEN/STIR and each intermediate provider in the call path accurately passes authentication information to the terminating provider—and that fail authentication . . .”).

¹¹ *Id.* ¶¶ 34-35.

¹² See *Ex Parte* Letter from Am. Bankers Ass’n et al., to Ajit Pai, Chairman, Fed. Comm’n Comm’n (May 30, 2019), <https://www.aba.com/Advocacy/LetterstoCongress/Documents/Ltr-FCC-Draft-Declaratory-Ruling-20190530.pdf> (letter sent on behalf of ten industry trade associations in the financial, health care, and retail sectors).

¹³ See *Declaratory Ruling and Third Notice* ¶ 35 (observing that a “call-blocking program might block calls based on large bursts of calls in a short timeframe,” among other factors).

fees and negative credit reports.¹⁴ Moreover, the Bureau of Consumer Financial Protection (the expert agency on this matter) has proposed a rule under the Federal Debt Collection Practices Act (FDCPA) that would impose restrictions on the number and frequency of calls that third-party collectors may place to consumers.¹⁵ In addition, the label of “debt collector” may pose a risk that the caller is disclosing the existence of a debt to third parties in violation of the FDCPA. In sum, labeling a call as “debt collector” is unnecessary, provides no benefit to consumers, presents risks to consumers’ privacy, and may harm consumers if calls are not answered as a result of the label. We encourage the Commission to consult with the Bureau as the Commission considers rules regarding the labeling and blocking of calls.

IV. The Commission Should Require Voice Service Providers to Notify Callers and Consumers of Blocked Calls and Remove Erroneous Blocks Expediently in Order to Receive Safe Harbor Protection

The Commission has proposed a safe harbor from liability under the Commission’s call completion rules for Voice Service Providers that choose to block calls that are not authenticated under the SHAKEN/STIR framework.¹⁶ The Commission also has recognized that the blocking of calls under this framework may result in the erroneous blocking of legitimate calls placed by the Associations’ members, despite the best efforts of Voice Service Providers.¹⁷ We agree with the Commission’s suggestion that Voice Service Providers should establish procedures to enable callers to correct erroneous blocks.¹⁸ This requirement would implement congressional direction contained in Senate-passed legislation that the Commission not “support blocking or mislabeling calls from legitimate businesses” and that the Commission “should require voice service providers to unblock improperly blocked calls in as timely and efficient a manner as reasonable.”¹⁹ The requirement also would be consistent with legislation that the U.S. House of Representatives passed today (by a 429-3 vote) that would require the Commission to ensure that call-blocking services provided to consumers have “effective redress options” for erroneously blocked calls that resolve such blocks with “no additional charge to callers.”²⁰

¹⁴ See, e.g., U.S. Dep’t of the Treas. et al., Guiding Principles for the Future of Loss Mitigation: How the Lessons Learned from the Financial Crisis Can Influence the Path Forward 4 (2016), <https://www.treasury.gov/press-center/press-releases/Documents/guiding-principles-future-of-loss-mitigation.pdf> (observing that “improved consumer engagement in the loss mitigation process” between 2009 and 2016 have “supported the recovery of the housing market and demonstrated that a mortgage modification can be a sustainable option for homeowners seeking to avoid foreclosure”).

¹⁵ Debt Collection Practices (Regulation F), 84 Fed. Reg. 23,274 (proposed May 21, 2019) (to be codified at 12 C.F.R. pt. 1006).

¹⁶ *Declaratory Ruling and Third Notice* ¶ 51.

¹⁷ *Id.* ¶ 70 (seeking comment on “other ways to protect callers from erroneous blocking”).

¹⁸ See *id.* ¶ 52 (“[H]ow should we address false positives? Are there specific notification or other procedures that are most appropriate for use to enable callers to correct such false positives quickly?”).

¹⁹ S. Rep. No. 116-41, at 15 (2019) (Senate Commerce Committee report on the Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act (S. 151, 116th Cong. (2019)), which passed the Senate by a vote of 97-1 on May 23, 2019).

²⁰ H.R. 3375, Stopping Bad Robocalls Act, 116th Cong. § 8 (2019), <https://docs.house.gov/bills20190722/BILLS-116hr3375-SUS.pdf>. On July 17, 2019, the House Committee on Energy and Commerce reported H.R. 3375 to the full House of Representatives by a vote of 49-0.

To receive protection under the safe harbor, the Commission should require Voice Service Providers to implement procedures to notify callers and call recipients of blocked calls and to remove those blocks expeditiously and without charging a fee to the calling party. Voice Service Providers should be required to notify callers of *any* call block, regardless of whether the blocking is imposed under the SHAKEN/STIR framework. Specifically, Providers should give notice of the block to the caller and to the call recipient. Notification could be made through use of an intercept message or special information tone that conveys that the call has been blocked.²¹ These notifications should include a phone number or website address for the caller to seek information about why the call was blocked and how to prevent such blocking in the future. The intercept process also should identify the Voice Service Provider that has blocked the call and provide a means for the caller to contact that Provider. Voice Service Providers also should remove an erroneous block within 24 hours of learning of the block, at no charge to the caller.

These procedures will mitigate the harm caused to our members by an erroneous block — and the harm caused to our members’ customers who would miss important and often time-sensitive informational calls if the block were not removed.

V. The Commission Should Expand the “Critical Calls List”

The Commission has proposed requiring Voice Service Providers that block calls to maintain a “Critical Calls List” of numbers that the Provider may not block.²² We agree that consumers are harmed when they do not receive important calls from legitimate businesses and that Voice Service Providers should facilitate these lawful calls. Congress has expressed its unequivocal intent that the Telephone Consumer Protection Act (TCPA) should not “be a barrier to the normal, expected or desired communications between businesses and their customers.”²³

The Commission has proposed that the Critical Calls List include numbers from which emergency calls are placed and has requested comment on whether the List should be expanded to include other categories of numbers. We urge the Commission to expand the Critical Calls List to include the categories of numbers described below. In addition, we ask that the Commission clarify the procedure for businesses to submit (and update) qualifying outbound numbers for this List.

The creation of a list of numbers from which outbound calls may not be blocked would protect important, time-critical, non-telemarketing communications between businesses and their customers, including those discussed below—

a. Messages that Protect Consumers from Fraud and Identity Theft

Financial institutions continuously work to identify suspicious activities and transactions and to respond with timely messages to customers that might be at risk. In 2015, the Commission

²¹ As observed in the Notice, the Internet Engineering Task Force, a standards body composed of network designers, operators, vendors, and researchers, is reviewing a proposal to include a “Session Initiation Protocol” (SIP) response code that would alert the caller that the call has been blocked. *Declaratory Ruling and Third Notice* ¶ 58 n.106.

²² *Id.* ¶ 63.

²³ H.R. Rep. No. 102-317, at 17 (1991); *see also* Letter from Senator John Thune (R-S.D.), Chairman, Sen. Comm. on Commerce, Sci., & Transp., et al. to Ajit Pai, Chairman, Fed. Comm’n 2 (July 24, 2018), <https://ecfsapi.fcc.gov/file/108202324802054/18-585.pdf> (affirming that “Congress did not intend for the TCPA to be a ‘barrier to the normal, expected or desired communications between businesses and their customers.’”).

recognized the value provided by these messages and exempted them from the TCPA's consent requirements, subject to certain conditions.²⁴ Among the activities and risk factors institutions monitor for these purposes are: (1) customer purchases that are unusual in kind for the customer, such as purchases in amounts or in geographic areas or at types of merchants that depart from the customer's established buying patterns; (2) sizes and types of transaction authorization requests that present a high likelihood of fraud, such as high-dollar transactions, ATM withdrawals, and purchases of goods that can readily be converted to cash; (3) transaction requests involving geographic areas, merchants, or merchant types that recently have experienced unusual levels of fraud; and (4) suspicious non-monetary activities, such as changes of address closely accompanied by requests for new payment cards, and requests for new online credentials, coupled with evidence of malware or phishing attacks.²⁵

Financial institutions also are required, under the Fair Credit Reporting Act, to verify a customer's identity before authorizing the establishment of any new credit plan or extension of credit where a fraud alert has been placed on the customer's credit reporting agency file.²⁶

b. Data Security Breach Notifications

Section 501(b) of the Gramm-Leach-Bliley Act, as well as the data security breach notification statutes of the 50 states and the District of Columbia, require the Associations' members to establish response and customer notification programs to be implemented following any unauthorized access to customers' personal information.²⁷ Accordingly, upon learning of any data breach, our members immediately seek to contact customers to notify them of the breach and of any remedial action to be taken.

As with fraud alerts, the Commission has recognized the value provided by data security breach notifications and exempted them from the TCPA's consent requirements.²⁸

c. Remediation Messages

Closely related to data security breach notification messages are notices to customers concerning measures they may take to prevent identity theft resulting from a breach, such as placing fraud alerts on their credit reports and subscribing to credit monitoring services. In many notable security breach cases, affected institutions have offered to cover the costs of such services for consumers. The Commission also has exempted these messages from the TCPA's consent requirements.²⁹

²⁴ *Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 30 F.C.C. Rcd. 7961, 8024-25 (2015) (Declaratory Ruling and Order) [hereinafter *2015 Declaratory Ruling and Order*].

²⁵ The Red Flags Rule, adopted by the Federal Trade Commission and other federal regulators of financial institutions, prohibits a card issuer from complying with a request for an additional or replacement card that follows less than 30 days after an address change, until it has notified the cardholder of the request. *See, e.g.*, 16 C.F.R. § 681.1 (2019).

²⁶ 15 U.S.C. § 1681c-1 (2016).

²⁷ *Id.* § 6801(b); *see, e.g.*, Cal. Civ. Code § 1798.29 (West 2019); 815 Ill. Comp. Stat. Ann. 530/10(a) (West 2019); N.Y. Gen. Bus. Law § 899-aa (McKinney 2019); N.C. Gen. Stat. Ann. § 75-65 (West 2019); Wash. Rev. Code Ann. § 19.255.010 (West 2019).

²⁸ *2015 Declaratory Ruling and Order*, 30 F.C.C. Rcd. at 8024-25.

²⁹ *Id.*

d. Notifications to Consumers Closely Related to Electric Service

It is imperative that electric utility companies quickly disseminate information regarding service interruptions or other potential public safety hazards. Electric companies place calls to address the wide range of potential risks to public health and safety presented by an interruption of electric service due to extreme weather conditions or needed repair and maintenance work. Examples of these calls include calls that warn about planned or unplanned service outages; provide updates about service outages or service restoration; ask for confirmation of service restoration or information about lack of service; provide notification of meter work, tree trimming, or other field work that directly affects the customer's electric service; and provide information about potential brown-outs due to heavy energy usage.³⁰

e. Mortgage Servicing Calls Required by Federal or State Law

Following the 2008 financial crisis, federal and state regulators have required mortgage servicers to place outbound telephone calls to borrowers that fall behind on their mortgage payments to advise the borrower about options to avoid foreclosure and the potential loss of their home.³¹ Failure to place such calls can result in significant liability for the mortgage servicer. These requirements were borne out of research that was conducted following the financial crisis, which strongly validates that early outreach to a distressed borrower can provide the borrower with greater opportunity to obtain a loan modification, interest rate reduction, or forbearance on interest and fees.³² Early outreach also can help the borrower limit avoidable late fees, negative credit reports, and prolonged delinquencies from which the borrower may have difficulty recovering. These calls are informational in nature and are usually placed by live customer service agents.

³⁰ See e.g., *Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 31 F.C.C. Rcd. 9054, 9066 (2016).

³¹ Cal. Civ. Code § 2923.5(a)(1)(A), (a)(2) (West 2019); Nev. Rev. Stat. Ann. § 107.510(1)(b), (2) (West 2019); Wash. Rev. Code Ann. § 61.24.031(1)(a)(i-ii), (1)(b) (West 2019) (California, Nevada, and Washington State pre-foreclosure rules requiring telephone and/or in-person “initial contact” or due diligence required before issuing or recording a Notice of Default); 12 C.F.R. § 1024.39(a) (2019) (CFPB Mortgage Servicing Rules requiring telephone or in-person contact by the 36th day of delinquency); 38 C.F.R. § 36.4278(g) (2019) (VA Mortgage Servicing Rules requiring telephone contact no later than the 20th day of delinquency); U.S. Dept. of Hous. & Urban Dev., Handbook 4000.1, FHA Single Family Housing Policy Handbook 593 (2019) (Telephone contact within 20th day of delinquency), <https://www.hud.gov/sites/dfiles/OCHCO/documents/4000.1hsggh.pdf>; Fannie Mae, Servicing Guide 313 (2019), <https://www.fanniemae.com/content/guide/svc041019.pdf>; Freddie Mac, Single-Family Seller/Servicer Guide 9101-3 (2018) (Outbound contact attempts, including text and telephone, by the 36th day of delinquency), <http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/092618Guide.pdf>; Fannie Mae, Making Home Affordable Program Handbook for Servicers of Non-GSE Mortgages 81 (2019) (Minimum of four telephone calls to the last known phone numbers of record, at different times of the day, within a 30 day period), https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/mhahandbook_53.pdf; U.S. Dept. of Agric., HB-1-3555, SFH Guaranteed Loan Program Technical Handbook 18-2 (2018) (Telephone or written contact before the account becomes 20 days past due, personal contact recommended until delinquency is cured), <https://www.rd.usda.gov/files/hb-1-3555.pdf>.

³² See Mortgage Servicing Rules Under Real Estate Settlement Procedure Act (Regulation X), 78 Fed. Reg. 10,696, 10,788 (citing Goodman, Yang, Ashworth, & Landy, *Modification Effectiveness: The Private Label Experience and Their Public Policy Implications*, submitted to the Pew Charitable Trusts Conference on Strategies for Revitalizing the Housing Market (May 30, 2012)).

f. Product Safety Recall Notices

Retailers, manufacturers, and other supply chain companies subject to the jurisdiction of the Consumer Product Safety Commission (CPSC) enter into voluntary corrective action plans (typically known as “product safety recalls”), and are occasionally subject to mandatory recall orders of the CPSC, with respect to consumer products that potentially pose a hazard to consumers. The four bases for both voluntary and mandatory recalls listed under Section 15(b) of the Consumer Product Safety Act (CSPA), which incorporates by reference other statutes granting recall authority to the CPSC, are that the consumer product: 1. “fails to comply with an applicable consumer product safety rule or with a voluntary consumer product safety standard upon which the Commission has relied . . .”; 2. “fails to comply with any other rule, regulation, standard or ban under this Act or any other Act enforced by the Commission;” 3. “contains a defect which could create a substantial product hazard”; or 4. “creates an unreasonable risk of serious injury or death.”³³ If a product is recalled, either voluntarily by the recalling company or via a mandatory recall order of the CPSC, the recalling company often will contact known affected consumers directly to notify them of the recall, either by telephone, text messaging, or email. In cases where a call, as defined by the TCPA, is made to a consumer, it is critically important for the consumer to be reached as soon as possible to avoid the hazard or risk of serious injury or death presented by the product or products.

Additionally, the Food and Drug Administration, Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Agriculture, U.S. Department of Transportation, U.S. Environmental Protection Agency, and U.S. Federal Aviation Administration, among other federal agencies, have jurisdiction over certain consumer products in addition to the CPSC’s jurisdiction. The Associations’ members with products subject to these agencies’ jurisdiction may make critically important and time-sensitive calls to customers known to have purchased a product or to be using a service that may present a risk of harm to consumers. Such product recall notices and related consumer safety calls are time-critical calls that should not be blocked by Voice Service Providers, as this could result in the serious injury or death of the consumer if not timely notified of the recall or other corrective action due to erroneous blocking. Therefore, such calls should be placed on the Critical Calls List and no safe harbor for Voice Service Providers should apply to the blocking of such calls.

g. Healthcare Reminders and Prescription Notices

Hospitals, pharmacies, and other healthcare organizations place time-sensitive, non-telemarketing calls to provide important healthcare information to consumers. These calls include appointment and exam confirmations and reminders, wellness checkups, hospital pre-registration instructions, pre-operative instructions, lab results, post-discharge follow-up intended to prevent readmission, prescription notifications, home healthcare instructions, and “health care messages” as defined by HIPAA.

Several of these messages are required by law. For example, an insurance exchange must make a “reasonable effort” to contact all applicants who provide information to the exchange that is inconsistent with the information maintained in official records.³⁴ Federal law also permits

³³ 15 U.S.C. §§ 2051-2089 (2016).

³⁴ See Letter from Victoria Di Tomaso, Pres., AAHAM, to Tom Wheeler, Chairman, Fed. Comm’n Comm’n, et al. 1 (Mar. 24, 2014), <https://ecfsapi.fcc.gov/file/7521094890.pdf> (describing applicable law).

federal and state health and human services programs to communicate with patients (and clients) by phone regarding program eligibility and recertification.³⁵ In addition, federal law requires hospitals and outpatient clinics to perform post-discharge follow-up with patients to reduce the rate of readmission.³⁶

VI. The Commission Should Measure the Number of Erroneously Blocked Calls

In the Notice, the Commission proposes to establish a process to provide information to the public about the “effectiveness” of Voice Service Providers’ “robocall solutions.”³⁷ If the Commission creates this mechanism, we recommend that the Commission measure and report annually on the number of calls that Voice Service Providers have blocked erroneously. These would include (but not be limited to) the number of calls erroneously blocked under the SHAKEN/STIR framework. We believe that Providers will be able to track the number of erroneous blocks, particularly if Providers are required to notify callers of blocked calls and to implement a formal mechanism to remove erroneous blocks. Data on the number of erroneously blocked calls will assist the Commission in determining whether the SHAKEN/STIR framework accurately distinguishes between calls that are legitimate and those that are not.

In addition, the June 2019 Declaratory Ruling authorizes Voice Service Providers to offer consumers call-blocking programs that block any call not in the consumer’s list of contacts.³⁸ The Commission should measure and report annually on the number of calls blocked by Voice Service Providers under such call-blocking programs, including the number of calls that are originated by legitimate businesses.

Conclusion

The Associations support the Commission’s goal to eliminate illegal automated calls and support the implementation of the SHAKEN/STIR framework as a means to help achieve that goal. To ensure that calls placed by legitimate businesses are not blocked, we urge the Commission to prohibit the blocking by Voice Service Providers of “unsigned” calls until the SHAKEN/STIR framework is fully implemented. Once the framework has been implemented, the Commission should permit Voice Service Providers to block only calls that are not authenticated or, if authenticated, those calls that the Provider has determined, with a high degree of certainty, are illegal calls.

We also urge the Commission to expand its proposed Critical Calls List to include numbers used to place fraud alerts, data breach notifications, remediation messages, electric service notifications, product safety recall notices, healthcare reminders and prescription notices, and mortgage servicing calls required by Federal or State law. We also recommend that the Commission, in assessing the effectiveness of Voice Service Providers’ solutions to the problem

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Declaratory Ruling and Third Notice* ¶ 83.

³⁸ *Id.* ¶¶ 43-46.

of illegal automated calls, measure and report annually on the number of calls that Voice Service Providers have blocked erroneously.

Sincerely,

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Ann C. Kossachev, Director of Regulatory
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Paul Martino, Vice President, Senior Policy
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Appendix

The American Bankers Association is the voice of the nation's \$18 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard nearly \$14 trillion in deposits, and extend more than \$10 trillion in loans.

ACA International is the leading trade association for credit and collection professionals. Founded in 1939, and with offices in Washington, D.C. and Minneapolis, Minnesota, ACA represents approximately 3,000 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs more than 230,000 employees worldwide. As part of the process of attempting to recover outstanding payments, ACA members are an extension of every community's businesses. Without an effective collection process, businesses and, by extension, the American economy in general, is threatened. Recovering rightfully-owed consumer debt enables organizations to survive, helps prevent job losses, keeps credit, goods, and services available, and reduces the need for tax increases to cover governmental budget shortfalls.

The American Association of Healthcare Administrative Management (AAHAM) is the premier professional organization in healthcare administrative management.

Founded in 1916, 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 many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

The Consumer Bankers Association is the trade association for today's leaders in retail banking – banking services geared towards consumers and small businesses. The nation's largest financial institutions, as well as many regional banks, are CBA corporate members, collectively holding two-thirds of the industry's total assets. CBA's mission is to preserve and promote the retail banking industry as it strives to fulfill the financial needs of the American consumer and small business.

Credit Union National Association represents America's credit unions and their 115 million members.

Edison Electric Institute (EEI) is the association that represents all U.S. investor-owned electric companies. EEI members provide electricity for about 220 million Americans and operate in all 50 states and the District of Columbia. The electric power industry supports more than 7 million jobs in communities across the United States. EEI's members are committed to providing affordable and reliable electricity to customers now and in the future.

The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 52,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 760,000 Americans and are the only physical banking presence in one in five U.S. counties. Holding more than \$4.9 trillion in assets, \$3.9 trillion in deposits, and \$3.4 trillion in loans to consumers, small businesses and the

agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at www.icba.org.

The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's web site: www.mba.org.

The National Association of Federally-Insured Credit Unions (NAFCU) advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 117 million consumers with personal and small business financial service products. NAFCU provides its members with advocacy, education, and compliance assistance to meet the ongoing challenges that cooperative, community-based financial institutions face in today's economic and regulatory environment. NAFCU represents 71% of total federal credit union assets and 50% of all federally-insured credit union assets.

The National Retail Federation provides a voice for every retailer. As the world's largest retail trade association, we help unite 42 million working Americans around our common goal—empowering our industry. We represent discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants and Internet retailers from the United States and more than 45 countries.