



October 4, 2024

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation, *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls, Targeting and Eliminating Unlawful Text Messages*, CG Docket Nos. 17-59 & 21-402, Eighth Report and Order in CG Docket No. 17-59 and Third Report and Order in CG Docket No. 21-402, FCC-CIRC2409-02 (rel. Sept. 5, 2024)

Dear Ms. Dortch,

On October 2, 2024, Paul Benda and Jonathan Thessin of the American Bankers Association (ABA); Margot Saunders of the National Consumer Law Center (NCLC); James Akin of America's Credit Unions (ACU); Michael Pryor and Leah Dempsey of Brownstein Hyatt Farber Schreck, LLP, on behalf of ACU and ACA International; Brian Allen and Greg Williamson of the Bank Policy Institute; Aryeh Fishman of the Edison Electric Institute; and Gabriel Acosta of the Mortgage Bankers Association (collectively, the Organizations), met with Carmen Scurato, Legal Advisor for Consumer and Public Safety for Chairwoman Jessica Rosenworcel.¹

The Organizations attending the meeting represent a diverse range of stakeholders – from trade associations representing banks, credit unions, other financial services providers, and electric utility companies, to a consumer rights organization. The Organizations joined together for this meeting because they are united in their commitment to combating criminals who attempt to defraud consumers by impersonating legitimate businesses through illegally spoofed calls and text messages. In the meeting, the Organizations affirmed their support for the draft Report and Order released on September 5, 2024 (Order), which includes provisions to combat illegal calls and texts.² The Organizations urged the Federal Communications Commission to adopt the Order without delay.

¹ A description of each Organization is provided in the Attachment.

² *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls, Targeting and Eliminating Unlawful Text Messages*, CG Docket Nos. 17-59 & 21-402, Eighth Report and Order in CG Docket No. 17-59 and

Texts that impersonate legitimate businesses harm consumers and undermine those businesses' ability to communicate with their customers. Bank impersonation texts – i.e., text messages sent by a criminal impersonating a bank – were the most common form of text message scam reported to the Federal Trade Commission (FTC) in 2022.³ As the FTC has described, criminals send texts to consumers, claiming to be from the consumer's financial institution, and ask the consumer to verify a large transaction they did not make. Consumers who respond are connected to a fake representative of the institution, who seeks to obtain the consumer's log-in credentials. The criminal then transfers money out of the consumer's account and to an account belonging to the criminal.⁴ The scam's median reported loss was \$3,000 in 2022, according to the FTC, accounting for \$330 million in aggregate reported losses that year.⁵ Impersonation texts have increased nearly twentyfold since 2019.⁶

In the meeting, the Organizations provided recent examples of how criminals commit this fraud. Mr. Benda with ABA described how a community bank located in the Midwest with less than \$500 million in assets was the target of a mass texting campaign two weeks ago. A criminal sent a fake fraud alert to hundreds, perhaps thousands, of the bank's customers (most likely, through an "email-to-text" campaign). If the customer replied to the fraud alert, the criminal called the customer, displaying the bank's phone number on the customer's Caller ID (i.e., an illegally spoofed call) and claiming to be from the bank. The criminal then used social engineering (i.e., publicly available information about the customer) to persuade the customer to reveal their banking log-in credentials. The bank has received approximately 600 calls from customers and non-customers who were targeted by the scam.

Ms. Saunders, an attorney with NCLC, reported that many attorneys across the nation with whom she works are dealing with an overwhelming number of clients who have had money transferred out of their bank accounts due to bank impersonation texts and similar scams. She explained that she often receives requests from legal aid attorneys who are trying to assist low-income clients who have lost their rent money, or the funds set aside to pay for other necessary expenses, through these scams. She also affirmed that criminals send text messages to persuade consumers to reveal their account credentials, similar to the fraudulent text message campaign described above that targeted the Midwestern community bank and its customers. If the consumer replies to the text, the consumer will receive a call from the (fake) fraud department operated by the criminal, seeking the consumer's bank log-in credentials in order to transfer money out of the account.

Third Report and Order in CG No. 21-402, FCC-CIRC2409-02 (rel. Sept. 5, 2024) [hereinafter, *Draft Report and Order*].

³ Fed. Trade Comm'n, Press Release, New FTC Data Shows Bank Impersonation is Most-Reported Text Message Scam (June 8, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/new-ftc-data-analysis-shows-bank-impersonation-most-reported-text-message-scam>.

⁴ *Id.*

⁵ Leslie Fair, Fed. Trade Comm'n, Can Your Staff Spot the Five Most Common Text Message Scams? (June 8, 2023), <https://www.ftc.gov/business-guidance/blog/2023/06/can-your-staff-spot-five-most-common-text-message-scams>; see also Ruth Sarreal, Nerd Wallet, How to Avoid the Top Text Message Scam Putting Your Cash at Risk (updated Sept. 5, 2023), <https://www.nerdwallet.com/article/banking/text-message-scam#:~:text=One%20particular%20kind%20of%20text,as%20a%20Social%20Security%20number>.

⁶ Fed. Trade Comm'n, Consumer Protection Data Spotlight, IYKYK: The Top Text Scams of 2022 (June 8, 2023), <https://www.ftc.gov/news-events/data-visualizations/data-spotlight/2023/06/iykyk-top-text-scams-2022>.

Ms. Saunders noted that the FTC’s data reported above reflects only the *reported* losses. The actual losses from texts impersonating banks are generally considered to be much higher. One organization determined that consumers had over \$13 billion in losses during the first half of 2023 due to text scams.⁷

Mr. Fishman with the Edison Electric Institute explained that utilities across the country have reported an uptick in recent years of scammers who often use electronic devices to defraud customers and that “smishing” scams (i.e., phishing scams perpetrated via text message) are among the top scams impacting utility customers. Scammers send text messages with the utility’s logo and that inform the customer that their power will be disconnected. The text then asks the customer to call a number (belonging to the scammer) to confirm. When the customer calls the number, the scammer demands an immediate payment through common payment apps or crypto currency or their service will be disconnected.

Because criminals are actively engaged in illegal texting (and calling) campaigns to defraud consumers, the Organizations urged the Commission to adopt the Order without delay. The Organizations conveyed their strong support in particular for two provisions that are contained in the Order: (1) a requirement that mobile wireless providers offer email-to-text as an opt-in service;⁸ and (2) a requirement that mobile wireless providers that originate text messages must block all texts from a particular source when notified by the Commission of illegal texts from that source, except under limited circumstances.⁹

In comments that the trade association representatives submitted to the Commission in June 2023 and again this past February, they warned that bad actors are distributing large volumes of smishing messages from e-mail addresses, which convert the e-mail message to an SMS text message.¹⁰ During the meeting, Ms. Saunders expressed agreement with the trade association representatives that it is especially important that the e-mail to text channel be shut down, as NCLC has been told that this is often the mechanism used by scammers to send fraudulent text messages. As the trade associations advised in the prior comments, frequently, bad actors send these “e-mail to SMS” messages from telephone numbers that cannot accept incoming calls.¹¹ These numbers are not uniquely assigned to an e-mail address, and therefore, they cannot easily be reported and shut down. The Organizations appreciate that, in the September 5 Order, the Commission would require mobile wireless providers to offer email-to-text as an opt-in service.¹² We support this provision and believe it will significantly reduce the use of email-to-text to send illegal text messages.

⁷ Robokiller, *The Robokiller Phone Scam Report: 2023 Mid-Year Insights & Analysis 4* (2023), https://assets.website-files.com/61f9a8793a878d7f71c5505d/64ca6ccf1f5e962fae3e55e3_Robokiller%20Mid-Year%20Report%202023.pdf.

⁸ See *Draft Report and Order*, *supra* note 2, ¶¶ 71-73.

⁹ See *id.*, ¶¶ 54-70.

¹⁰ See *In the Matter of Targeting and Eliminating Unlawful Text Messages, Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991, Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket Nos. 21-402, 02-278, & 17-59, Comments of Am. Bankers Ass’n *et al.* 4-5 (Feb. 26, 2024), <https://www.fcc.gov/ecfs/document/10227124925626/1> [hereinafter, Associations Feb. 2024 Comments]; *Targeting and Eliminating Unlawful Text Messages, Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, CG Docket Nos. 21-402 & 02-278, Reply Comments of Am. Bankers Ass’n *et al.* 8-9 (June 6, 2023), <https://www.fcc.gov/ecfs/document/106072171018174/1> [hereinafter, Associations June 2023 Comments].

¹¹ Associations Feb. 2024 Comments, *supra* note 10, at 5; Associations June 2023 Comments, *supra* note 10, at 8.

¹² *Draft Report and Order*, *supra* note 2, ¶ 71.

The Order also would require mobile wireless providers that originate text messages to block all texts from a particular source when notified by the Commission of illegal texts from that source, except under limited circumstances.¹³ Existing rules require terminating providers – but not originating providers – to block all texts from a particular number when notified by the Commission of illegal texts from that number.¹⁴ In the trade associations’ comments referenced above, they urged the Commission to expand the existing requirement to cover originating providers.¹⁵

The Organizations commend the Commission for taking this step in the Order, and we fully support it. When a terminating or originating provider is on notice that a source is transmitting suspected illegal texts, the entity should investigate and, under most circumstances, block texts from that source. The Commission previously required originating voice service providers to block illegal calls upon notification.¹⁶ We support the Commission’s provision that would apply this same requirement to mobile providers that originate text messages.

The Organizations remain committed to stopping bad actors who seek to defraud consumers, but our members and we cannot achieve this goal alone. We urge the Commission to take strong action to combat illegally spoofed calls and texts by adopting the Order.

Sincerely,

American Bankers Association
ACA International
America’s Credit Unions
Bank Policy Institute
Edison Electric Institute
Mortgage Bankers Association
National Consumer Law Center on behalf of its low-income clients

¹³ *Id.*, ¶¶ 54-65. Under the Order, the originating provider must block text messages from a particular source following Commission notification of suspected illegal texts from that source unless the provider, after investigating, determines that the identified texts are not illegal, or has reasonable belief that either the source is no longer originating illegal texts or that particular texts from that source are lawful. *Id.*, ¶ 56. The provider must notify the Commission’s Enforcement Bureau of the basis for its belief and, if it believes particular texts from that source are lawful, the standard it is using to determine which texts from the source are lawful. *Id.*

¹⁴ See *In the Matter of Targeting and Eliminating Unlawful Text Messages, Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991, Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket Nos. 21-402, 02-278, & 17-59, Second Report and Order, Second Further Notice of Proposed Rulemaking in CG Docket Nos. 02-278 and 21-402, and Waiver Order in CG Docket No. 17-59, ¶¶ 16-25 (rel. Dec. 18, 2023).

¹⁵ Associations Feb. 2024 Comments, *supra* note 10, at 7; Associations June 2023 Comments, *supra* note 10, at 9-10.

¹⁶ *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor*, CG Docket No. 17-59 & WC Docket No. 17-97, Seventh Report and Order in CG Docket 17-59 and WC Docket 17-97, Eighth Further Notice of Proposed Rulemaking in CG Docket 17-59, and Third Notice of Inquiry in CG Docket 17-59, ¶ 29 (rel. May 19, 2023).

APPENDIX

The American Bankers Association is the voice of the nation's \$23.9 trillion banking industry, which is composed of small, regional and large banks that together employ approximately 2.1 million people, safeguard \$18.8 trillion in deposits and extend \$12.5 trillion in loans.

The Bank Policy Institute is a nonpartisan public policy, research and advocacy group that represents universal banks, regional banks, and the major foreign banks doing business in the United States. The Institute produces academic research and analysis on regulatory and monetary policy topics, analyzes and comments on proposed regulations, and represents the financial services industry with respect to cybersecurity, fraud, and other information security issues.

ACA International represents approximately 1,700 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates, in an industry that employs more than 113,000 people worldwide. Most ACA member debt collection companies are small businesses. The debt collection workforce is ethnically diverse, and 70% of employees are women. ACA members play a critical role in protecting both consumers and lenders. ACA members work with consumers to resolve their past debts, which in turn saves every American household more than \$700 year after year. The ARM industry is instrumental in keeping America's credit-based economy functioning with access to credit at the lowest possible cost.

America's Credit Unions is the national trade association for consumers' best option for financial services: credit unions. America's Credit Unions advocates for policies that allow credit unions to effectively meet the needs of their nearly 140 million members nationwide.

Edison Electric Institute (EEI) is the association that represents all U.S. investor-owned electric companies. EEI members provide electricity for nearly 250 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 Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry that works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans.

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training.