



November 7, 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 November 5, 2024, Paul Benda and Jonathan Thessin of the American Bankers Association (ABA); Margot Saunders of the National Consumer Law Center (NCLC); Michael Pryor of Brownstein Hyatt Farber Schreck, LLP, on behalf of America's Credit Unions (ACU) and ACA International; Greg Williamson of the Bank Policy Institute; and Alisha Sears of the Mortgage Bankers Association (collectively, the Organizations) met with Hannah Lepow, Legal Advisor for Media and Consumer Protection for Commissioner Geoffrey Starks, and Alfonso Marquez, Legal Intern with Commissioner Starks.¹ The above-named representatives of the Organizations and Amanda Smith of ACU also met on November 5 with Edyael Casaperalta, Legal Advisor for Wireless, Public Safety and Consumer Protection for Commissioner Anna M. Gomez.

The Organizations attending the meetings represent a diverse range of stakeholders – from trade associations representing banks, credit unions, and other financial services providers, to a consumer rights organization. The Organizations joined together for these meetings 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 meetings, the Organizations affirmed their support for the draft Report and Order released on

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

September 5, 2024 (Order), which includes provisions to combat illegal calls and texts.² The Organizations urged the Federal Communications Commission (Commission) to adopt the Order without delay.

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 in September. 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. As of October 4, 2024, the bank had 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

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 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>.

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>.

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.

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

The examples and data provided by Mr. Benda, Ms. Saunders, and others in the meeting underscore that criminals are distributing large volumes of smishing messages from e-mail addresses, which convert the e-mail message to an SMS text message. The Organizations appreciate that, in the Order, the Commission would require mobile wireless providers to offer email-to-text as an opt-in service.⁸ The Organizations expressed support for this provision and believe it will significantly reduce the use of email-to-text to send illegal text messages.

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.⁹ 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.¹⁰ In comments submitted to the Commission over the past two years, the trade association representatives urged the Commission to expand the existing requirement to cover originating providers.¹¹ Criminals frequently use multiple numbers from which to originate texts. Originating providers are well positioned to stop illegal texts from a source because they have visibility into all text messages that a particular source is sending – not solely text messages from a particular number. The trade association representatives stated that they do not believe there is risk that the lawful text messages placed by their members will be erroneously blocked if the Commission directs originating providers to block texts from a particular source when the Commission has identified illegal texts originating from that source.

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

⁹ *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.*

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, 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).

¹¹ 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.* 7 (filed Feb. 26, 2024), <https://www.fcc.gov/ecfs/document/10227124925626/1>; *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.* 9-10 (filed June 6, 2023), <https://www.fcc.gov/ecfs/document/106072171018174/1>.

The Organizations remain committed to stopping criminals 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 texts and calls by adopting the Order.

Sincerely,

American Bankers Association

ACA International

America's Credit Unions

Bank Policy Institute

Mortgage Bankers Association

National Consumer Law Center on behalf of its low-income clients

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.

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.