



## FEDERAL COMMUNICATIONS COMMISSION

Enforcement Bureau  
Telecommunications Consumers Division  
45 L Street, NE  
Washington, D.C. 20554

October 23, 2023

The Honorable Ben Ray Luján  
Chairman  
Subcommittee on Communications,  
Media, and Broadband  
254 Russell Senate Office Building  
Washington, DC 20510

The Honorable John Thune  
Ranking Member  
Subcommittee on Communications,  
Media, and Broadband  
254 Russell Senate Office Building  
Washington, DC 20510

Dear Chairman Luján and Ranking Member Thune:

Thank you for the opportunity to submit a statement addressing the ongoing work of the Federal Communications Commission's Enforcement Bureau to combat illegal robocalls and scam texts. Protecting consumers from fraud and unwanted communications is a top consumer protection priority for the Commission and the Enforcement Bureau. The Commission is grateful for the continuing support of the Subcommittee on Communications, Media, and Broadband. Below, I outline the Commission's recent enforcement efforts against illegal robocalls and ways the Commission is modernizing its approach to enforcement. Lastly, I identify where Chairwoman Jessica Rosenworcel has called for new legislation to address statutory gaps that are leaving consumers vulnerable.

### Recent Enforcement Activities

In our ongoing effort and commitment to put a stop to illegal robocalls, the Commission has ordered substantial penalties against bad actors, acted swiftly and repeatedly to disrupt illegal traffic, and cracked down on providers who have failed to implement sufficient robocall mitigation plans. This calendar year alone, the Commission has already issued four orders imposing more than \$500 million in fines against robocallers. In parallel, the Commission has had significant success blocking illegal robocalls before they ever reach consumers. After identifying a non-compliant gateway or originating provider responsible for facilitating bad traffic, the Commission has permitted or ordered downstream providers to block the traffic from that non-compliant provider—thereby stopping the robocalls immediately. Further, under the Commission's current rules, all providers in the potential path of a call are required to implement a robocall mitigation plan that includes reasonable steps to avoid originating, carrying, or processing illegal robocall traffic, and file that plan in the Robocall Mitigation Database (RMD). The Commission has issued over 20 notices or show cause orders threatening non-compliant providers with removal from the RMD. This is a significant consequence, as downstream

providers may not accept traffic from any provider that is required to file in the RMD and has been removed due to noncompliance with the Commission's rules. Our evolving, multi-pronged approach has resulted in an over 20 percent drop in illegal robocalls since last year, according to one study.<sup>1</sup> But the Commission's work is not done. Going forward we intend to continue the battle against robocalls as well as pioneer enforcement against robotexts.

To strengthen its investigative and enforcement efforts, the Commission has continued to expand its partnerships with state, federal, and international regulatory and law enforcement partners. The Commission now has memoranda of understanding with attorneys general in 47 states, the District of Columbia, and Guam, which allows the Enforcement Bureau and its counterparties to facilitate information sharing and investigative cooperation more easily. The Commission also renewed its memorandum of understanding between international regulatory and law enforcement authorities that are members of the Unsolicited Communications Enforcement Network (UCENet). Collectively, these memoranda aim to promote domestic and cross-border collaboration to combat unsolicited communications, including email and text spam, scams, and illegal telemarketing. These relationships matter. To point to just one example this year, our collaboration with the Ohio Attorney General's Office led to a record-breaking penalty of nearly \$300,000,000 ordered against one of the worst robocalling schemes inflicted on U.S. consumers.

The Commission also engages directly with consumers and the general public in a variety of ways to increase consumer and industry awareness. In advance of the Supreme Court's ruling pertaining to student loan debt in June, the Commission worked with multiple attorneys general and the U.S. Department of Education to warn students about potential scams looking to take advantage of any confusion stemming from the ruling. The Commission also now publishes certain traceback data, i.e., information pertaining to calls reported as potentially illegal, including the source of those calls. The Commission also closely monitors and investigates complaints by consumers and small businesses.

### Modernizing Enforcement Methods

Many of these successful enforcement efforts would not have been possible without the passage of the Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act, which led to two key developments. First, the TRACED Act no longer required the Commission to issue citations for the bulk of robocall violations, and instead allowed the Commission to move immediately to forfeiture proceedings. The result was record-breaking fines against the worst bad actors in the industry. Second, the TRACED Act required the FCC to mandate adoption of the STIR/SHAKEN caller identification framework, which enables phone companies to verify that the caller ID information transmitted with a call matches the caller's real phone number. Among other initiatives undertaken to meet this mandate, the FCC launched

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<sup>1</sup> See Robokiller, The Robokiller Phone Scam Report 2023 Mid-Year Insights & Analysis at 10 (2023), [https://assets.website-files.com/61f9a8793a878d7f71c5505d/64ca6ccf1f5e962fae3e55e3\\_Robokiller%20Mid-Year%20Report%202023.pdf](https://assets.website-files.com/61f9a8793a878d7f71c5505d/64ca6ccf1f5e962fae3e55e3_Robokiller%20Mid-Year%20Report%202023.pdf).

the RMD to monitor compliance. As discussed above, removal of providers from the RMD who fall short of their obligations to protect consumers is a devastating consequence.

The Commission is currently engaged in discussions with the Treasury Department, including with the Financial Crimes Enforcement Network (FinCEN), to provide the Commission's Enforcement Bureau with access to vital information collected pursuant to the Bank Secrecy Act (BSA). Although our efforts with Treasury are ongoing, we are able to note that these efforts have been collaborative, and our Treasury colleagues have been very constructive in their engagement with us. BSA evidence is critical to identify the financing used to support the entities using U.S. communications networks to commit fraud targeting consumers, as well as the various methods in which bad actors are laundering and exfiltrating their illicit proceeds. Supplementing our current authorities with BSA information will further assist the Enforcement Bureau in identifying and going after the worst actors while limiting their ability to reconfigure and use financial resources to further their schemes.

### Proposed Policy Changes

The Chairwoman has identified two additional fronts where Congress can help the Commission's enforcement efforts. First, Congress could help the Commission protect consumers by broadening the definition of "automatic telephone dialing system" in the Telephone Consumer Protection Act (TCPA). The TCPA broadly protects consumers from calls made using an "automatic telephone dialing system or an artificial or prerecorded voice." The TCPA's definition of automatic telephone dialing system has been unaltered since 1991 and needs adjustments to keep pace with the way technology has developed over the last thirty years. Further, in *Facebook v. Duguid*, the Supreme Court narrowly interpreted "automatic telephone dialing system" to mean equipment that stores or generates numbers randomly or sequentially. Consequently, equipment that simply stores non-random and non-sequential lists of numbers may fall outside the statute. This interpretation makes it harder for the Commission to regulate bad actors manipulating technology to reach massive volumes of consumers, particularly with regards to sending unwanted text messages.

Second, the Chairwoman has explained that Congress could help the Commission protect consumers by giving the Commission the authority to collect the fines it imposes against bad actors responsible for illegal robocalls. The Commission has the authority to issue a Forfeiture Order for violations of the Communications Act and its rules, but it lacks the authority to pursue collection without involvement from the Department of Justice (DOJ). Since 2018, the Commission has referred eight robocalling forfeiture orders to the DOJ for collection, of which the DOJ is currently pursuing collection for two. The result is that significant sums of ill-gotten gains are potentially left in the pockets of bad actors. With its own authority to collect its fines, the Commission would pursue these cases promptly and aggressively.

Thank you for the opportunity to submit written testimony about this important consumer protection matter.

Sincerely,

Loyaan Egal  
Chief, Enforcement Bureau  
Federal Communications Commission