

April 17, 2018

The Honorable John Thune  
Chairman  
Committee on Commerce, Science, &  
Transportation  
U.S. Senate  
512 Dirksen Senate Office Building  
Washington, D.C. 20515

The Honorable Bill Nelson  
Ranking Member  
Committee on Commerce, Science &  
Transportation  
U.S. Senate  
512 Dirksen Senate Office Building  
Washington, D.C. 20515

Dear Chairman Thune and Ranking Member Nelson:

On behalf of the Consumer Bankers Association (CBA), I would like to commend the Committee on Commerce, Science, and Transportation's for holding the hearing on "Abusive Robocalls and How We Can Stop Them." CBA is the voice of the retail banking industry whose products and services provide access to credit to millions of consumers and small businesses. Our members operate in all 50 states, serve more than 150 million Americans, and collectively hold two-thirds of the country's total depository assets.

The influx of fraudulent and illegal robocalls by bad actors has become an ever-growing problem for consumers. As Congress examines how to prevent these burdensome calls and address those with ill-intentions, it is imperative to distinguish these robocalls from the beneficial communications between legitimate businesses and their customers.

Consumers utilize many useful communications through calls and texts ranging from low balance notifications to repayment counseling, among other important notices and alerts. While the Telephone Consumer Protection Act (TCPA) was enacted nearly 27 years ago and aimed to protect consumers from intrusive and unwanted telemarketing calls, it has also forced financial institutions to limit many pro-consumer, non-telemarketing communications. Failing to reflect both changes in technology and the contact preference of consumers, the TCPA is barring businesses from providing important information that consumers want and need to receive. CBA members are committed to the spirit of the TCPA and go to great lengths to comply, but the recent interpretations of the law have stifled legitimate businesses' ability to better serve and communicate with their customers.

Since enacted, TCPA litigation has become a thriving industry for class action lawyers. Mobile applications have been created for the sole purpose of collecting and reporting calls to waiting attorneys, helping to drive a 1,272 percent increase in TCPA litigation from 2010 to 2016.<sup>1</sup> Attorneys are benefiting from the outdated law with settlement fees averaging \$2.4 million, dwarfing the average plaintiff award of \$4.12.<sup>2</sup>

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<sup>1</sup> <https://webrecon.com/2016-year-in-review-fdcpa-down-fcra-tcpa-up/>

<sup>2</sup> <https://ecfsapi.fcc.gov/file/60001016697.pdf>

The FCC has an opportunity to re-examine the TCPA, and prescribe new guidelines for the industry. On March 16, 2018, the U.S. Court of Appeals for the D.C. Circuit issued a unanimous decision in *ACA International v. Federal Communications Commission (FCC)* vacating the FCC's overbroad reading of what qualifies as an automatic dialer, most notably addressing the FCC's 2015 interpretation of "capacity" of an automatic dialer, and the FCC's order on reassigned numbers, finding that a one-call safe harbor for companies who inadvertently contacted a number that had been reassigned to be "arbitrary and capricious."

The FCC should re-evaluate the definition of an automatic dialer to include those technologies that use random and sequential numbers – typically for marketing or fraudulent purposes – and not those that employ existing customer contact lists stored by legitimate businesses. Additionally, the FCC should continue its pursuit of a reassigned numbers database to create an all-encompassing source for businesses to scrub their contact lists, and permit a safe-harbor from any violations of the law for those businesses that voluntarily use the database to determine if a phone number has been reassigned or improperly entered to their lists. Establishing a solution that permits, but does not require the industry to scrub numbers against such a list is crucial. We urge the Committee to encourage the FCC to take prompt action in these matters.

CBA members greatly appreciate this thoughtful approach to examining the issues surrounding illegal and burdensome robocalls. We remain committed to working with the Committee to protect consumers from abusive robocalls while providing legitimate businesses with much needed clarification and reasonable standards on how to reach their customers.

Sincerely,

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

Richard Hunt  
President and CEO  
Consumer Bankers Association