

July 3, 2017

Commission's Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Advanced Methods to Target and Eliminate Unlawful Robocalls*
CG Docket No. 17-59

To Whom it May Concern:

The American Financial Services Association (AFSA)¹ agrees with the Federal Communications Commission (FCC) that consumers should receive fewer illegal robocalls. AFSA recognizes that illegal robocalls are, at the very least, annoying for consumers. At most, they can be quite harmful. For those reasons, AFSA strongly supports the FCC's Notice of Proposed Rulemaking (proposed rule) that would allow providers to block illegal robocalls. AFSA also appreciates the FCC's request for more information in its Notice of Inquiry (NOI).

I. Notice of Proposed Rulemaking

AFSA understands that robocalls are the number one consumer complaint to the FCC. As Chairman Pai wrote, "Not only are unwanted robocalls intrusive and irritating, but they are also frequently employed to scam our most vulnerable populations, like elderly Americans, out of their hard-earned dollars."²

Under the Obama Administration, the FCC sought to curtail robocalls by issuing regulations³ under the Telephone Consumer Protection Act of 1991 (TCPA).⁴ The 2015 TCPA Order expanded the definition of "autodialer," broadly interpreted the statute's use of the term "capacity," labeled predictive dialers as autodialers, defined "called party" to mean subscriber, and ruled that a called party may revoke consent at any time and through any reasonable means. These changes did nothing to stop the tide of increasing illegal robocalls, which are made by scammers who do not even try to comply with the TCPA. Illegitimate callers continue to use evolving methods to continue to make illegal robocalls.

Instead of limiting the number of true illegal robocalls, the 2015 TCPA Order has had the negative effect of contributing to the ever-increasing number of TCPA lawsuits and serving to chill some communications between legitimate businesses and their customers.

¹ Founded in 1916, 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.

² Statement of Chairman Ajit Pai on Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59. p. 26.

³ Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Declaratory Ruling and Order, 2015. (2015 TCPA Order)

⁴ 47 U.S.C. § 227.

AFSA agrees with Commissioner Michael O’Rielly’s statement, “Unlike the prior Commission, whose misguided interpretations of the [TCPA] have exposed legitimate businesses to liability for trying to provide useful information that their customers expect to receive, this item seeks to comment on ways to stop actual bad actors from making calls to scam and defraud consumers.”⁵

TCPA litigation continues to grow each year. Last year ended with, “.. continued explosive growth for TCPA, finishing 31.8% ahead of 2015 and decisively overtaking the #2 spot from FCRA – even if it didn’t quite crack 5k this year (if I can make the safest-sounding prediction for 2017 this early, look for TCPA to surpass 5k filings this fall).”⁶

TCPA lawsuits are so lucrative, that some consumers have even made a business out of filing them. A Forbes article provides an example of a “professional” TCPA plaintiff:

“Melody Stoops admits she was in the ‘business’ of bringing lawsuits against companies over calls they made to her cell phones without her permission.

“Stoops, according to testimony included in a recent federal court decision, bought and collected at least 35 different pre-paid cell phones and stored them in a shoebox when not ‘in use.’

“When companies -- including Comenity, Credit One, Navient and Wells Fargo, among others -- would call the phones, the Pennsylvania woman would sometimes answer, telling them they had the wrong number. On occasion, she would tell them not to call again. But she always documented the calls in her log.

“She then started filing lawsuits against the companies, arguing they were in violation of the Telephone Consumer Protection Act.

“Current TCPA regulations prohibit businesses from making automated, pre-recorded calls without written consent from those on the receiving end. The law permits any “person or entity” to bring an action to enjoin violations of the statute and/or recover actual damages or statutory damages ranging from \$500 to \$1,500 per violation.

“Stoops testified that was her plan all along -- that the phones were specifically bought in order to manufacture lawsuits.

“‘It’s my business. It’s what I do,’ she testified, saying a friend in Nebraska gave her the idea for the business model. She has filed at least 11 TCPA cases in the U.S. District Court for the Western District of Pennsylvania and has sent at least 25 pre-litigation demand letters.”⁷

In a change from the 2015 TCPA Order, the proposed rule would help prevent illegal robocalls. The proposed rule would authorize providers to block calls purporting to originate from unassigned or invalid numbers. These are numbers that are unassigned under the North American Numbering Plan, not allocated to a phone company, or not assigned to a subscriber.

AFSA agrees with the FCC that this proposed rule is necessary to allow providers to help prevent unlawful acts and protect consumers. However, we have one suggested change to the commentary on the proposed rule. The

⁵ Statement of Commissioner Michael O’Reilly on Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59. p. 30.

⁶ WebRecon LLC, “2016 Year in Review: FDCPA Down, FCRA & TCPA Up.” 2017. Available at <https://webrecon.com/2016-year-in-review-fdcpa-down-fcra-tcpa-up/>

⁷ Karmasek, Jessica, “Filing TCPA Lawsuits: ‘It’s What I Do,’ Says Professional Plaintiff With 35 Cell Phones.” Forbes. Aug, 25, 2016. Available at <https://www.forbes.com/sites/legalnewsline/2016/08/25/filing-tcpa-lawsuits-its-what-i-do-says-professional-plaintiff-with-35-cell-phones/#4e6d37052265>.

FCC proposes to define the term “illegal robocall” as a call that violates the requirements of the TCPA, the related FCC regulations implementing the TCPA, or the Telemarketing Sales Rule, as well as any call made for the purpose of defrauding a consumer, as prohibited under a variety of federal and state laws and regulations, including the federal Truth in Caller ID Act.

AFSA is concerned that this definition is insufficiently precise and could lead to lawful calls being blocked. Legitimate businesses trying to contact their customers about an existing account may inadvertently violate the TCPA. An inadvertent violation should not make the call an “illegal robocall” that can be blocked by a provider.

AFSA suggests that the FCC replace the words “as well as any call,” in the definition with “and is.” Thus, the definition an illegal robocall would be: “A call that violates the requirements of the TCPA, the related FCC regulations implementing the TCPA, or the Telemarketing Sales Rule, *and is* made for the purpose of defrauding a consumer, as prohibited under a variety of federal and state laws and regulations, including the federal Truth in Caller ID Act.

II. Notice of Inquiry

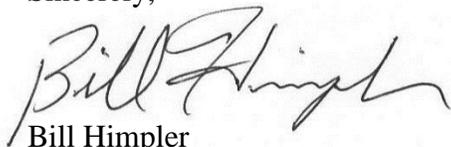
In addition to the proposed rule, the FCC is asking for comment on a NOI. The FCC states that the Robocall Strike Force⁸ asked it to clarify that providers are permitted to block presumptively illegal calls. The categories of unassigned numbers discussed in the proposed rule exemplify objective standards for determining whether a specific call is illegal to a reasonably high degree of certainty. Additional, objective standards that would indicate to a reasonably high degree of certainty that a call is illegal are more complicated. AFSA agrees that there might be some situations in which legitimate calls would be blocked.

Thus, AFSA supports protections for legitimate callers. AFSA agrees that requiring providers to “white list” legitimate calls could be a solution. AFSA also agrees that there should be a challenge mechanism for callers who may have been blocked in error.

* * *

AFSA thanks the FCC for taking this important step in offering a solution to consumers plagued by robocalls that will not negatively affect calls made by legitimate businesses to their customers. Please contact me by phone, 202-466-8616, or email, bhimpler@afsamail.org, with any questions.

Sincerely,



Bill Himpler
Executive Vice President
American Financial Services Association

⁸ The Strike Force includes representatives from across the industry, including providers of traditional landline, mobile, and VoIP services, handset manufacturers, operating system developers, and VoIP gateway providers.