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Stopping Illegal Robocalls and Robotexts: Progress, Challenges, and Next Steps

Thank you Chairman Palmer, Ranking Member Clarke, and members of the Subcommittee. My name is Stephen Waguespack, and I am the President of the U.S. Chamber Institute for Legal Reform (“ILR”). The U.S. Chamber is the world’s largest business federation, representing the interests of more than three million businesses of all sizes and sectors, as well as state and local chambers and industry associations. The ILR is a division of the U.S. Chamber that promotes civil justice reform through regulatory, legislative, judicial, and educational activities at the global, national, state, and local levels. Thank you for the opportunity to testify today about the robocalling landscape and how American businesses are protecting consumers.

I would like to leave the Subcommittee with four main points today:

- ***First***, legitimate businesses support—and are helping to lead—efforts to crack down on illegal and abusive robocalls and robotexts in order to create a safe communications ecosystem; businesses have every incentive to ensure that consumers continue to trust the ecosystem and answer calls and texts.
- ***Second***, Congress can ensure that its already-substantial efforts to address illegal robocalls and robotexts bear fruit by encouraging federal agencies—and particularly the Department of Justice (“DOJ”)—to make illegal robocalls and robotexts an enforcement

priority.

- ***Third***, the Telephone Consumer Protection Act’s (“TCPA”) private rights of action continue to fuel abusive litigation against American businesses. This difficult operating environment hurts businesses and consumers. It makes it more difficult for legitimate businesses and organizations to send, and for consumers to receive, good calls and texts—such as appointment reminders, notifications about school closures, and other communications that consumers want; at the same time, it does not deter bad calls and texts—such as fraudulent and harassing communications that originate from bad actors. It is critical that Congress distinguish between these two types of calls. Congress should also encourage the Federal Communications Commission (“FCC”) to streamline and modernize TCPA regulations to boost compliance, ensure certainty for legitimate businesses, and focus on addressing bad actors.
- ***Fourth***, Congress could consider modest changes to the TCPA to limit the abuse of our judicial system through class actions that do nothing to stop bad actors—many of whom flagrantly and repeatedly violate existing laws.

I. INDUSTRY SUPPORTS A SAFE AND TRUSTWORTHY COMMUNICATIONS ECOSYSTEM AND IS DEVOTING RESOURCES TO PROTECTING CONSUMERS FROM SCAMMERS.

Chamber members around the country share Congress’s concerns about the damage that scam calls and texts are causing and are committed to working with Congress to root out these schemes at the source and hold perpetrators responsible.

Like consumers, legitimate businesses suffer harm at the hands of robocall and robotext fraud

and scams. The illegal calls and texts that seek to defraud U.S. consumers begin with bad actors exploiting the reputation and good will of trusted American brands. Indeed, legitimate businesses face the serious risk from illegal robocalls of dilution of their brand through impersonation fraud. For example, “1 in 3 businesses” report having “had their name used by an impersonator making scam calls.”¹ This fraud carries serious consequences for businesses: 13% of consumers “have since switched brands after receiving an impersonation call.”²

Beyond reputational damage, fraudulent calling and texting schemes also degrade consumers’ trust in the voice and text messaging networks, making it difficult for businesses to engage with their customers. American consumers are the life-blood of commerce, and successful and trusted businesses avoid practices that customers revile. In stark contrast, the bad actors behind the deluge of illegal robocalls and robotexts simply ignore the law, ultimately inflicting financial harm to consumers, and severely tarnishing legitimate brands through impersonation fraud.

In short, the business community abhors the perpetuation of illegal and abusive robocalls and robotexts. Because of significant harms to consumers and businesses from robocall and robotext scams, companies are proactively going on the offensive by fighting back against the bad actors behind these calls and texts. For example:

- Marriott International has directly fought back by bringing its own trademark lawsuit against malicious robocallers and their facilitators, and in a significant legal victory, obtained judgments, consent orders, or settlements against all six of the U.S.-based

¹ State Of The Call 2023, Hiya, at 9, *available at* <https://www.hiya.com/state-of-the-call> (updated June 2023).

² *Id.* at 10.

defendants. Marriott also secured \$8 million judgments against two foreign defendants that unlawfully used its trademarks in more than 66 million robocalls between 2018 and 2022.³

- DIRECTV also filed two federal lawsuits against fraudsters who were targeting existing or potential DIRECTV customers with imposter robocalls.⁴ The company ultimately secured a total of \$8 million in judgments, and broad permanent injunctions against the entities and individuals behind these deceptive robocalls targeting American consumers.
- Other companies have been actively deploying other efforts to address illegal robocalls and robotexts. For example, the American Bankers Association (“ABA”) launched an industry-wide consumer education campaign involving more than 2,000 banks from across the nation called “Banks Never Ask That.”⁵ The campaign is designed to educate consumers about the persistent threat of phishing scams, and “turn[] the tables on the bad guys by empowering consumers with the tools they need to spot bogus bank communications.”⁶ The ABA recently reported that one participating bank experienced a

³ See Press Release, Marriott International, Marriott International Secures Legal Victory Against Fraudulent Robocall Operators (Oct. 4, 2024), <https://news.marriott.com/news/2024/10/04/marriott-international-secures-legal-victory-against-fraudulent-robocall-operators>. See also, *Marriott Int’l, Inc. v. Dynasty Mktg. Grp. LLC*, No. 1:21-CV-0610, 2023 WL 2230433 (E.D. Va. Feb. 6, 2023), *report and recommendation adopted*, 2023 WL 2226782 (E.D. Va. Feb. 24, 2023).

⁴ See *DIRECTV, LLC v. Synmatix, LLC et. al.*, No. 1:22-CV-02817 (D. Md. Nov. 1, 2022); *DIRECTV, LLC v. WNK Associates, Inc. et. al.*, No. 6:22-CV-00423 (E.D. Tex. Nov. 1, 2022).

⁵ See *Banks Never Ask That* (2024), American Bankers Association, <https://www.banksneveraskthat.com/about/>.

⁶ *Id.*

94% decline in customer losses to fraud after implementing the campaign.⁷

- Companies are devising innovative technologies to ward off illegal robocalls and robotexts, such as analytics-powered software,⁸ and the private sector is partnering with the Government in tackling illegal and abusive robocalls. The Industry Traceback Group (“ITG”) is a group of “companies from across the wireline, wireless, [Voice over Internet Protocol] VoIP, and cable industries” that “collaborate to trace, source, and ultimately, stop illegal calls.”⁹ The ITG has conducted more than 17,000 tracebacks since its creation¹⁰ supporting state and federal investigations. As the FCC explained, the ITG’s efforts have “played a key role in combating the scourge of illegal robocalling campaigns.”¹¹ And just last month, the ITG stated that it is coordinating with voice service providers and financial institutions to conduct a pilot program to source examples of spoofed bank calls for traceback and identification of their sources. Importantly, this effort has enabled banking institutions to more quickly identify customers impacted by

⁷ Marlee Ribnick, *How one bank’s ‘stop and think’ message slashed customer fraud losses*, ABA Banking Journal (May 20, 2025) <https://bankingjournal.aba.com/2025/05/how-one-banks-stop-and-think-message-slashed-customer-fraud-losses/>.

⁸ See Lance Whitney, *Stop the Madness: How to Block Spam Calls and Robocalls*, PC Mag (Feb. 28, 2025), <https://www.pcmag.com/how-to/block-robocalls-and-spam-calls>.

⁹ See Industry Traceback Group, <https://tracebacks.org/>.

¹⁰ Industry Traceback Group Ex Parte, *Enforcement Bureau Requests Information on the Status of Private-Led Traceback Efforts of Suspected Unlawful Robocalls*, EB Docket No. 20-195, DA 25-261, at 1 (May 1, 2025), <https://www.fcc.gov/ecfs/document/1050176246723/1>.

¹¹ FCC Report to Congress On Robocalls and Transmission of Misleading or Inaccurate Caller Identification Information, FCC, at 19 (Dec. 23, 2022), <https://docs.fcc.gov/public/attachments/DOC-390423A1.pdf>.

fraudulent scams.¹²

- The telecommunications industry also has developed technology to help in the fight. Industry technologists developed a standard called STIR/SHAKEN to authenticate caller ID information for calls carried over an IP network to “combat illegal spoofing.”¹³ With the TRACED Act, Congress mandated the use of this industry-spearheaded approach.¹⁴
- Finally, on the robotexting front, CTIA has launched its Secure Messaging Initiative (“SMI”), which is an industry-led program aimed at protecting consumers from unwanted or illegal text messaging spam. The goal of the SMI is to rapidly and effectively shut down spam activity and help enforcement agencies target bad actors that send unwanted or fraudulent messages.¹⁵ Through this partnership, the wireless industry has delivered 10 referral packages to law enforcement partners at the FCC, the Federal Trade Commission (“FTC”), and the state Anti-Robocall Litigation Task Force, which these enforcers can use to bring charges against spammers and shut them down.¹⁶

¹² USTelecom Ex Parte, *Enforcement Bureau Requests Comments on Selection of Registered Traceback Consortium*, EB Docket No. 20-22, at 2 (May 22, 2025) <https://www.fcc.gov/ecfs/document/1052278229960/1>.

¹³ *Call Authentication Tr. Anchor; Implementation of Traced Act Section 6(a)–Knowledge of Customers by Entities with Access to Numbering Res.*, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3241, ¶ 5 (2020).

¹⁴ See Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, § 4(b)(1)(A)-(B), 133 Stat. 3274, 3277 (2019).

¹⁵ *CTIA Secure Messaging Initiative*, CTIA, <https://www.ctia.org/ctia-secure-messaging-initiative>.

¹⁶ *Wireless Industry Achieves Milestones in Tracing Robotexts*, CTIA (Sept. 16, 2024), <https://www.ctia.org/news/wireless-achieves-milestone-in-tracing-texts>.

These are just a few examples of the business community’s many efforts to address illegal and abusive robocalls and robotexts and to fight against bad actors.

II. CONGRESS SHOULD ENSURE THAT PROSECUTING FRAUDSTERS IS A PRIORITY.

A. Fraudulent And Abusive Robocalls And Robotexts Are Already Illegal.

More legislation will not stop the illegal and abusive robocalls and robotexts that we are seeing today. The TCPA and its implementing rules prohibit calls made using autodialed and artificial or prerecorded voices to consumers’ cell phones unless the consumer consents or the call is otherwise permitted (*e.g.*, calls made for emergency purposes).¹⁷ And the FCC has extended the TCPA’s coverage to text messages, prohibiting autodialed text messages sent without a called party’s consent.¹⁸ The TCPA also establishes a number of other robust protections for consumers with respect to telemarketing and solicitation calls and texts—regardless of the technology being used to communicate.¹⁹ Further, the TCPA is not the only tool in enforcers’ toolbox to fight illegal actors. For example, the Truth in Caller ID Act of 2009—strengthened by the TRACED Act—broadly prohibits callers from “spoofing” their numbers “with the intent to defraud, cause harm, or wrongfully obtain anything of value.”²⁰ Congress delegated to the FTC the authority to

¹⁷ 47 U.S.C. § 227(b)(1)(B), (2)(B); 47 C.F.R. § 64.1200(a).

¹⁸ In the 2003 TCPA Order, the FCC determined that text messages constitute “calls” under the TCPA. *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, CG Docket No. 02-278, at ¶ 165 (2003). *See also Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, CG Docket No. 02-278, WC Docket No. 07-135, at ¶ 107 (2015) (“Glide raises the issue of whether SMS text messages are subject to the same consumer protections under the TCPA as voice calls. We reiterate that they are.”).

¹⁹ *See, e.g.*, 47 C.F.R. § 64.1200 (c)-(d).

²⁰ 47 U.S.C. § 227(e).

“implement and enforce a national do-not-call registry,”²¹ and under the FTC’s Telemarketing Sales Rule (“TSR”), it is illegal to place most kinds of telemarketing calls to a number on the registry.²² The TSR also prohibits deceptive and abusive telemarketing tactics and can be a powerful tool to go after bad actors.²³

Illegal robocallers and robotexters also face serious potential criminal penalties, including through the wire fraud statute, which provides for up to 20 years imprisonment for “devis[ing] any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises” over the phone.²⁴ In addition, the TRACED Act imposes criminal fines of \$10,000 per violation of the prohibition on fraudulent call spoofing.²⁵ Further, the Communications Act’s general penalty provision provides that willful and knowing violators of the TCPA and its associated rules may be imprisoned and fined.²⁶

Beyond this, there are robocall and robotext mitigation requirements already on the books. For example, the FCC adopted a Report and Order in March 2023 that requires providers to block text messages that appear to originate from phone numbers on a reasonable do-not-originate list, which are text messages that are highly likely to be illegal.²⁷ And a second rule already in effect requires mobile providers to either establish a point of contact for text message senders or ensure

²¹ 15 U.S.C. § 6151.

²² 16 C.F.R. § 310.4(b)(1)(iii)(B).

²³ *Id.* §§ 310.4, 310.5.

²⁴ 18 U.S.C. § 1343.

²⁵ 47 U.S.C. § 227(e)(5)(B).

²⁶ 18 U.S.C. § 501.

²⁷ *Targeting and Eliminating Unlawful Text Messages; Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket Nos. 21-402, 02-278, Report and Order and Further Notice of Proposed Rulemaking, 38 FCC Rcd 2744, 2751, ¶ 16 (2023).

that its aggregator partner or blocking contractor establish a point of contact to inquire about blocked texts and resolve complaints regarding erroneous blocking.²⁸

Even with this existing robust body of legislation, fraudsters continue to violate the many laws on the books without penalty.

B. There Has Been Some Enforcement Progress.

Thankfully, we have seen some progress in combatting the bad actors responsible for illegal robocalls. As the FCC’s most recent report to Congress detailed, the agency pursues forfeitures for tens—and sometimes hundreds—of millions of dollars against the biggest robocalling operations targeting Americans.²⁹ Among these enforcement actions is the largest forfeiture in the agency’s history: \$299 million levied against a group of businesses that placed one billion fraudulent robocalls.³⁰ The FCC also took action to protect consumers from scam robotexts associated with student debt, issuing a Consumer Alert in conjunction with four state Attorneys General warning consumers about an uptick in scam messages related to federal student loan debt relief.³¹ The FTC is also active, having settled a lawsuit in 2024 with a VoIP that funneled

²⁸ 47 CFR § 64.1200(r).

²⁹ FCC Report to Congress on Robocalls and Transmission of Misleading or Inaccurate Caller Identification Information, FCC, at 4-5 (Dec. 27, 2024), <https://docs.fcc.gov/public/attachments/DOC-408475A1.pdf> (“2024 FCC Robocall Report”).

³⁰ *Id.* at 5.

³¹ Consumer Advisory, Fed. Commc’ns Comm’n, FCC & State Attorneys General Warn Consumers of Increased Risk of Student Loan Debt Scam Robocalls and Robotexts (June 30, 2023), <https://docs.fcc.gov/public/attachments/DOC-394832A1.pdf> (Student Loan Robocall Advisory).

“hundreds of millions of illegal robocalls through its network.”³² The settlement, among other things, bans the company from providing VoIP services to any company that “does not have an automated procedure to block calls that display invalid Caller ID phone numbers or that are not authenticated through the FCC’s STIR/SHAKEN Authentication Framework.”³³

As highlighted above, businesses are supplementing these federal enforcement efforts. As the FCC notes in its 2024 TRACED Act Report to Congress,³⁴ the ITG’s traceback efforts “have continued to grow” over the last four years.³⁵ The ITG “initiated 3,737 tracebacks [in 2023]—345 more than were conducted in 2022.”³⁶ The ITG identified 699 U.S. and foreign-based providers in 2023, and of those 699 providers, 270 had not previously been identified; “85% of completed tracebacks resulted in an originating provider warning or terminating the caller.”³⁷

C. Robust Enforcement Is The Way To End Illegal Robocalls And Robotexts.

³² Press Release, FTC, FTC Sues to Stop VoIP Service Provider That Assisted and Facilitated Telemarketers in Sending Hundreds of Millions of Illegal Robocalls to Consumers Nationwide (May 12, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-sues-stop-voip-service-provider-assisted-facilitated-telemarketers-sending-hundreds-millions>; Press Release, FTC, XCast Labs Will Be Banned from Supporting Illegal Telemarketing Practices to Settle FTC Charges It Assisted and Facilitated in Sending Hundreds of Millions of Illegal Robocalls (Jan. 2, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/01/xcast-labs-will-be-banned-supporting-illegal-telemarketing-practices-settle-ftc-charges-it-assisted>.

³³ Press Release, FTC, XCast Labs Will Be Banned from Supporting Illegal Telemarketing Practices to Settle FTC Charges It Assisted and Facilitated in Sending Hundreds of Millions of Illegal Robocalls (Jan. 2, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/01/xcast-labs-will-be-banned-supporting-illegal-telemarketing-practices-settle-ftc-charges-it-assisted>.

³⁴ 2024 FCC Robocall Report.

³⁵ *Id.* at 24.

³⁶ *Id.*

³⁷ *Id.*

Despite all of this activity—including headline-grabbing FCC forfeiture orders—the federal government needs to do more to hold bad actors accountable, particularly those perpetrating fraud on Americans from overseas. A lack of historical DOJ enforcement presents the biggest obstacle at this time, though we are hopeful that will improve.

DOJ has not been pursuing in court the forfeiture orders adopted by the FCC. The FCC recently reported that in 2023, DOJ did not “collect[] forfeiture penalties or criminal fines for violations of [the TCPA].”³⁸ This was a missed opportunity for DOJ and one we hope the new leadership at the Department will vigorously pursue in the near future.

Nor has DOJ historically taken its own action to prosecute bad actors that actively and openly flout the law and seek to defraud Americans. DOJ has ample authority under the wire fraud statute and other provisions, as earlier described. And it has the means to use that authority because the ITG and other industry groups provide DOJ with tracebacks and other information that it could use. At the end of the day, however, it is DOJ that has to make the decision about whether to prosecute. While the DOJ has partnered with the FTC and others on some cases against robocallers,³⁹ DOJ has not previously appeared to have made material prosecutions a

³⁸ See 2024 FCC Robocall Report at 5.

³⁹ Press Release, DOJ Office of Public Affairs, U.S. Department of Justice, Federal Trade Commission, Federal Communications Commission and Other Federal and State Law Enforcement Agencies Announce Results of Nationwide Initiative to Curtail Illegal Telemarketing Operations (July 18, 2023), <https://www.justice.gov/opa/pr/us-department-justice-federal-trade-commission-federal-communications-commission-and-other#:~:text=The%20department's%20Consumer%20Protection%20Branch,that%20transmitted%20illegal%20phone%20calls>.

high priority, which is particularly disappointing when it comes to recidivist robocall abusers.⁴⁰

As the Chamber has called for in prior testimony, lawmakers should consider ways to spur additional action from DOJ, such as:

- Requiring DOJ to file an annual report with Congress explaining enforcement activity it has undertaken in the last calendar year to combat illegal robocalls and its handling of FCC referrals, including the pursuit of forfeiture amounts. This requirement would be similar to the TRACED Act's annual TCPA reporting requirement for the FCC and should require DOJ to explain if and why it has not pursued FCC referrals.⁴¹
- Prioritizing DOJ funds for investigations and enforcement actions against illegal robocallers.
- Requiring DOJ to establish a robocall enforcement and education office.

However Congress might proceed, know that American businesses stand ready to assist DOJ and others in the fight against illegal and abusive robocalls.

⁴⁰ *In the Matter of Sumco Panama SA et al.*, Forfeiture Order, File No. EB-TCD-21-00031913, FCC 23-64, ¶ 12 (Aug. 3, 2023) (“*Sumco Panama Order*”) (“Cox and Jones, key participants in the Enterprise, are currently banned from any form of telemarketing, and have been since 2013 and 2017, respectively. However, they have continued illegal telemarketing practices by using an international network of companies to conceal their involvement.”).

⁴¹ 47 U.S.C. § 227(h).

III. THE TCPA’S PRIVATE RIGHTS OF ACTION CONTINUE TO BE THE SOURCE OF ONGOING LITIGATION ABUSE, WHICH DOES NOT ADDRESS THE URGENT ISSUE OF COMBATting BAD ACTORS, AND THE FCC SHOULD MODERNIZE ITS TCPA REGULATIONS.

Although the TCPA has generally helped protect consumers, the same cannot be said for its private rights of action. Those provisions are abused by plaintiff’s attorneys to seek enormous payouts from American businesses. Private TCPA lawsuits and the threat of litigation make it perilous for U.S. businesses to communicate with consumers. Although there was some initial thinking that the Supreme Court’s 2021 decision in *Facebook v. Duguid*⁴² would significantly improve the situation, well-meaning businesses continue to be harassed by harmful and opportunistic TCPA settlement demands and lawsuits. This ultimately harms the ability of consumers to utilize modern communications tools and access innovative services.

A. Not All Automated Communications Are Bad.

Ultimately, any discussion of robocalling, robotexting, and the TCPA must distinguish between legitimate and lawful communications versus abusive scam communications. Automated calls and texts can provide an efficient and effective means of communication to which consumers regularly and willingly consent. As a former FCC Commissioner explained: “There are good and legal robocalls, and there are scam and illegal robocalls, and it’s the latter that are wreaking havoc on the nation’s communications networks.”⁴³ Such a distinction is critical. Consider some

⁴² *Facebook, Inc. v. Duguid*, 592 U.S. 395 (2021).

⁴³ Remarks of FCC Commissioner Michael O’Rielly Before the Washington Insights Conference, FCC, at 3 (May 16, 2019), <https://www.fcc.gov/document/orielly-remarks-aca-intl-washington-insights-conference> (“O’Rielly Remarks”).

of the ways in which legitimate institutions use robocalls and robotexts to communicate:

- “Alerts from a school that a child did not arrive at school, or that the building is on lockdown.”
- “Notifications regarding storm alerts, utility outages, and service restoration.”
- “Updates from airlines” to provide critical flight information to passengers.
- “Text messages from taxi and ridesharing services to alert customers when their driver has arrived.”⁴⁴

Such automated communications are not merely convenient; they are effective. For example, “significantly more patients who received automated telephone messages regarding hypertension treatment achieved blood pressure control than patients who received ordinary care only.”⁴⁵

Likewise, energy companies have reported survey data showing “that customers would like outage and restoration notifications, and prefer communications via text message or telephone call, with email being the least requested method of contact.”⁴⁶

These beneficial communications are also protected by the First Amendment. The Supreme Court has long recognized that the Government may not “suppress the dissemination of concededly truthful information about entirely lawful activity,” even when dissemination is

⁴⁴ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd 7961, 8084-85 (2015) (O’Rielly, Comm’r, dissenting in part and approving in part) (“*2015 TCPA Declaratory Ruling and Order*”).

⁴⁵ *Id.* at 8085 (quoting Letter from Elizabeth P. Hall, Vice President, Office of Government Affairs, Anthem, Inc., to Marlene H. Dortch, FCC, CG Docket No. 02-278, at 5 (filed Apr. 6, 2015)).

⁴⁶ *Id.* at 8086 (internal quotations omitted).

“commercial” in nature.⁴⁷ In striking down part of the TCPA as unconstitutional in 2020, the Supreme Court confirmed that robocalls constitute speech protected by the First Amendment.⁴⁸

In sum, there are many beneficial robocalls and robotexts that provide customers with timely, convenient, and desirable information. The Chamber urges policymakers to avoid conflating those calls with the fraudulent and harmful calls placed by scammers and abusers.

B. The TCPA Encourages Litigation Against American Businesses Instead Of Bad Actors.

Unfortunately, the TCPA continues to be abused and inhibit constitutionally protected pro-consumer communications. The Chamber’s research has repeatedly shown how the TCPA has created a cottage industry of unnecessary and often abusive litigation, including class-actions, burdening how businesses reach their customers, while doing little to stop truly abusive robocalls or robotexts and protect consumers.⁴⁹ This litigation cash cow has become a major obstacle,

⁴⁷ *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 771-73 (1976).

⁴⁸ *See Barr v. Am. Ass’n of Pol. Consultants, Inc.*, 591 U.S. 610, 620 (2020) (plurality) (“The law here focuses on whether the caller is *speaking* about a particular topic.” (emphasis in original)); *id.* at 637 (Sotomayor, J., concurring) (concluding that relevant provision of the TCPA unconstitutionally burdened “robocall speech” (internal quotations omitted)); *id.* at 649 (Gorsuch, J., concurring) (“no one doubts the TCPA regulates speech”).

⁴⁹ *See, e.g.*, Expanding Litigation Pathways: TCPA Lawsuit Abuse Continues in the Wake of Duguid, U.S. Chamber Institute for Legal Reform (Apr. 2024), <https://instituteforlegalreform.com/wp-content/uploads/2024/04/ILR-Expanding-Litigation-Pathways-April-2024.pdf> (“*Expanding Pathways*”); TCPA Litigation Sprawl: A Study of the Sources and Targets of Recent TCPA Lawsuits, U.S. Chamber Institute for Legal Reform, at 4-5 (Aug. 2017), <https://instituteforlegalreform.com/research/tcpa-litigation-sprawl-a-study-of-the-sources-and-targets-of-recent-tcpa-lawsuits/>; Ill-Suited: Private Rights of Action and Privacy Claims, U.S. Chamber Institute for Legal Reform (July 2019), <https://instituteforlegalreform.com/wp-content/uploads/2020/10/Ill-Suited - Private Rights of Action and Privacy Claims Report.pdf>; Turning the TCPA Tide: The

stifling legitimate and lawful communications between businesses—large and small—and their customers. It places businesses at risk for potential litigation each time they pick up the phone or send a text message. And it does nothing to address the real bad actors: repeat scammers who abuse our communications networks to harm consumers.

Indeed, just a handful of professional plaintiff’s lawyers—and some professional *pro se* plaintiffs—are responsible for a massive volume of TCPA litigation.⁵⁰ For example in a petition to the FCC, filed in March of this year by the Ecommerce Innovation Alliance and others, the petitioners noted that:

“a singular law firm based in south Florida, through aggressive social media campaigns, actively recruits plaintiffs to file TCPA lawsuits based on a misapplication of the law. They lure individuals with promises of money and false claims that all messages delivered during Quiet Hours are ‘illegal texts’ and boast about recovering ‘millions of dollars’ under the TCPA. Since November, two junior attorneys from this firm have inundated federal courts with 100 such cases.”⁵¹

And as ILR research into TCPA litigation trends has shown, for each year from 2020-2023, just ten law firms have been responsible for more than half of that year’s TCPA filings.⁵²

Effects of *Duguid*, U.S. Chamber Institute for Legal Reform (Dec. 2021), https://instituteforlegalreform.com/wp-content/uploads/2021/12/1323_ILR_TCPA_Report_FINAL_Pages.pdf.

⁵⁰ See *Expanding Pathways* at 22.

⁵¹ Petition for Declaratory Ruling and/or Waiver of the Ecommerce Innovation Alliance and Other Petitioners, CG Docket Nos. 02-278, 21-402, at i (filed Mar. 3, 2025).

⁵² See *Expanding Pathways* at 22.

Professional TCPA plaintiffs also play a substantial role in TCPA litigation abuse by either pairing with a plaintiff's firm or filing TCPA claims *pro se*. For example, Terry Fabricant—the most frequently appearing plaintiff—regularly partners with the Law Offices of Todd M. Friedman, the law firm that filed the most federal TCPA cases in 2020 and 2021.⁵³ Together they filed 126 federal TCPA cases from 2020-2023.⁵⁴

ILR's members know firsthand the difficulties with this kind of “gotcha” operating environment. The statute's private rights of action are expansive. Any person who receives an unlawful call or text may bring a lawsuit to recover \$500–\$1,500 per violation.⁵⁵ There is no cumulative limit to these damages, leading some plaintiff's lawyers to seek mind-boggling damages awards.⁵⁶ Further, massive classes—such as a recent class certification of over one million people in a TCPA case against a bank⁵⁷—is often sufficient to drive companies into a coercive settlement. For example, one lawsuit alleging violations of the TCPA for advertisements led to a class action settlement fund of \$35 million with 1,237,296 class members.⁵⁸ Other examples include a class action settlement with a telecommunications company for \$45 million⁵⁹ and another with a

⁵³ *Id.* at 23.

⁵⁴ *Id.*

⁵⁵ 47 U.S.C. § 227(b)(3).

⁵⁶ *See, e.g.*, Final Judgment, *McMillion et al. v. Rash Curtis & Associates*, No. 4:16-CV-03396, (N.D. Cal. Sept. 9, 2019), ECF No. 370 (The court order a \$267M judgment against the defendant for violations of the TCPA.).

⁵⁷ *Head v. Citibank, N.A.*, 340 F.R.D. 145, 149 (D. Ariz. 2022).

⁵⁸ *Drazen v. Pinto*, 41 F.4th 1354 (11th Cir. 2022), *reh'g en banc granted, opinion vacated*, 61 F.4th 1297 (11th Cir. 2023).

⁵⁹ Final Judgment ¶ 14, *Hageman v. AT&T Mobility LLC*, No. 1:13-CV-00050 (D. Mont. Feb. 11, 2013), ECF No. 68.

utility services company for \$38.5 million.⁶⁰

With enormous potential damages in play, plaintiffs have little incentive to go after criminal or overseas scammers, who offer a miniscule chance to easily generate such large payouts.⁶¹

Instead, TCPA plaintiffs have opted to target legitimate businesses—many of them household names—and not the offshore robocallers and robotexters flooding Americans’ phones with fraud and scam calls and texts. Consider some examples of recent targets of TCPA lawsuits:

- The City of Albuquerque was sued after sending text messages to local residents during the COVID-19 pandemic, notifying them of the opportunity to engage in socially-distanced town halls.⁶²
- Serve All, Help All, a non-profit company that provides financial aid and assistance to those with housing needs, was sued by a serial *pro se* litigant⁶³ for an automated phone call offering a Public Service Announcement for homeowners in default.⁶⁴
- A ride-share company was sued for notifying a driver that he needed to update an expired

⁶⁰ *Jenkins v. Nat’l Grid USA Serv. Co., Inc.*, No. 15-CV-1219, 2022 WL 2301668, at *3 (E.D.N.Y. June 24, 2022).

⁶¹ See David Adam Friedman, *Impostor Scams*, 54 U. Mich. J.L. Reform 611, 658 (2021), <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2527&context=mjlr> (explaining that parties “increasingly responsible for the majority of TCPA violations are located overseas” and are often “judgment proof”).

⁶² *Silver v. City of Albuquerque*, No. 1:22-CV-00400, 2023 WL 2413780 (D.N.M. Mar. 8, 2023), *aff’d*, 134 F.4th 1130 (10th Cir. 2025).

⁶³ The plaintiff filed 11 TCPA lawsuits in the Western District of Washington in 2021, two lawsuits in 2022, and this lawsuit in 2023.

⁶⁴ *Barton v. Serve All, Help All, Inc.*, No. 3:21-CV-05338, 2023 WL 1965905, at *1 (W.D. Wash. Feb. 13, 2023), *motion to certify appeal denied*, No. 3:21-CV-05338, 2023 WL 2372904 (W.D. Wash. Mar. 6, 2023).

driver's license.⁶⁵

This litigation environment makes it hard to communicate. Indeed, much of the recent litigation involves technical errors and honest mistakes. In one recent case where a technical glitch resulted in a company accidentally misdialing consumers, the defendant settled almost immediately to avoid potentially paying more than \$4 million for the 8,645 alleged violations of TCPA.⁶⁶ In another case, a court treated the TCPA as a strict liability statute, finding that a company could be on the hook for damages where it called a number for which consent had been obtained but—unknownst to the company—the number was subsequently reassigned to a different consumer.⁶⁷

And yet additional risks loom, with a predicted wave of TCPA suits that may seek to exploit the FCC's new consent revocation rule.⁶⁸ Certain of the requirements could be a boon for serial litigants, including a new provision that requires businesses making calls and sending text messages to honor opt-out requests made through “reasonable means” within 10 business days.⁶⁹ While the FCC has explained that certain words (*i.e.*, “stop,” “quit,” “end,” “revoke,” “opt out,” “cancel,” or “unsubscribe” via reply text message) sent as a response to a text constitute a *per se* reasonable means to revoke consent, the agency did not preclude the use of other words and

⁶⁵ *Eller v. Uber Techs., Inc.*, No. 4:23-CV-03526 (S.D. Tex. Sept. 19, 2023).

⁶⁶ *Fralish v. Ceteris Portfolio Servs., LLC*, No. 3:22-CV-00176, 2022 WL 19920239 (N.D. Ind. Mar. 7, 2022).

⁶⁷ *Hylton v. Titlemax of Va., Inc.*, No. 4:21-CV-163, 2022 WL 16753869, at *1 (S.D. Ga. Nov. 7, 2022).

⁶⁸ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order and Further Notice of Proposed Rulemaking, 39 FCC Rcd 1988 (2024).

⁶⁹ 47 C.F.R. § 64.1200(a)(10).

phrases to revoke consent, leaving it open to dispute, and hence litigation.⁷⁰

The end result is that well-meaning businesses committed to compliance can nevertheless be subject to bet-the-company liability every time they call or text. This system does not protect against the scammers and bad actors who continue to prey on consumers.⁷¹

C. *Facebook v. Duguid* Has Not Materially Improved The Situation.

There was some optimism after the Supreme Court’s decision in *Facebook v. Duguid* that we would see a decline in frivolous TCPA lawsuits. In that case, the Court clarified that an “automatic telephone dialing system”—a key term in the TCPA—must use a random or sequential number generator.⁷² Because some lower courts had previously found that *any* system capable of storing numbers could trigger TCPA liability, this interpretation clarified the statute’s language and should have limited some lawsuits against callers. Several courts since have heeded the Supreme Court’s interpretation and rejected efforts to evade it with strained arguments about equipment.⁷³

Unfortunately, the *Duguid* decision has not stemmed the tide of frivolous TCPA litigation. An ILR study concluded that although there was a short-term reduction immediately following

⁷⁰ *Id.*

⁷¹ *Cf. Sumco Panama Order* ¶ 1 (Aug. 3, 2023).

⁷² *Facebook, Inc. v. Duguid*, 592 U.S. 395, 409 (2021).

⁷³ The Ninth Circuit and Third Circuit have followed the Supreme Court’s interpretation. In *Borden v. eFinancial, LLC*, the Ninth Circuit held that an automatic telephone dialing system must “randomly or sequentially generate telephone numbers, not just any number.” *Borden v. eFinancial, LLC*, 53 F.4th 1230, 1233 (9th Cir. 2022). Similarly, in *Panzarella v. Navient Solutions, Inc.*, the Third Circuit held that use of a system with the capacity to be an automatic telephone dialing system is not sufficient to establish a TCPA violation. 37 F.4th 867 (3d Cir. 2022).

Duguid in the volume of TCPA lawsuits filed, “plaintiffs have succeeded in prolonging litigation, taking cases to expensive discovery phases and even summary judgement, which creates risks for legitimate callers attempting to reach their customers with important information.”⁷⁴ Given the expense of discovery, plaintiff’s attorneys still have ample leverage to coerce companies into massive settlements in a post-*Duguid* world.

Worse, that initial slowdown in TCPA lawsuits has now been reversed. TCPA filings have been increasing, with burgeoning class actions a major driver of TCPA filings. One observer notes that “TCPA class actions continue to pour in” and “class actions filings were up 100% (doubled!) in April [2025] compared to last year.”⁷⁵

Thus, *Duguid* has not led to long-term meaningful protections against opportunistic TCPA lawsuits.

D. The TCPA’s Private Rights Of Action Harm Consumers.

In all this talk about precedent and statistics, I do not want to lose track of what is at stake here. The TCPA’s private rights of action hurt businesses and consumers. Given that even innocent missteps can lead to business-ending liability, some companies may understandably choose to “cease communicating” altogether.⁷⁶ But, as explained above, many consumers *want* these

⁷⁴ *Expanding Pathways* at 6.

⁷⁵ Eric J. Troutman, *TCPA CLASS ACTIONS CONTINUE TO SKYROCKET!!: TCPA Class Action Filings DOUBLE in April, 2025 And That’s Not All...*, TCPA World (May 30, 2025), <https://tcpaworld.com/2025/05/30/tcpa-class-actions-continue-to-skyrocket-tcpa-class-action-filings-double-in-april-2025-and-thats-not-all/>.

⁷⁶ *2015 TCPA Declaratory Ruling and Order* at 8093 (O’Rielly, Comm’r, dissenting in part and approving in part) (quoting Letter from Monica S. Desai, Counsel to Abercrombie & Fitch Co. and Hollister Co., to Marlene H. Dortch, FCC, CG Docket No. 02-278, at 3-4 (filed May 13, 2015)).

communications. They want to know if their flight has been delayed, if their medication is ready for pickup, or if their child did not arrive at school. An *in terrorem* litigation environment that chills these communications is fundamentally anti-consumer.

E. TCPA Regulations Are Expansive, Complex, And In Need Of Reform.

The TCPA has spawned an expansive docket at the FCC intended to clarify the TCPA's statutory provisions and address novel issues presented by robocalls and robotexts. Over the years, the number of TCPA regulations has substantially increased with new obligations and exemptions, and understanding TCPA obligations is challenging given the number of cross-references and references to the underlying TCPA Reports and Orders. Thus, TCPA obligations are often ambiguous, have prompted numerous frivolous and costly lawsuits against legitimate businesses attempting compliance, and have led to varying inconsistent court interpretations. This threatens to create a patchwork of differing court interpretations compounding compliance and litigation costs.

Also, the TCPA and its associated regulations are frequently abused by elements of the plaintiffs' bar and serial plaintiffs to leverage excessive damage awards and settlements against the legitimate business community while leaving genuine bad actors largely untouched. Congress should encourage the FCC to review and clarify TCPA requirements and consider streamlining rules, reducing liability against the legitimate business community, and eliminating duplicative sections. This will provide more clarity for regulated parties, boost compliance, reduce the judiciary's workload in interpreting ambiguous requirements, and focus efforts on addressing bad actors.

IV. CONGRESS SHOULD CONSIDER MODEST CHANGES TO THE TCPA THAT LIMIT LITIGATION ABUSE BY CURTAILING DAMAGES AND FEES, PROTECTING GOOD-FAITH COMPLIANCE, AND REFORMING THIRD PARTY LITIGATION FUNDING TO HELP ADDRESS ABUSIVE TCPA LITIGATION.

Since the TCPA’s 1991 enactment and in more recent legislation, Congress has tried to strike a balance by addressing the abuse of mass communication tools while protecting the ability of businesses to communicate with customers using modern technology by delivering desired and timely communications in an efficient manner. The current litigation climate has seriously undermined that balance. If Congress wants to address the calling ecosystem, it could take steps to rein in the counterproductive abuse of the TCPA’s statutory damages provision and the near-strict liability approach that has developed. Congress also should consider the dangers of third party litigation funding (“TPLF”) which has introduced distortions in our civil justice system more generally, and could promote additional abusive TCPA litigation.

To restore the balance intended in the TCPA, Congress should consider modest changes to reduce abusive litigation, including:

- **Cumulative Damages Cap**: Total exposures in TCPA cases can become extraordinary because of the combination of statutory damages and large numbers of class members who may have received only one errant call and experienced no meaningful harm. Facebook in the *Duguid* case faced billions in potential damages, and there are countless examples of eye-popping settlements and damage calculations.⁷⁷ Congress should

⁷⁷ See, e.g., *Wakefield v. ViSalus, Inc.*, No. 3:15-CV-1857, 2019 WL 2578082 (D. Or. June 24, 2019) (denying request to treble \$925,220,000 damage award).

consider adding a cap on the TCPA’s damages to help alleviate the specter of crushing liability for simple mistakes. The Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) offers a model for this approach. It caps penalties in tiers based on the culpability of the violator, with the low tier limiting the statutory penalty amount to “\$100 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed \$25,000.”⁷⁸ Congress could similarly impose a limit on the “total amount” of damages available under the TCPA.

- **Safe Harbor:** The law should provide businesses an opportunity to cure inadvertent alleged violations of the TCPA without being subjected to liability. Safe harbors allow businesses to remedy good-faith mistakes, thereby leaving consumers better off and allowing enforcers to better focus their efforts on true bad actors. The idea of a safe harbor is not unfamiliar in important societal issues. For example, the FTC’s Children’s Online Privacy Protection Act (“COPPA”) Safe Harbor Program allows industry groups to be considered in compliance with COPPA regulations if their proposed COPPA oversight programs are approved by the FTC.⁷⁹ Additionally, Florida amended the Florida Telephone Solicitation Act to allow consumers to respond with “STOP” to cease further text message solicitations.⁸⁰ However, the law also provides a safe-harbor period of 15 days for solicitors to react to the “STOP” text, and no action can be brought against a telephone solicitor unless a text is received more than 15 days after the initial “STOP”

⁷⁸ 42 U.S.C. § 1320d-5(a)(3)(A).

⁷⁹ 16 CFR § 312.11(b).

⁸⁰ H.B. 761, 2023 Leg., Reg. Sess., § 1 (Fla. 2023) (amending Fla. Stat. § 501.059).

message was sent.⁸¹

- **Limit Attorney's Fees:** Congress should consider limiting attorney's fees that may be available in TCPA cases. One reason for the onslaught of TCPA litigation is that attorneys are incentivized to go after American businesses, regardless of culpability or actual consumer harm because large damage awards can generate large attorney's fees. As a commentator recently observed, "[e]very single one of these [TCPA] cases has the potential to completely ruin a business— the attorneys fees to defend the suits alone are enough to drive some companies out of business."⁸² Reasonable limits on attorney's fees could blunt that distorted incentive. Congress could borrow from other federal statutes that limit attorney fee recoveries, ensuring that any damages award benefit consumers.

Each of these approaches offer Congress a way to limit some of the most abusive TCPA litigation without undermining efforts to crack down on the bad actors responsible for harmful and abusive robocalls.

In addition to these adjustments, Congress should be mindful of the impact of third party funding on incentives and outcomes in litigation, including class actions. TPLF allows hedge funds and other financiers to invest in lawsuits in exchange for a percentage of any settlement or judgment. As the Chamber ILR has shown through extensive research, third party funding of litigation is driving up massive verdicts that may have little relation to actual harm, and it offers the prospect

⁸¹ Fla. Stat. § 501.059(10)(c).

⁸² Eric J. Troutman, *TCPA CLASS ACTIONS CONTINUE TO SKYROCKET!!*: *TCPA Class Action Filings DOUBLE in April, 2025 And That's Not All...*, TCPA World (May 30, 2025), <https://tcpaworld.com/2025/05/30/tcpa-class-actions-continue-to-skyrocket-tcpa-class-action-filings-double-in-april-2025-and-thats-not-all/>.

of huge payouts to lawyers and funders, rather than helping consumers. ILR’s research paper, *Nuclear Verdicts: An Update on Trends, Causes, and Solutions*, showed that “[p]laintiffs’ lawyers are also increasingly bringing litigation funded by third parties seeking a return on their investment, which not only enables such advertising and speculative claims but also contributes to nuclear verdicts by driving up award demands and widening the gap for parties to negotiate a reasonable settlement.”⁸³

Congress can enact disclosure and other reforms to address the problems presented by the opaque and unrestricted TPLF industry, which can promote questionable TCPA lawsuits. The Chamber has developed and advocated several proposals that will protect our civil justice system from abuse. I will briefly note three of them. *First*, Congress and judges should require disclosure of TPLF agreements. Plaintiffs and their lawyers enter these agreements with funders in secret. *Second*, Congress should address ethics concerns raised when an outside party has a financial interest in litigation. It should, for example, prohibit funders from influencing a party’s selection of an attorney, choices about litigation strategy, or settlement. *Third*, Congress can protect plaintiffs by making certain that they are aware that their attorney has committed to sharing their recovery with a third party and prohibiting funders from taking a larger share of the recovery than an injured plaintiff receives.

Some states have taken action to regulate the use of TPLF, and Congress can explore similar changes to the TCPA that preclude the expansion of opaque TPLF into TCPA litigation. Several members of Congress have expressed grave concerns about the role of litigation funding in our

⁸³ Nuclear Verdicts: An Update on Trends, Causes, and Solutions, U.S. Chamber Institute for Legal Reform (May 2024) <https://instituteforlegalreform.com/research/nuclear-verdicts-an-update-on-trends-causes-and-solutions/>.

civil justice system, and have called on the Department of Justice to examine the trend and take appropriate action.⁸⁴

* * *

The business community wants to end illegal robocalls and robotexts in order to foster a safe and trustworthy communications ecosystem for businesses and their customers. Companies take pains to comply with the TCPA and stand ready to continue assisting state and federal partners to go after scammers and those who intentionally flout federal and state law. As Congress considers paths forward, enforcement should remain a top priority of all federal agencies, and Congress should consider reforms to prevent legitimate businesses from being ensnared in abusive TCPA litigation.

I want to again thank the Subcommittee for the opportunity to discuss these important issues. I look forward to answering your questions.

⁸⁴ See Grim Realities: Debunking Myths in Third-Party Litigation Funding, U.S. Chamber Litigation Center, at 27 (Aug. 29, 2024) <https://instituteforlegalreform.com/research/grim-realities-debunking-myths-in-third-party-litigation-funding/> (noting calls by Rep. James Comer (R-KY), who “wrote to Chief Justice Roberts urging the Judicial Conference (the federal judiciary’s rulemaking body) to review the role of litigation finance” and “called for concrete judicial reform, including a potential requirement that TPLF in federal lawsuits be disclosed as a matter of course”).