

November 1, 2022

NATIONAL ANTI-ROBOCALL LITIGATION TASK FORCE FILES LAWSUITS TO ENFORCE SUBPOENA AGAINST TWO ALLEGED ILLEGAL ROBOCALLERS

Chicago — Attorney General Kwame Raoul today announced that the national [Anti-Robocall Litigation Task Force](#) is asking a court to force two voice service providers to supply information on their alleged involvement in illegal robocalls.

The targets of the task force's investigations are Michael Lansky LLC — doing business as Avid Telecom — and One Eye LLC. The national task force is asking the court to enforce civil investigative demands (CIDs), or requests for information, against each entity.

Raoul and 50 other attorneys general participate in the bipartisan national task force, which investigates and takes legal action against bad actors making unwanted telemarketing calls or helping scammers make them. If providers don't comply with the task force's requests for information, the task force can file a complaint to obtain the requested information

"Robocalls aren't just an Illinois problem. They are a nationwide problem. That's why my office came together with other state attorneys general to form the National Anti-Robocall Litigation Task Force," Raoul said. "Today's enforcement actions should serve as a warning to others who attempt to profit off this illegal and invasive practice. I will continue to hold these businesses accountable and protect the rights of Illinois consumers."

Raoul and the task force allege that Avid Telecom knowingly accepted and routed illegal robocalls. Further, the task force believes Avid Telecom's CEO, Michael Lansky, helped another telecom provider hide its suspect traffic.

According to the task force, an individual named Prince Anand closed another voice service provider, PZ Telecommunication LLC, and became the apparent CEO of One Eye. This transition occurred after the Federal Communications Commission sent PZ Telecom a cease-and-desist letter.

One Eye has stopped responding to the task force, and Avid has refused to answer the CID. The state of Indiana, which co-leads the task force with North Carolina and Ohio, [filed the complaints on behalf of the task force](#).

According to the National Consumer Law Center (NCLC) and Electronic Privacy Information Center (EPIC), more than 33 million scam robocalls are made to Americans every day. These scam calls include fraudsters posing as the Social Security Administration, Amazon and employers offering employment opportunities. The NCLC and EPIC also estimate scammers stole \$29.8 billion through scam calls in 2021. The task force is focused on shutting down the gateways that profit off this illegal scam traffic.

Attorney General Raoul offers the following tips to avoid scams and unwanted calls:

- Be wary of callers who specifically ask you to pay by gift card, wire transfer, or cryptocurrency. For example, the Internal Revenue Service does not accept iTunes gift cards.
- Look out for prerecorded calls from imposters posing as government agencies. Typically, the Social Security Administration does not make phone calls to individuals.
- If you suspect fraudulent activity, immediately hang up and do not provide any personal information.

- You can file a consumer complaint about scam or unwanted calls with the Attorney General's Consumer Protection Division by visiting the [Attorney General's website](#).

Attorney General Raoul has been a consistent advocate for protections against illegal robocalls. In 2022, Raoul joined a coalition of 33 attorneys general in [filing a brief](#) in the U.S. Supreme Court defending the anti-robocall provisions of the Telephone Consumer Protection Act.

In August 2019, Raoul joined a bipartisan coalition of attorneys general from all 50 states and Washington D.C. in partnering with 12 phone companies to create a set of principles for telecom companies to fight robocalls. In June 2019, Raoul, in cooperation with the Federal Trade Commission, announced a major crackdown on robocalls that included 94 actions targeting operations around the country that were responsible for more than 1 billion calls. Raoul has also submitted comments to the Federal Communications Commission urging the adoption of its proposed rules on enforcement against caller ID spoofing.



August 2, 2022

ATTORNEY GENERAL RAOUL ANNOUNCES THE FORMATION OF A NATIONWIDE ANTI-ROBOCALL LITIGATION TASK FORCE

Attorneys General Form a National Bipartisan Task Force to Combat Robocalling

Chicago — Attorney General Kwame Raoul today announced that Illinois is joining a nationwide Anti-Robocall Litigation Task Force of 50 state attorneys general to investigate and take legal action against the telecommunications companies responsible for bringing a majority of foreign robocalls into the United States. This bipartisan national task force has one goal: to cut down on illegal robocalls.

“Robocalls aren’t just an Illinois problem. They are a nationwide problem. That is why I am proud to join my fellow attorneys general in launching this task force,” Raoul said. “Robocalls cost consumers time and money, as well as violate their privacy. I will continue to protect the rights of Illinois consumers by fighting against this illegal practice.”

The task force has issued 20 civil investigative demands to 20 gateway providers and other entities that are allegedly responsible for a majority of foreign robocall traffic. Gateway providers that bring foreign traffic into the U.S. telephone network have a responsibility to ensure the traffic is legal, but these providers are not taking sufficient action to stop robocall traffic. In many cases, they appear to be intentionally turning a blind eye in return for steady revenue. The task force will focus on the bad actors throughout the telecommunications industry, to help reduce the number of robocalls that Illinois residents receive, which will also benefit the companies that are following the rules.

Raoul is committed to stopping illegal and unwanted calls. According to the National Consumer Law Center and Electronic Privacy Information Center, over 33 million scam robocalls are made to Americans every day. These scam calls include Social Security Administration fraud against seniors, Amazon scams against consumers, and many other scams targeting all consumers, including some of our most vulnerable residents. An estimated \$29.8 billion was stolen through scam calls in 2021. Most of this scam robocall traffic originates overseas. The task force is focused on shutting down the providers that profit from this illegal scam traffic and refuse to take steps to otherwise mitigate these scam calls.

Attorney General Raoul offers the following tips to avoid scams and unwanted calls:

- Be wary of callers who specifically ask you to pay by gift card, wire transfer or cryptocurrency. For example, the Internal Revenue Service does not accept iTunes gift cards.
- Look out for prerecorded calls from imposters posing as government agencies. Typically, the Social Security Administration does not make phone calls to individuals.
- If you suspect fraudulent activity, immediately hang-up and do not provide any personal information.
- You can file a consumer complaint about scam or unwanted calls with the Attorney General’s Consumer Protection Division at <https://ccformsubmission.ilag.gov/>.

Attorney General Raoul has been a consistent advocate for protections against illegal robocalls. In 2022, Raoul joined a coalition of 33 attorneys general in filing a brief in the U.S. Supreme Court defending the anti-robocall provisions of the Telephone Consumer Protection Act. In August 2019, Raoul joined a bipartisan coalition of attorneys general from all 50 states and Washington D.C. in partnering with 12 phone companies to create a set of principles for telecom companies to fight robocalls. In June 2019, Raoul, in cooperation with the Federal Trade Commission, announced a major crackdown on robocalls that included 94 actions targeting operations around the country that were responsible for more than 1 billion calls. Raoul has also submitted comments to the Federal Communications Commission urging the adoption of its proposed rules on enforcement against caller ID spoofing.



STATE OF INDIANA
IN THE MARION COUNTY CIRCUIT/SUPERIOR COURT

CAUSE NO. _____

TODD ROKITA
INDIANA ATTORNEY GENERAL

Petitioner,

v.

MICHAEL D. LANSKY LLC, dba AVID
TELECOM

Respondent.

**VERIFIED PETITION TO ENFORCE
CIVIL INVESTIGATIVE DEMAND**

Attorney General Todd Rokita, by Deputy Attorney General Joseph D. Yeoman, petitions the Court pursuant to Indiana Code § 4-6-3-6 for an order to enforce his Civil Investigative Demand (“CID”) issued to Michael D. Lansky LLC dba Avid Telecom. A true and accurate copy of the CID and the reissued CID are attached as Exhibits 1, 2.

RESPONDENT

1. Respondent, Michael D. Lansky, LLC dba Avid Telecom (“Avid Telecom”), is an Arizona corporation with a principal place of business located at 2830 N SWAN RD #160, TUCSON, AZ, 85712.
2. Avid Telecom has conducted business in Indiana by routing millions of telephone calls into Indiana, and contracting to do business with at least one Indiana telecommunications company.
3. For one of Avid Telecom’s clients, Avid Telecom routed over 46 million telephone calls to Indiana area codes, which included over 17 million calls to Hoosiers on the

Federal Do Not Call Registry and over 8 million calls to Hoosiers on the Indiana Do Not Call list.

4. Further, on Avid Telecom’s 499 filer information with the Federal Communications Commission, Avid purports to offer “Telecommunications Services” to Indiana. *See FCC Form 499 Filer Database*, Federal Communications Commission, <https://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=828064> (last visited Sept. 30, 2022).

LEGAL STANDARD

5. The Attorney General may issue a CID if he has reasonable cause to believe the person may be in “possession, custody, or control of documentary material, or may have knowledge of a fact that is relevant to an investigation” being conducted to determine if a person or entity is in violation of a law enforced by the Attorney General, including a violation of the Telemarketing Sales Rule, 16 C.F.R. § 310.3 through 310.5, the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 and its implementing rules, 47 C.F.R. §§ 64.1200 and 64.1604, Indiana’s Telephone Solicitation of Consumers Act, Ind. Code 24-4.7 (“TSCA”), or the Regulation of Automatic Dialing Machines Act, Ind. Code 24-5-14 (“Auto-dialer Act”). Ind. Code § 4-6-3-3.
6. A CID issued under Ind. Code § 4-6-3-3 must contain the following: 1) “a general description of the subject matter being investigated and a statement of the applicable provisions of law;” and 2) “the date, time, and place at which the person is to appear, answer written interrogatories, or produce documentary material or other tangible items.” Ind. Code §§ 4-6-3-6(1) and (2).

7. If a person objects or refuses to comply with a CID, the Attorney General may file a petition to enforce the CID in the circuit or superior court in the county where the respondent maintains a principal place of business. Ind. Code § 4-6-3-6(a).
8. In his Petition to Enforce, the Attorney General must demonstrate the CID is proper. *Id.*
9. The Supreme Court has stated the Attorney General has a burden, “albeit a small one,” to demonstrate through his Petition to Enforce that his issuance of a CID is proper. See *Nu-Sash of Indianapolis, Inc. v. Carter*, 887 N.E.2d 92, 96 (Ind. 2008).
10. The Supreme Court specifically identified the Attorney General’s burden as requiring him “to establish only that there is an investigation and that there are reasonable grounds to believe that a person to whom the CID is directed has information relevant to the investigation.” *Id.* The Attorney General may establish there is “an investigation and the respondent is reasonably believed to have relevant information” by verified petition. *Id.*
11. If a court finds a CID was properly issued, a court shall order a respondent to comply with the requests contained in the CID. Ind. Code § 4-6-3-6(a).
12. If a court finds a party has “acted in bad faith in seeking or resisting the demand,” a court may enter an order requiring the party acting in bad faith to pay the expenses and attorney’s fees of the opposing party. Ind. Code § 4-6-3-6(c).
13. There is an active investigation into Avid Telecom and nineteen other telecommunications companies.

14. The Indiana Attorney General has reasonable belief Avid Telecom has relevant information to the investigation into Avid and several of the other nineteen other telecommunications companies.

FACTS

15. On August 2, 2022, the Attorney General, along with 49 other Attorneys General, announced the Anti-Robocall Litigation Task Force. *See Attorney General Todd Rokita Announces the Formation of a Nationwide Bipartisan Anti-Robocall Litigation Task Force*, Indiana Attorney General, (Aug. 2, 2022)

https://events.in.gov/event/attorney_general_todd_rokita_announces_the_formation_of_a_nationwide_bipartisan_anti-robocall_litigation_task_force.

16. As a leader of the Task Force, the Attorney General initially issued 20 CIDs to 20 different telecommunications companies. Avid Telecom was one of those providers.

17. Avid Telecom is the “complete call center solution provider,” and offers its clients a wide variety of telecommunications services and/or products including but not limited to: “DIDs, outbound minutes, dialing software, high-quality data and industry expertise.” These services also include “wholesale carrier services.” *See Home*, Avid Telecom, <https://avidtelecom.net/> (last visited Oct. 28, 2022).

18. Further, Avid Telecom advertises that “[u]nlike other VoIP providers that try to be all things to all customers, Avid Telecom focuses on being the best provider of VoIP-to-PSTN termination services.” *Id.*

19. The Industry Traceback Group (“ITG”), the FCC’s designated registered traceback consortium that combats “illegal calls by tracing them to their origin”, uses a network-based process that is accessible to all voice service providers using the U.S.

telephone network to issue “Tracebacks.” A Traceback traces a call’s path beginning with the voice service provider that delivered that call to the call recipient, all the way back to the voice service provider or entity that originated or placed the call, in order to learn where the call came from and who helped route the call along the call path to the call recipient. The ITG traces back calls that are identified to be suspected illegal and fraudulent robocalls. A true and accurate copy of the ITG’s Policies and Procedures is attached as Exhibit 3.

20. Each call that is the subject of a Traceback is typically one among a call campaign, which is a group of calls with identical or nearly identical messaging as determined by the content and calling patterns of the caller. Exhibit 3 at 4.
21. A single Campaign often represents hundreds of thousands or millions of calls. *Id.* represents hundreds of thousands or millions of calls. *Id.*
22. As Tracebacks are initiated, a known “downstream provider” notifies the ITG of the “upstream provider” that routed the call to it, and process continues working “up” the call path.
23. For every voice service provider in the call path that helped to route that call, the ITG sends a notice, via email, of the illegal call, a description of the call’s content, why the call is likely illegal, as well as a link to the audio recording so that the provider receiving the notice can be aware of the fraudulent or illegal message contained in the call that they routed across their network.
24. Each provider has a unique login to the ITG’s Traceback portal. Each provider can see how many Tracebacks it has been sent, as well as metrics about the upstream and

downstream voice service providers that it accepted a call from or routed a call to as related to each Traceback it receives.

25. As of August 3, 2022, Avid Telecom has been issued 267 Tracebacks. A true and accurate copy of a spreadsheet of Avid Telecom's Tracebacks, provided by USTelecom in response to a North Carolina CID, is attached as Exhibit 4.
26. Of the 267 calls, 126 calls were made to phone numbers on the Federal Do Not Call registry.
27. At least three of these calls went to phone numbers with an Indiana area code. Two of the phone numbers were on the Federal Do Not Call registry. All three phone calls were identified as being related to illegal or fraudulent scam calls.
28. Based on its Tracebacks, Avid Telecom has routed these types of calls:

Call Type	# of Tracebacks
Amazon imposter or Amazon scam	12
Apple imposter or Apple scam	2
Auto warranty	95
Business listings	5
Employment or Debt scam	21
Health Insurance and Medicare	43
Government imposter or Gov. scam	10
SSA imposter or SSA scam	27
Utility scam	9

29. The following are Avid Telecom’s upstream voice service provider customers that have routed identified fraudulent and illegal calls to Avid that were the subject of Tracebacks:

Customer	# of Tracebacks
Airespring	4
AllClear Connect	4
Autelecom LLC	21
BestiumPro	2
Connexum LLC	9
Digital Media Solutions	15
Great Choice Telecom LLC	22
Great Lakes Communication	24
Icon Global Services	8
J Squared / RPG / Rising Eagle	19
Mobi Telecom LLC	75
NGL Communications LLC	2
Red Telecom LLC	2
Telcast Network / Voovertel	2
Telesero / Fiducia	7
Tellza / Phonetime / Matchcom	2
Third Rock Telecom	2
TouchTone	2
Trixcom / Vibtree Technologies, LLC	8

Urth Access, LLC	2
VOIP Terminator / BL Marketing	6
Yodel Technologies / Yodel Voice	8

30. Of the above-mentioned providers from which Avid accepted and routed identified fraudulent and illegal robocalls, the FCC has sent Robocall Cease-and-Desist Letters to:

- Airespring
- Great Choice Telecom
- Icon Global
- Mobi Telecom
- Third Rock
- Yodel Tech

See Robocall Facilitators Must Cease and Desist, Federal Communications Commission, <https://www.fcc.gov/robocall-facilitators-must-cease-and-desist> (last visited Sept. 30, 2022).

31. Further, the FCC brought an enforcement action against John Spiller and JSquared Telecom LLC for a record \$225 million fine. *See FCC Proposes Record \$225 Million Fine for 1 Billion Spoofed Robocalls*, FCC, (June 10, 2022) <https://www.fcc.gov/document/fcc-proposes-record-225-million-fine-1-billion-spoofed-robocalls-0>.

32. On June 10, 2020, the State of Indiana, along with seven other states, sued John Spiller, JSquared Telecom LLC, and other entities in *State of Texas et al. v. Rising Eagle Capital Group LLC et al.*, 4:20-cv-02021 (S.D.T.X 2020).
33. In *Spiller*, Avid Telecom produced over 195 GBs of Call Detail Records for John Spiller and his company J Squared Telecom.
34. Call Detail Records are automatically generated and are, essentially, call logs that capture the details (e.g., time and date of the call, the duration of the call, the called number, the calling number) of every incoming and outgoing call that is sent across a voice service provider's network.
35. An analysis of the call detail records completed as part of the *Spiller* case, Avid Telecom routed over 46 million telephone calls to Indiana area codes, which included over 17 million calls to Hoosiers on the Federal Do Not Call Registry and over 8 million calls to Hoosiers on the Indiana Do Not Call list.
36. In *Spiller*, John Spiller provided the Plaintiff States his Skype conversations with Michael Lansky ("Lansky"), CEO of Avid Telecom, and Stacey Reeves ("Reeves"), Vice President of Operations/Sales. In the messages, John Spiller went by the handle "onlywebleads." A true and accurate copy of a portion of the Skype messages between Lansky and Spiller are attached as Exhibit 5.
37. In these messages, Lansky agreed to help Spiller switch his traffic to a new company, Great Choice Telecom LLC, thus avoiding being shutdown by the FCC. At the time, Lansky knew Spiller had several legal actions pending against him, and that Spiller was sending him suspect robocall traffic.

38. Further, Lansky agreed to use an alias for Spiller during a credit check with another provider and possibly a business bank loan.
39. In total, Avid Telecom received 19 Tracebacks for JSquared Telecom's traffic.
40. In total, Avid Telecom received 22 Tracebacks for Great Choice Telecom's traffic.
41. Thus, Avid Telecom received 41 Tracebacks regarding traffic to a Spiller entity.
42. The communications below are illustrative of why the Attorney General believes Avid Telecom has relevant information to the Task Force's investigation. These are communications regarding only one of Avid Telecom's many clients.
43. On June 10, 2020, Lansky and Spiller discussed the lawsuit and/or FCC action:

Michael Lansky - 6/10/2020 10:20:07 AM
hey John, just spoke to Craig Dingwall, and can you please call him
asap..

onlywebleads - 6/10/2020 10:22:02 AM
Will do

Michael Lansky - 6/10/2020 10:22:09 AM
thanks,,

Michael Lansky - 6/10/2020 10:22:13 AM
its very important

Michael Lansky - 6/10/2020 10:22:56 AM
we need to make sure there is not a conflict of interest

onlywebleads - 6/10/2020 10:23:11 AM
What do you mean?

onlywebleads - 6/10/2020 10:23:17 AM
Conflict of interest?

Michael Lansky - 6/10/2020 10:23:16 AM
hes been my regulatory attorney for 12-13 years

Michael Lansky - 6/10/2020 10:23:38 AM
there isn't any at this point

Michael Lansky - 6/10/2020 10:24:06 AM
But he can explain

Michael Lansky - 6/10/2020 10:24:45 AM
he read the FCC news yesterday

Michael Lansky - 6/10/2020 10:24:24 AM
he just called me and needs some clarification

onlywebleads - 6/10/2020 10:24:34 AM
Understood

onlywebleads - 6/10/2020 10:35:15 AM
I understand I just had a argument with Craig and he fired me as
his client so there is no more conflict of interest

Michael Lansky - 6/10/2020 10:35:30 AM
well ok...

Michael Lansky - 6/10/2020 10:35:46 AM
sorry to hear there was an argument...

onlywebleads - 6/10/2020 10:36:36 AM
Yea I felt he was listening to the media

onlywebleads - 6/10/2020 10:36:44 AM
Not to me as a client of his

Michael Lansky - 6/10/2020 10:36:50 AM
Im sure he is

Michael Lansky - 6/10/2020 10:37:21 AM
meaning listening to the media

Michael Lansky - 6/10/2020 10:38:42 AM
stressful times for everybody, especially you at this point

onlywebleads - 6/10/2020 10:42:52 AM
I just talked to him again and apologized for my outburst and he is
not firing me

onlywebleads - 6/10/2020 10:43:11 AM
I told him I am under a lot of stress

onlywebleads - 6/10/2020 10:43:11 AM
I told him I am under a lot of stress

Michael Lansky - 6/10/2020 10:51:05 AM
he just called me.. we are all good until something changes from
the FCC etc

Michael Lansky - 6/10/2020 10:51:23 AM
meaning this goes from alagtions to something more serious

Michael Lansky - 6/10/2020 10:51:39 AM
until then we drive on as normal

See Exhibit 5 at SKYPE008109- 8110.

44. On June 17, 2020, Lansky wrote about another telecom company closing:

Michael Lansky - 6/17/2020 10:44:03 PM
I don't know if you know who Modok is.... but they closed up
yesterday...

Michael Lansky - 6/17/2020 10:44:22 PM
basically USTA put them out of business.. and they had a ton of it

onlywebleads - 6/17/2020 10:51:31 PM
A ton of what?

Michael Lansky - 6/17/2020 10:51:56 PM
traffic

onlywebleads - 6/17/2020 10:52:19 PM

Oh really wow what type of traffic?
onlywebleads - 6/17/2020 10:52:30 PM
Robo dialing traffic?
Michael Lansky - 6/17/2020 10:52:49 PM
they were terminating same kind traffic you are ... health care and
auto warrantie I guess

Id. at SKYPE008111

45. On June 19, 2020. Spiller and Lansky had this discussion:

Michael Lansky - 6/19/2020 8:41:19 AM
good morning John
Michael Lansky - 6/19/2020 8:41:45 AM
we are not seeing any traffic from you this morinng
onlywebleads - 6/18/2020 5:07:08 PM
I'm still working on it with PayPal right now and I'll keep you
posted
onlywebleads - 6/19/2020 9:47:01 AM
Lansky I am going to be the new CEO of a new telecom company
so I can continue to run my traffic if the FCC shuts off my business
the new company is called Great Choice Telecom LLC and the
new owner is Mikel
Quinn he will have a FCC 499 this week as well
Michael Lansky - 6/19/2020 9:48:12 AM
good morning John... good to know, let me know when you are
ready to tansit over to the new company. btw, please call me
Michael... I much prefer it.
onlywebleads - 6/19/2020 9:48:31 AM
Understood will do

Id. at SKYPE008112

46. On June 25, 2020, Lansky and Spiller exchanged these messages:

onlywebleads - 6/25/2020 2:13:14 PM
Yea it does but I have some new guys starting up in a few days so I'll keep
you abreast when they start up
Michael Lansky - 6/25/2020 2:13:31 PM
sounds good.. appreciate the business
Michael Lansky - 6/25/2020 2:13:50 PM
have you figured out when you are going to make the change to the
company?
onlywebleads - 6/25/2020 2:15:54 PM
At the middle of next month I will be made a Ceo to Great choice
Telecom LLC and I'll be running all my traffic through that company
onlywebleads - 6/25/2020 2:16:13 PM
I'll let you know before I make the switch

Michael Lansky - 6/25/2020 2:16:39 PM
ok perfect
Michael Lansky - 6/25/2020 2:16:48 PM
just want to stay in synch

Id. at SKYPE008114

47. On August 26, 2020, in responding to Great Choice Telecom's first Traceback, Avid Telecom wrote to USTelecom:

Request to add a new provider:

Provider Name: Great Choice Telecom LLC, Provider Contact Name: Mikel Quinn, Provider Email: Mikel@greatchoicetelecom.com, Provider Phone Number: 832-763-7352, Provider Address: 9597 Jones Road, suite 110, Provider City: Houston, Provider Zip: 77064, Provider Country: United States

See Exhibit 4.

48. On September 30, 2020, they had this exchange:

onlywebleads - 9/30/2020 11:18:07 AM
Will you be a credit reference for me since I've been paying you on a credit for almost a year now?
Michael Lansky - 9/30/2020 11:20:56 AM
sure no problem
onlywebleads - 9/30/2020 11:23:57 AM
Thank you
onlywebleads - 9/30/2020 11:25:16 AM
It's going to be for great choice telecom, LLC and under my alias Mikel Quinn will that still be ok?
Michael Lansky - 9/30/2020 11:25:26 AM
ok
Michael Lansky - 9/30/2020 11:26:02 AM
who is going to be checking so I make sure I respond?
onlywebleads - 9/30/2020 11:26:12 AM
Peerless
Michael Lansky - 9/30/2020 11:26:14 AM
ok
Michael Lansky - 9/30/2020 11:26:41 AM
just a fyi... I basically dont send them any traffic as we were getting a lot FAS from them.. so beware
onlywebleads - 9/30/2020 11:27:55 AM
Yea I am aware I just want them for one thing and it's for toll free

termination not for LD.
Michael Lansky - 9/30/2020 11:28:06 AM
no worries.. I will give you a good reference
onlywebleads - 9/30/2020 11:28:14 AM
Thank you

Exhibit 5 at SKYPE008125.

49. On June 23, 2021, Reeves wrote to USTelecom in response to a Great Choice

Traceback: “we are closing the customer route.” Exhibit 4.

50. On June 29, 2021, Reeves wrote to USTelecom in response to another Great Choice

Traceback: “We have blocked the customer until the issue can be investigated.”

Exhibit 4.

51. On August 26, Avid Telecom wrote to USTelecom in response to another Great

Choice Traceback: “We are informing the customer and blocking the customer

pending further investigation [sic],” and “The customer had previously been

permanently blocked.” *Id.*

52. On October 14, 2021, they had this exchange:

onlywebleads - 10/26/2021 1:31:56 PM

Im putting you down as a referral for my business loan it will be under
Great Choice Telecom and Mikel Quinn since he’s the owner Ñot me on
paper

Michael Lansky - 10/26/2021 1:32:58 PM

ok

onlywebleads - 10/26/2021 1:44:40 PM

I’m sorry for the confusion but I run the business but with the lawsuit that
I went through previously I had to put him on my account as the face of
my business but he is getting replaced because he is a drunk and moved
from Houston to Louisiana and can’t get in contact with him anymore he
doesn’t have access to the bank accounts at all

onlywebleads - 10/26/2021 1:45:02 PM

So that is a plus

Michael Lansky - 10/26/2021 1:49:11 PM

no worries.. understood

Exhibit 5 at SKYPE008154.

53. On October 27, 2021, Avid Telecom wrote to USTelecom in response to another Great Choice Traceback: “We are also blocking the customer route until investigation can be done.” Exhibit 4.
54. On October 27, 2021, Reeves wrote to USTelecom in response to another Great Choice Traceback: “The customer was disconnected this morning based on previous traceback received this morning.” *Id.*
55. On October 27, 2021, Lansky and Spiller had this discussion:
- Michael Lansky - 10/27/2021 12:51:06 PM
John, You have been sent two USTA tickets with horrible calls that you have not answered
- Michael Lansky - 10/27/2021 12:51:19 PM
we have to block you
- onlywebleads - 10/27/2021 12:51:29 PM
Really I’ll answer them now I didn’t know I apologize
- Michael Lansky - 10/27/2021 12:52:07 PM
they are terrible tickets... the kind that will get everybody associated with them turned down
- Michael Lansky - 10/27/2021 12:52:11 PM
pure fraud
- onlywebleads - 10/27/2021 12:52:29 PM
I am cutting the client off now just saw them
- Michael Lansky - 10/27/2021 12:52:36 PM
USTA send notices and we sent you notices
- onlywebleads - 10/27/2021 12:52:58 PM
I apologize I had turned down my traffic and I’m traveling so my email isn’t up to date but I’m on it now
- Michael Lansky - 10/27/2021 12:53:04 PM
USTA has told us we need to turn you down
- onlywebleads - 10/27/2021 12:53:03 PM
I apologize greatly for this
- onlywebleads - 10/27/2021 12:53:03 PM
I apologize greatly for this
- Michael Lansky - 10/27/2021 12:53:38 PM
they told us we need to have a zero tolerenc policy on fraud tickets
- Michael Lansky - 10/27/2021 12:53:58 PM
you know they can put us out of business in a heartbeat
- onlywebleads - 10/27/2021 12:54:17 PM
I know I’m working on it now give me a day to fix my traffic
- onlywebleads - 10/27/2021 1:19:17 PM

I blocked traffic and I apologize for not seeing it
Michael Lansky - 10/27/2021 1:20:25 PM
unfortunately USTA advised us to turn the carrier that sent this traffic
off...

Michael Lansky - 10/27/2021 1:20:38 PM
they really dont give us a choice

onlywebleads - 10/27/2021 1:21:00 PM
So that is it then their is no way for me to earn you back as a vendor

Michael Lansky - 10/27/2021 1:21:07 PM
if another ticket hit.. and we didnt have you turned off... they would
tell our vendors to turn us off

onlywebleads - 10/27/2021 1:21:15 PM
Understood

Michael Lansky - 10/27/2021 1:21:30 PM
the landscape got brutal

onlywebleads - 10/27/2021 1:21:47 PM
I'm going to fix my traffic

Michael Lansky - 10/27/2021 1:21:51 PM
lets just let is simmer for a bit

Michael Lansky - 10/27/2021 1:22:05 PM
like a week or so...

onlywebleads - 10/27/2021 1:22:06 PM
Give me a week to fix my shit on my side I apologize

Michael Lansky - 10/27/2021 1:22:24 PM
maybe start you back with some limited ports

onlywebleads - 10/27/2021 1:22:11 PM
Sounds good thank you

onlywebleads - 10/27/2021 1:25:19 PM
Ok sounds good I apologize again for this error in my business

Michael Lansky - 10/27/2021 1:25:30 PM
Thanks

onlywebleads - 10/27/2021 1:25:52 PM
I'm going to fix my ports now

onlywebleads - 10/28/2021 11:07:00 AM
Lansky can we come to a better conclusion than you cutting me off for a
week I will call you to discuss right now

Michael Lansky - 10/28/2021 11:10:00 AM
I can't afford another ticket from you

Michael Lansky - 10/28/2021 11:10:45 AM
Usta told us to us turn you off

Michael Lansky - 10/28/2021 11:11:14 AM
If we didn't and got another ticket... we'd be so screwed

onlywebleads - 10/28/2021 11:13:02 AM
You won't get another ticket from me you will be only receiving from the
traffic i can vouch for Not the new clients traffic only the ones I need you
to complete their 800# calls

onlywebleads - 10/28/2021 11:13:37 AM

I need you as a vendor on my switch for the older clients Ñot the new clients

onlywebleads - 10/28/2021 11:42:08 AM

Please Michael i Can promise you that you will Ñot get another Traceback from me at all

onlywebleads - 10/28/2021 4:47:27 PM

That was one Traceback that was from back in October 18th and another one from October 26 those are the only ones that I received from USTA. The client has been terminated yesterday

Exhibit 5 at SKYPE008156-57.

56. On December 20, 2021, Reeves wrote to USTelecom in response to another Great Choice Traceback: “Customer route has been permanently closed.” Exhibit 4.
57. On or around January 7, 2020, Avid received its first Traceback related to J Squared. *See* Exhibit 4.
58. On or around February 17, 2020, Avid received its first Traceback related to J Squared for Auto Warranty robocalls. *See* Exhibit 4.
59. On or around June 19, 2020, Avid received its last Traceback related to J Squared. *See* Exhibit 4.
60. On or around August 24, 2020, Avid received its first Traceback related to Great Choice. The Traceback was related to Auto Warranty robocalls. Exhibit 4.
61. Avid Telecom continued to receive Tracebacks related to Great Choice until on or around December 17, 2021. *Id.*
62. In all, Avid Telecom received 41 Tracebacks regarding illegal robocalls that sent by a Spiller entity.
63. Avid Telecom has done business with an Indiana telecommunications company. Startel Communication LLC was an Indiana business. A true and accurate copy Startel Communication’s Articles of Incorporation are attached as Exhibit 6.

64. Further, another one of Avid Telecom's clients, Mobi Telecom LLC, is being sued by the Ohio Attorney General's office. A true and accurate of the Ohio Attorney General's lawsuit is attached as Exhibit 7.
65. Avid Telecom received 75 Tracebacks related to Mobi Telecom, with 71 of them related to auto warranty robocalls. *See* Exhibit 4.
66. Regarding Mobi's Tracebacks, Reeves and/or Avid never responded to USTelecom to demonstrate that the caller had proof of consent to send the calls. *See Id.*
67. On July 7, 2022, the FCC issued a Cease-and-Desist letter for Mobi Telecom. A true and accurate copy of the Cease-and-Desist letter has been attached as Exhibit 8.
68. On July 8, 2022, Reeves wrote to USTelecom in response a July 7, 2022 Traceback, "this customer was terminated for violating our customer agreement." Exhibit 4.
69. Since August 3, 2022, the Task Force has received more information from USTelecom. The State has reason to believe, based on this new information, that one of Avid Telecom's clients is using faulty or fake consent to justify the legality of their robocalls. A true and accurate copy of a spreadsheet of Avid Telecom's Updated Tracebacks, provided by USTelecom in response to a North Carolina CID, is attached as Exhibit 9.
70. As an example, Reeves provided USTelecom with a screen shot from CashRefi to show that a caller had consented to receiving auto warranty calls. A true and accurate copy of the Screenshot is attached as Exhibit 10.
71. In the screen shot, it is clear that this website is for a home mortgage rates and not auto-warranty. Thus, the call recipient would not be consenting to auto-warranty calls, but calls related to home mortgages.

72. Further, the “approved partners” from this website leads to:

<http://mycashrefi.com/ps/v23/partners.html>. On that webpage, the potential call recipient is agreeing to being called by 2967 different entities.

73. The Office of the Attorney General is currently conducting an investigation into whether the policies and actions of Avid Telecom constitute a violation of the Telemarketing Sales Rule, 16 C.F.R. § 310.3 through 310.5, the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 and its implementing rules, 47 C.F.R. §§ 64.1200 and 64.1604, Indiana’s Telephone Solicitation of Consumers Act, Ind. Code 24-4.7 (“TSCA”), or the Regulation of Automatic Dialing Machines Act, Ind. Code 24-5-14 (“Auto-dialer Act”) by providing assistance to those that violate the above provisions.

74. From information obtained through an initial investigation conducted by the Attorney General, the Attorney General has reason to believe Avid Telecom, presumably the holder and custodian of its own records, may be in possession, custody, or control of documentary material, and may have knowledge of facts that are relevant to an investigation being conducted to determine whether Avid Telecom violated the Telemarketing Sales Rule, 16 C.F.R. § 310.3 through 310.5, the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 and its implementing rules, 47 C.F.R. §§ 64.1200 and 64.1604, Indiana’s Telephone Solicitation of Consumers Act, Ind. Code 24-4.7 (“TSCA”), or the Regulation of Automatic Dialing Machines Act, Ind. Code 24-5-14 (“Auto-dialer Act”) by providing assistance to those that violate the above provisions.

PETITIONER’S ATTEMPTS TO OBTAIN RESPONSES TO THE CID

75. On August 1, 2022, in furtherance of its investigation, the Office of the Indiana Attorney General issued CID # 2022-00792-8753, containing interrogatories and requests for production of documents. The Attorney General requested a response to CID # 2022-00792-8753 by August 15, 2022. A true and accurate copy of CID 2022-00792-8753 is attached and marked as Exhibit 1.
76. The CID was mailed via United Parcel Service to Avid Telecom's Registered Agent: Michael Lansky at 2830 N SWAN RD #160, TUCSON, AZ 85712.
77. On Wednesday August 10, 2022: Michael Lansky emailed undersigned counsel "We just received your package late Monday afternoon (at my home?) and I am currently traveling. Our counsel is copied on this email. We should be responding shortly."
78. On August 15, 2022, counsel for Avid Telecom objected to the CID 2022-00792-8753. A true and accurate copy of the objection is attached and marked as Exhibit 10.
79. On August 18, 2022, undersigned counsel and Avid Telecom's counsel had a meet and confer to discuss the objections. Undersigned counsel made it clear that the Office would move forward to enforce the CID. In the meet and confer, undersigned counsel stated a willingness to work with Avid Telecom's counsel to ease the alleged burden of responding. Avid Telecom's counsel said they would discuss with their client.
80. On August 22, 2022, undersigned counsel and Avid Telecom's local counsel met in person to discuss the CID. In this meeting, undersigned counsel notified Avid Telecom's counsel of Avid Telecom's response in *Spiller* and the already existing evidence of illegal calls that Avid Telecom has routed to Indiana residents.

81. On August 26, 2022, undersigned counsel emailed Avid Telecom's local counsel for an update on the CID response.
82. On August 30, 2022, Avid Telecom's local counsel sent undersigned counsel a letter. A true and accurate copy is attached as Exhibit 11.
83. On September 1, 2022, the Attorney General reissued CID 2022-00792-8753 with a new due of September 16, 2022. Exhibit 2.
84. On September 16, 2022, Avid Telecom's counsel sent another objection to answering CID 2022-00792-8753. A true and accurate copy is attached as Exhibit 12.
85. Avid Telecom has not provided a full response to CID 2022-00792-8753 as of the date of this filing.
86. Avid Telecom's failure to provide a response to CID 2022-00792-8753 is in bad faith.
87. The Attorney General has attempted to secure a response to CID 2022-00792-8753 through repeated communications with Avid Telecom. The Attorney General's attempts have been unsuccessful.

RELIEF

88. As the Attorney General has issued his CID 2022-00792-8753 as part of his duties to protect Indiana consumers by enforcing consumer protection law, the Attorney General requests that the Court set this matter for hearing at the Court's earliest convenience.
89. The Attorney General requests that the Court order Avid Telecom to provide a full response to CID 2022-00792-8753 by answering fully and truthfully the interrogatories and requests for production propounded in CID 2022-00792-8753 and award reasonable expenses to the Office of the Indiana Attorney General for the

Attorney General's costs and attorney's fees in petitioning to enforce CID 2022-00792-8753.

90. The Attorney General requests that the Court enter all other just and proper relief.

I affirm, under the penalties for perjury, that the foregoing representations are true.

Respectfully submitted,

Office of the Indiana Attorney General

Date: 11/1/2022

By: /s/ Joseph D. Yeoman
JOSEPH D. YEOMAN
Indiana Bar No. 35668-29
Joseph.Yeoman@atg.in.gov
Deputy Attorney General
302 West Washington Street
IGCS – 5th Floor
Indianapolis, IN 46204
(317) 234-1912 (Yeoman)
(317) 232-7979 (Fax)

CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2022, I electronically filed the foregoing with the Clerk of the Court using the IEFS system. I hereby certifies that a copy of the above Verified Petition to Enforce Civil Investigative Demand was mailed by United States certified mail, return service requested on November 1, 2022 to the following:

Registered Agent: Michael Lansky
Michael D. Lansky LLC
2830 N SWAN RD #160
TUCSON, AZ 85712

/s/ Joseph D. Yeoman
JOSEPH D. YEOMAN
Indiana Bar No. 35668-29
Joseph.Yeoman@atg.in.gov
Deputy Attorney General
302 West Washington Street
IGCS – 5th Floor
Indianapolis, IN 46204
(317) 234-1912 (Yeoman)
(317) 232-7979 (Fax)



September 19, 2022

ATTORNEY GENERAL RAOUL JOINS COALITION CALLING ON FCC TO CRACK DOWN ON FRAUDULENT ROBOCALLS

Chicago — Attorney General Kwame Raoul today joined a bipartisan coalition of 51 attorneys general in calling on the Federal Communications Commission (FCC) to require telephone providers that route calls across the United States telephone network to implement more rigorous measures to prevent illegal and fraudulent robocalls.

“Robocalls are a continued source of frustration for Illinoisans, and we must utilize every tool at our disposal to curb these calls that cost residents time and money,” Raoul said. “I urge the FCC to adopt these expanded rules to ensure all telecommunications companies are working to reduce the number of fraudulent calls entering the United States.”

According to Raoul and the coalition, illegal robocalls cost consumers, law enforcement and the telecommunications industry approximately \$13.5 billion every year, with calls often originating from overseas scam actors who spoof United States-based phone numbers. While the FCC recently required phone companies that allow robocalls onto the United States telephone network to do more to keep them out, the agency is now proposing expanding many of these rules.

[In their letter to the FCC](#), Raoul and the coalition express support for the FCC proposal to extend the implementation of STIR/SHAKEN, a caller ID authentication technology that helps prevent spoofed calls, to all “intermediate” phone providers in the United States. Currently, only providers that originate call traffic are required to implement STIR/SHAKEN. The coalition also urges the FCC to require providers to adopt additional measures to cut down on illegal and fraudulent robocalls, including responding to law enforcement traceback requests within 24 hours and blocking illegal traffic as soon as possible.

Raoul and the coalition note the importance of uniform robocall mitigation practices to stem the tide of illegal and fraudulent robocalls.

Attorney General Raoul has been a consistent advocate for protections against illegal robocalls. Just last month, Raoul announced Illinois would be joining the nationwide [Anti-Robocall Litigation Task Force](#) to investigate and take legal action against the telecommunications companies responsible for bringing a majority of foreign robocalls into the United States. In 2020, [Raoul joined a coalition of 33 attorneys general](#) in filing a brief in the U.S. Supreme Court defending the anti-robocall provisions of the Telephone Consumer Protection Act. In August 2019, [Raoul joined a bipartisan coalition of attorneys general](#) from all 50 states and Washington D.C. in partnering with 12 phone companies to create a set of principles for telecom companies to fight robocalls. In June 2019, Raoul, in cooperation with the Federal Trade Commission, announced a major crackdown on robocalls that included 94 actions targeting operations around the country that were responsible for more than 1 billion calls. Raoul has also submitted comments to the FCC urging the adoption of its proposed rules on enforcement against caller ID spoofing.

Joining Raoul in sending the comment letter are the attorneys general of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Guam, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

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PRESIDENT

Tom Miller
Iowa
Attorney General

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

PRESIDENT-ELECT

Josh Stein
North Carolina
Attorney General

In the Matter of)
)
Advanced Methods to Target and)
Eliminate Unlawful Robocalls)

CG Docket No. 17-59

VICE PRESIDENT

Ellen F. Rosenblum
Oregon
Attorney General

)
)
Call Authentication Trust Anchor)

WC Docket No. 17-97

REPLY COMMENTS OF FIFTY-ONE (51)
STATE ATTORNEYS GENERAL

IMMEDIATE PAST
PRESIDENT

Karl A. Racine
District of Columbia
Attorney General

I. Introduction

The undersigned State Attorneys General (“State AGs”) submit these Reply Comments in response to the public notice issued by the Consumer and Governmental Affairs and Wireline Competition Bureaus,¹ seeking comment on the Federal Communication Commission’s (“Commission”) proposals to expand rules focusing on gateway providers “to cover other providers in the call path, along with additional steps to protect American consumers from all illegal calls, whether they originate domestically or abroad.”²

Al Lama
Acting Executive Director

1850 M Street NW
12th Floor
Washington, DC 20036
(202) 326-6000
www.naag.org

¹ See *Advanced Methods to Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor*, CG Docket No. 17-59, WC Docket No. 17-97, Seventh Further Notice of Proposed Rulemaking in CG Docket No. 17-59 & Fifth Further Notice of Proposed Rulemaking in WC Docket No. 17-97, FCC 22-37 (May 19, 2022) [hereinafter *May 2022 FNPRM*].

² *Id.* at 64 ¶ 157.

Like the Commission, many of our offices report that “unwanted calls, including illegal robocalls, are consistently . . . a top source of consumer complaints.”³ Moreover, as the Commission recognizes, illegal robocalls cost law enforcement, the telecommunications industry, and, most importantly, our constituents, approximately \$13.5 billion every year.⁴ In 2021, American consumers, including seniors, persons with disabilities, and other vulnerable populations, were bilked out of \$830 million via fraud perpetrated over the phone and/or through text messages.⁵ In many cases, the perpetrators of this fraud are foreign actors gaining access to the U.S. phone network through international gateway providers.⁶ Based upon consumer complaints filed with our offices, these fraudulent, foreign-originated robocalls often involve caller ID spoofing of U.S.-based phone numbers. Yet, without assistance from willing domestic providers to deliver illegal robocalls, these calls would never reach Americans.

³ See *Advanced Methods to Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor*, Fifth Further Notice of Proposed Rulemaking in CG Docket No. 17-59 & Fourth Further Notice of Proposed Rulemaking in WC Docket No. 17-97, FCC 22-37, at 2 ¶ 4 (October 1, 2021) [hereinafter *October 2021 FNPRM*].

⁴ *Id.*; see also *id.* at 4 ¶ 9 (finding that when an entity spoofs a large number of calls in a robocall campaign, it causes harm to subscribers, to consumers receiving the spoofed calls, and to the terminating carriers who incur increased costs due to consumer complaints).

⁵ This number is reached by combining amounts lost to fraud by phone call (\$699 million) with amounts lost by text (\$131 million). See Federal Trade Commission, *Fraud Reports by Contact Method, Year: 2021*, FTC CONSUMER SENTINEL NETWORK (data as of June 30, 2022) <https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/LossesContactMethods> (Loss & Contact Methods tab, Year 2021).

⁶ *October 2021 FNPRM*, *supra* note 3, at 12–13 ¶¶ 26, 27, 28 (recognizing that a large portion of unlawful robocalls made to U.S. telephone numbers originate outside of the U.S.; that most foreign-originated fraudulent traffic uses a U.S. number in the caller ID field that is transmitted and displayed to the U.S. call recipient; that illegal, foreign-originated robocalls can only reach U.S. consumers after they pass through a gateway provider that is unwilling or unable to block such traffic; and that the Commission’s Enforcement Bureau has repeatedly identified gateway providers as playing a key role in routing illegal robocall traffic into the U.S.).

The May 19, 2022, *Gateway Provider Report and Order*⁷ was an important step toward cutting the strings that form the nets that these illegal robocallers cast over Americans. However, illegal robocalls continue to reach consumers, and the next logical step is to require *all* U.S.-based intermediate⁸ providers, whether they are accepting and routing a call as a gateway provider or as a non-gateway intermediate provider, to authenticate Caller ID information consistent with STIR/SHAKEN for calls carrying a U.S. number in the caller ID field, and to implement many of the meaningful robocall mitigation practices that are now required of gateway providers.

To this end, and consistent with recent Reply Comments filed with the Commission by State AGs related to these issues,⁹ State AGs support the Commission’s current proposals to extend STIR/SHAKEN authentication protocols to all U.S. intermediate providers as described in the May 2022 FNPRM.¹⁰ Illegal robocallers depend upon a relatively small number of unscrupulous

⁷ *Advanced Methods to Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor*, CG Docket No. 17-59, WC Docket No. 17-97, Sixth Report and Order in CG Docket No. 17-59 & Fifth Report and Order in WC Docket No. 17-97, FCC 22-37, at 10 ¶ 19 (May 20, 2022).

⁸ For use in these Reply Comments, we adopt the Commission’s proposed definition of “intermediate provider” to mean “any entity that [carries] or processes traffic that traverses or will traverse the [public switched telephone network (PSTN)] at any point insofar as that entity neither originates nor terminates that traffic.” See *May 2022 FNPRM*, *supra* note 1, at 3 ¶ 4 n.1.

⁹ See, e.g., Reply Comments of Fifty-One (51) State Attorneys General, *Numbering Policies for Modern Communications*, WC Docket No. 13-97, *Telephone Number Requirements for IP-Enabled Service Providers*, WC Docket No. 07-243, *Implementation of TRACED Act Section 6(a)–Knowledge of Customers by Entities with Access to Numbering Resources*, WC Docket No. 20-67, *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-155, filed Nov. 15, 2021 (supporting the Commission’s proposals to reduce access to numbering resources by potential perpetrators of illegal robocalls); Reply Comments of Fifty-One (51) State Attorneys General, *Call Authentication Trust Anchor*, WC Docket No. 17-97, filed Aug. 9, 2021 [hereinafter *August 2021 Reply Comments*] (encouraging Commission to require small voice service providers that flood the U.S. telephone network with illegal robocalls to implement STIR/SHAKEN caller ID authentication as soon as possible); Reply Comments of Fifty-One (51) State Attorneys General, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, *Call Authentication Trust Anchor*, WC Docket No. 17-97, filed Jan. 10, 2022 [hereinafter *January 2022 Reply Comments*] (encouraging Commission to require gateway providers that flood the U.S. telephone network with illegal robocalls to implement STIR/SHAKEN caller ID authentication as soon as possible).

¹⁰ *May 2022 FNPRM*, *supra* note 1, at 64 ¶¶ 158, 160–73.

VoIP providers who integrate their call traffic into the larger body of legitimate call traffic where it becomes more difficult to detect and stop. STIR/SHAKEN authentication protocols require calls to carry information which identifies the provider who originated the call and attests to whether that provider knows the subscriber who placed the call and if they know the subscriber is authorized to use the calling number. Importantly, requiring all intermediate providers to comply with STIR/SHAKEN so that they no longer strip this information from calls will both assist downstream voice service providers who can prevent known sources of illegal robocalls from abusing their networks,¹¹ and assist State AGs in targeting those individuals and companies that are responsible for, and participate in, an enterprise that robs Americans of the freedom to answer their phones and continues to cause billions of dollars in losses.

Because we are mindful that there is no “silver bullet” solution to curb the scourge of illegal and fraudulent robocalls, State AGs also fully support the Commission’s proposal to expand to all domestic providers the requirement to implement affirmative and effective mitigation practices. The Commission’s current proposal to require all U.S.-based intermediate providers to implement both STIR/SHAKEN authentication protocols and robocall mitigation practices are common-sense next steps in the effort to meaningfully mitigate illegal and fraudulent robocall traffic on a larger scale.

¹¹ The FCC permits call-blocking programs based on reasonable analytics including “information about the originating provider, such as whether it has been a consistent source of unwanted robocalls and whether it appropriately signs calls under the SHAKEN/STIR framework.” Declaratory Ruling and Third Further Notice of Proposed Rulemaking, *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, *Call Authentication and Trust Anchor*, WC Docket No. 17-97, adopted June 6, 2019, at ¶ 35.

II. The Commission Should Extend Current STIR/SHAKEN Gateway Obligations to All Domestic Intermediate Providers

The Commission proposes extending the call authentication requirements beyond gateway providers to all domestic intermediate providers in the call path.¹² STIR/SHAKEN provides increased protections for consumers against receiving illegally spoofed calls, but only with true end-to-end, universal implementation of STIR/SHAKEN protocols by all voice service providers.¹³ If providers along the call path are obligated to refuse calls from providers that fail to comply with STIR/SHAKEN, it will be more difficult, and costly, for bad actors to find providers that are still willing to route their illegal and fraudulent call traffic. This is a win for consumers, since “illegal robocalls will continue so long as those initiating and facilitating them can get away with and profit from it.”¹⁴

Relatedly, State AGs respectfully urge the Commission to adopt its proposed rules to establish deadlines for intermediate providers to implement STIR/SHAKEN authentication obligations as soon as possible.¹⁵ As the Commission recognizes in its proposal,¹⁶ many intermediate providers accept call traffic as gateway providers and should have already

¹² *May 2022 FNPRM*, *supra* note 1, at 63 ¶ 158.

¹³ *August 2021 Reply Comments*, *supra* note 9, at 3; *see also* Reply Comments of Fifty-One (51) State Attorneys General, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, *Call Authentication Trust Anchor*, WC Docket 17-97, filed Aug. 23, 2019, at 4–6 (supporting the Commission in taking regulatory action against those providers who fail to implement STIR/SHAKEN and supporting the prohibition of domestic voice service providers from accepting voice traffic from any other providers who fail to comply with STIR/SHAKEN); Reply Comments of Thirty-Five (35) State Attorneys General, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket Number, 17-59, filed Oct. 8, 2018, at 4–5 (urging the Commission to explore ways to encourage all domestic and international service providers to aggressively implement STIR/SHAKEN).

¹⁴ CHRIS FRASCELLA & MARGOT SAUNDERS, SCAM ROBOCALLS TELECOM PROVIDERS PROFIT 18 (Nat’l Consumer L. Ctr. And Electronic Privacy Info. Ctr. 2022) (quoting Statement of Commissioner Geoffrey Starks, *Call Authentication Trust Anchor*, WC Docket No. 17-97, FCC 21-105, filed Sept. 30, 2021).

¹⁵ *May 2022 FNPRM*, *supra* note 1, at 66 ¶ 169.

¹⁶ *Id.* at 65 ¶¶ 165, 166.

implemented STIR/SHAKEN pursuant to the Commission’s May 19, 2022 *Order*.

Further, the absence of a mandate that obligates all U.S.-based intermediate providers to implement STIR/SHAKEN overlooks the lessons learned and reflected in the Commission’s prior decision to reconsider an initial two-year blanket extension¹⁷ that expanded the original June 30, 2021 STIR/SHAKEN industry-wide implementation deadline to June 30, 2023 for a subset of small voice service providers. As the Commission learned from its previous experience, the longer this tier of providers is excused from having to shoulder the same authentication responsibilities as those providers above them in the call path, the more heightened the risk that an insulated subset of small voice service providers will continue to accept and route “an especially large amount of [illegal] robocall traffic.”¹⁸ State AGs have been consistent in our call for the Commission to require voice service providers along the call path to implement STIR/SHAKEN without delay, and we do so again here.¹⁹

¹⁷ In March 2021, pursuant to the mandates of the TRACED Act, voice service providers had until June 30, 2021, to implement STIR/SHAKEN. *See Call Authentication Trust Anchor*, WC Docket No. 17-97, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3241, 3257–58 ¶¶ 32–35 (rel. Mar. 31, 2020); 47 CFR § 64.6301. Small voice service providers were granted a two-year extension to June 30, 2023. *See Call Authentication Trust Anchor*, WC Docket No. 17-97, Second Report and Order, 36 FCC Rcd 1859, 1876 ¶ 38 (rel. Oct. 1, 2020).

¹⁸ *See Call Authentication Trust Anchor*, WC Docket No. 17-97, Third Further Notice of Proposed Rulemaking, FCC 21-62, at 2 ¶ 1 (May 21, 2021).

¹⁹ *See, e.g.,* Reply Comments of Fifty-One (51) State Attorneys General, *Numbering Policies for Modern Communications*, WC Docket No. 13-97, *Telephone Number Requirements for IP-Enabled Service Providers*, WC Docket No. 07-243, *Implementation of TRACED Act Section 6(a) – Knowledge of Customers by Entities with Access to Numbering Resources*, WC Docket No. 20-67, *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-155, filed Nov. 15, 2021 (supporting the Commission’s proposals to reduce access to numbering resources by potential perpetrators of illegal robocalls); *August 2021 Reply Comments, supra* note 9 (encouraging Commission to require small voice service providers that flood the U.S. telephone network with illegal robocalls to implement STIR/SHAKEN caller ID authentication as soon as possible); *January 2022 Reply Comments, supra* note 9 (encouraging Commission to require gateway providers that flood the U.S. telephone network with illegal robocalls to implement STIR/SHAKEN caller ID authentication as soon as possible).

III. The Commission Should Extend Certain Robocall Mitigation Duties to All Domestic Providers in the Call Path

The Commission further proposes to obligate all domestic intermediate providers to adopt affirmative mitigation programs, including a 24-hour traceback response requirement, mandatory call blocking, and a general duty to mitigate illegal robocalls.²⁰ State AGs support each of these proposals as set out by the Commission. Consistent application of these obligations for all providers in the call path would close the loophole²¹ that allows some providers to abdicate or shirk what should be a shared responsibility among providers to mitigate the continued deluge of illegal robocalls.

A. 24-Hour Traceback Requirement

Currently, all gateway providers must respond fully to all traceback requests from the Commission, civil or criminal law enforcement, as well as the industry traceback consortium, within 24 hours of receiving a request.²² The Commission proposes (1) extending this requirement to all domestic intermediate providers in the call path,²³ and (2) seeks feedback on whether to “adopt an approach to traceback based on [the] volume of requests received, rather than position in the call path, or size of provider” in a “tiered” approach.²⁴ The proposed tiered approach to traceback response obligations would require providers with, for example, fewer than 10 traceback requests per month to respond “in a timely manner” without the need to respond within 24 hours, between 10 and 99 traceback requests per month to “maintain an average 24-hour response,” and 100 or more traceback requests a month to consistently respond to tracebacks within 24 hours.

²⁰ *May 2022 FNPRM*, *supra* note 1, at 63 ¶ 158.

²¹ *Id.* 68–69 ¶ 175.

²² *Id.* at 30 ¶ 65.

²³ *Id.* at 69 ¶ 177.

²⁴ *Id.* at 69 ¶ 179.

State AGs unequivocally support the extension of the 24-hour traceback response requirement to all domestic intermediate providers. As the Commission recognizes, “traceback is an essential part of identifying the source of illegal calls,” wherein “time is of the essence . . . particularly for foreign-originated calls where . . . law enforcement may need to work with international regulators to obtain information from providers outside of U.S. jurisdiction.”²⁵ However, State AGs discourage the Commission from adopting a tiered approach to the timelines for compliance with the traceback requirement.

Instead, State AGs support uniformly expanding the existing 24-hour response requirement for traceback obligations on gateway providers to all domestic providers. A uniform requirement is clear and equitable. Further, the 24-hour response time is not overly burdensome to providers in the context of the crisis this country experiences daily in the tsunami of illegal robocalls. Moreover, the information that is required for a provider to comply with a traceback request can be found by accessing data that is automatically generated for every call routed to and from every provider in the normal course of business. This data is used by providers as a basis for billing, among other things.²⁶ Yet, since these records are not retained for consistent periods of time or with any predictability or regularity across providers in the industry, a shortened timeframe for traceback responses for all providers will increase the likelihood that this data, which is both critical and ephemeral, will be preserved to enable providers to respond to time-mandated,

²⁵ *October 2021 FNPRM*, *supra* note 3, at 21 ¶ 52.

²⁶ NATIONAL ASSOCIATION OF ATTORNEYS GENERAL, COMMENTS OF FORTY-THREE (43) STATE ATTORNEYS GENERAL: TELEMARKETING SALES RULE (16 C.F.R. PART 310—NPRM) (PROJECT NO. 411001) 6 (2022) [hereinafter *Aug. 2022 FTC Comments*] (supporting the FTC’s proposed amendments to the Telemarketing Sales Rule that would impose additional recordkeeping requirements on telemarketers and sellers, including retention requirements for call detail records).

ministerial requests designed to curtail illegal robocalls.²⁷ For these reasons, State AGs support extending a uniform 24-hour traceback requirement to all domestic intermediate providers.

B. Mandatory Blocking Following Commission Notification and Mandatory Downstream Provider Blocking

The Commission proposes requiring all domestic providers in the call path to block, rather than “simply effectively mitigate,” illegal traffic when notified of such traffic by the Commission, regardless of whether that traffic originates abroad or domestically.²⁸ State AGs support this common-sense requirement. Requiring all domestic providers in the call path to block illegal traffic will provide safeguards to stop or reduce known illegal or fraudulent calling campaigns from reaching consumers, including those who are most vulnerable. State AGs agree with the Commission’s insight that a lack of consistency in blocking obligations for identified illegal robocall traffic across provider types or roles could allow for unintended loopholes that a single, uniform rule would protect against.²⁹ Further, when the Commission has identified illegal traffic, a rule requiring anything short of uniform blocking of that identified illegal traffic would only afford protections to those profiting off of that illegal traffic, and exacerbate the harm those calls can, and will, bring to the nation’s consumers. Thus, because there is no common sense reason to exempt a provider from blocking illegal robocall traffic upon notification to do so by the Commission as described in this Notice, State AGs support the Commission’s proposal to mandate uniform blocking of this illegal traffic.

²⁷ *Id.*

²⁸ *May 2022 FNPRM, supra* note 1, at 70 ¶ 181.

²⁹ *Id.*

C. General Mitigation Standards and the Robocall Mitigation Database

The Commission further proposes extending a general mitigation standard obligation to voice service providers that have implemented STIR/SHAKEN in the IP portions of their networks, and to all domestic intermediate providers.³⁰ This obligation would include a duty for voice service providers to take “reasonable steps” to avoid originating or terminating illegal robocall traffic, and a duty for intermediate providers to take “reasonable steps” to avoid carrying or processing this traffic. Since robocallers and those who enable them often adapt to circumvent specific safeguards targeting illegal traffic,³¹ State AGs agree with the Commission’s proposal to implement a general mitigation obligation for all domestic intermediate providers. This will serve as an “effective backstop” to ensure robocallers “cannot evade any granular requirements” adopted by the Commission.³²

The Commission’s proposed general mitigation standard would also include an obligation for all domestic intermediate providers to file a mitigation plan along with a certification in the Robocall Mitigation Database, which plan must include substantive, detailed practices one could reasonably expect would reduce illegal robocall traffic.³³ State AGs support this proposed requirement, and agree that such an obligation should conform to the obligations that currently apply to gateway providers, namely: (1) certification as to the status of STIR/SHAKEN implementation and robocall mitigation efforts on their networks; (2) contact information for a person responsible for addressing robocall mitigation-related issues; and (3) a detailed description

³⁰ *Id.* at 72 ¶ 188.

³¹ *October 2021 FNPRM*, *supra* note 3, at 32 ¶ 91.

³² *May 2022 FNPRM*, *supra* note 1, at 72 ¶ 188.

³³ *Id.*

of their robocall mitigation practices.³⁴

We further support implementing a requirement that would obligate all domestic providers to “explain what steps they are taking to ensure that the immediate upstream provider is not using their network to transmit illegal calls.”³⁵ Just as STIR/SHAKEN is only truly effective when it is implemented end-to-end, mitigation practices are only effective when providers are accountable and proactive, end-to-end, along the call path. The Commission’s proposal to require providers to be able to “explain” how they are proactively working to mitigate illegal robocall traffic is a reasonable request for any legitimate provider. This obligation should not be overly burdensome for any provider who is committed to consistently keeping illegal traffic off of its network, and State AGs support this proposal.

Moreover, extending these additional mitigation requirements to all domestic providers will also simplify rules for all stakeholders in the robocall ecosystem, subjecting them to the same obligations for all calls, regardless of the providers’ respective roles in the call path.³⁶ Additionally, the application of these requirements industry-wide will enhance the effectiveness of law enforcement efforts pertaining to illegal robocalls.

Finally, State AGs support the shortest compliance deadlines proposed by the Commission for each proposal in this Notice.³⁷ Consumers in our states are eager to see solutions. In fact, they deserve solutions. The sooner the requirements can be implemented industry-wide, the sooner our consumers, and the providers themselves, will benefit from these enhanced protections and guardrails.

³⁴ *Id.* at 75 ¶ 197.

³⁵ *Id.* at 75 ¶ 197.

³⁶ *Id.* at 74 ¶ 193.

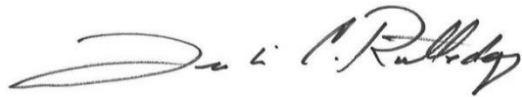
³⁷ *Id.* at 74 ¶ 194.

IV. Conclusion

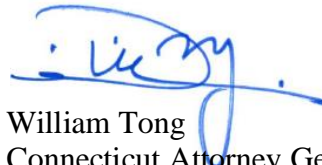
The undersigned State AGs commend the Commission's current proposals to expand obligations to implement Caller ID authentication protocols and specific mitigation efforts to all intermediate domestic providers. Such regulatory symmetry enhances legal clarity and fairness in rule implementation. Imposing consistent obligations on all stakeholders will help law enforcement readily identify and prosecute the bad actors who regularly seek to profit from the illegal robocalls that the nation uniformly abhors.

As with other specific measures adopted in the past, State AGs recognize that the Commission's proposed actions, including mandatory call blocking, will not completely eradicate the illegal robocall epidemic. However, we are confident that the proposals under consideration will help bring bad actors to account. State AGs remain committed to working together, and with the FCC, to combat illegal robocalls, and support the meaningful proposals under consideration by the Commission.

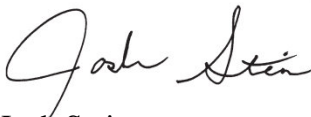
BY FIFTY-ONE (51) STATE ATTORNEYS GENERAL:




Leslie Rutledge
Arkansas Attorney General




William Tong
Connecticut Attorney General




Josh Stein
North Carolina Attorney General




Steve Marshall
Alabama Attorney General




Treg R. Taylor
Alaska Attorney General




Mark Brnovich
Arizona Attorney General




Rob Bonta
California Attorney General




Phil Weiser
Colorado Attorney General




Kathleen Jennings
Delaware Attorney General




Karl Racine
District of Columbia Attorney General




Ashley Moody
Florida Attorney General



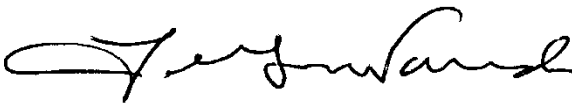
Christopher M. Carr
Georgia Attorney General




Leevin T. Camacho
Guam Attorney General



Holly T. Shikada
Hawaii Attorney General



Lawrence Wasden
Idaho Attorney General



Kwame Raoul
Illinois Attorney General



Todd Rokita
Indiana Attorney General



Tom Miller
Iowa Attorney General



Derek Schmidt
Kansas Attorney General



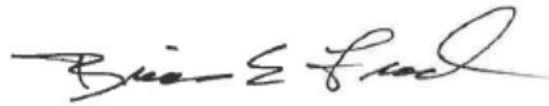
Daniel Cameron
Kentucky Attorney General



Jeffery Laundry
Louisiana Attorney General



Aaron M. Frey
Maine Attorney General



Brian Frosh
Maryland Attorney General



Maura Healey
Massachusetts Attorney General



Dana Nessel
Michigan Attorney General



Keith Ellison
Minnesota Attorney General



Lynn Fitch
Mississippi Attorney General




Eric S. Schmitt
Missouri Attorney General



Douglas Peterson
Nebraska Attorney General



Aaron D. Ford
Nevada Attorney General



John Formella
New Hampshire Attorney General



Matthew J. Platkin
Acting New Jersey Attorney General



Hector Balderas
New Mexico Attorney General



Letitia James
New York Attorney General



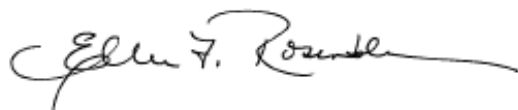
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North Dakota Attorney General



Dave Yost
Ohio Attorney General



John M. O'Connor
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Pennsylvania Attorney General



Peter F. Neronha
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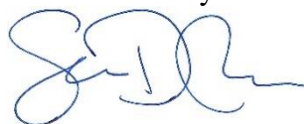
Mark Vargo
South Dakota Attorney General



Jonathan Skrmetti
Tennessee Attorney General



Ken Paxton
Texas Attorney General



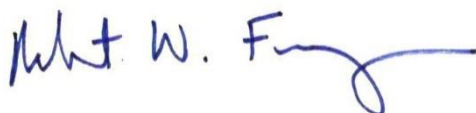
Sean D. Reyes
Utah Attorney General



Susanne Young
Vermont Attorney General



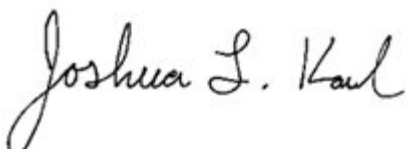
Jason Miyares
Virginia Attorney General



Robert W. Ferguson
Washington Attorney General



Patrick Morrissey
West Virginia Attorney General



Joshua L. Kaul
Wisconsin Attorney General



Bridget Hill
Wyoming Attorney General



March 3, 2020

ATTORNEY GENERAL RAOUL DEFENDS ANTI-ROBOCALL PROVISIONS

Chicago — Attorney General Kwame Raoul joined a coalition of 33 attorneys general in filing a brief with the U.S. Supreme Court arguing for the preservation of the anti-robocall provisions of the federal Telephone Consumer Protection Act (TCPA).

The TCPA, enacted in 1991, is a critical piece of federal consumer-protection law allowing individuals to sue illegal robocallers or states to sue on their residents' behalf. A decision in the U.S. Court of Appeals for the 4th Circuit recently invalidated a portion of the act, potentially jeopardizing the entire federal robocall ban. In [the brief](#), Raoul and the coalition argue that eliminating the robocall ban threatens the ability of states to fight one of the most pressing consumer protection issues residents face. In January 2020 alone, Americans received more than 4.7 billion robocalls

"Complaints related to robocalls continue to be among the most common consumer complaints my office receives," Raoul said. "Robocalls cost consumers time and money, as well as violate their privacy. I will continue to protect the rights of Illinois consumers by fighting against this illegal practice."

In the brief, Raoul and the coalition assert that if the recent exemption for federal government debt collection is held to be unconstitutional, the TCPA's severability clause should remove that exemption from the remaining robocall ban rather than invalidate the ban entirely. The coalition maintains that the robocall ban is critical in safeguarding personal and residential privacy by prohibiting intrusive robocalls.

Attorney General Raoul has been a consistent advocate for protections against illegal robocalls. In August 2019, Raoul joined a coalition of attorneys general from all 50 states and Washington D.C. in partnering with 12 phone companies to create a set of principles for telecom companies to fight robocalls. In June 2019, Raoul, in cooperation with the Federal Trade Commission, announced a major crackdown on robocalls that included 94 actions targeting operations around the country that were responsible for more than 1 billion calls. As part of that crackdown, Raoul [filed a lawsuit](#) against Glamour Services, LLC; Awe Struck, Inc.; and Matthew Glamkowski, the manager of Glamour Services and president of Awe Struck for allegedly using robocalling and telemarketing to solicit home cleaning services. In May 2019, Raoul submitted comments to the Federal Communications Commission urging the adoption of its proposed rules on enforcement against caller ID spoofing.

Consumers who wish to file a consumer complaint concerning robocalls they have received can do so on the [Attorney General's website](#) or by calling the Consumer Fraud Hotline at 1-800-243-0618. Information about how consumers can add their number to the Do Not Call registry is also available on the [Attorney General's website](#).

Joining Raoul in the brief are the attorneys general of Alabama, Alaska, Arkansas, Connecticut, Delaware, Hawaii, Idaho, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, and Wisconsin.





August 22, 2019

ATTORNEY GENERAL RAOUL PARTNERS WITH STATE ATTORNEYS GENERAL AND TELECOM COMPANIES IN FIGHT AGAINST ILLEGAL ROBOCALLS

Chicago — Attorney General Kwame Raoul today announced that phone companies have agreed to adopt [a set of principles](#) to fight illegal robocalls following discussions as part of a bipartisan, public/private coalition of 51 attorneys general and 12 phone companies. This agreement will help protect phone users from illegal robocalls and make it easier for attorneys general to investigate and prosecute bad actors.

“I appreciate the support and assistance from these companies in achieving our mutual goal of stopping robocalls,” Raoul said. “This is a step in the right direction toward solving a pervasive problem that burdens people across the country. Robocalls cost consumers time and money, as well as violate their privacy. I will continue to protect the rights of Illinois consumers by fighting against this illegal practice.”

Over the past 18 months, Raoul and the coalition of attorneys general worked with telecom companies to investigate technological solutions that major voice service providers were designing, developing and implementing to stop robocalls. Based on these meetings, the coalition developed a set of eight principles the phone companies can implement that address the robocall problem in two main ways: prevention and enforcement.

Phone companies will work to prevent illegal robocalls by:

- Implementing call-blocking technology at the network level at no cost to customers.
- Making available to customers additional, free, easy-to-use call blocking and labeling tools.
- Implementing technology to authenticate that callers are coming from a valid source.
- Monitoring their networks for robocall traffic.

Phone companies will assist attorneys general anti-robocall enforcement by:

- Knowing who their customers are, so bad actors can be identified and investigated.
- Investigating and taking action against suspicious callers – including notifying law enforcement and state attorneys general.
- Working with law enforcement, including state attorneys general, to trace the origins of illegal robocalls.
- Requiring telephone companies with which they contract to cooperate in call traceback identification, where they work backward and attempt to identify the caller.

Going forward, phone companies will stay in close communication with the coalition of attorneys general to continue to optimize robocall protections as technology and scammer techniques change.

This set of principles is the latest in Attorney General Raoul’s effort to curb illegal robocalls. In June, Raoul, in cooperation with the Federal Trade Commission, announced a major crackdown on robocalls that included 94 actions targeting operations around the country that were responsible for more than 1 billion calls. As part of that crackdown, Raoul [filed a lawsuit](#) against Glamour Services, LLC; Awe Struck, Inc.; and Matthew Glamkowski, the manager of Glamour Services and president of Awe Struck for allegedly using robocalling and telemarketing to solicit home cleaning services since 2007. In May, Raoul submitted comments to the Federal Communications Commission urging the adoption of its proposed rules on enforcement against caller ID spoofing.

Consumers who wish to file a complaint against a company responsible for robocalls can do so on the Attorney General’s [website](#) or by calling Raoul’s Consumer Fraud Hotline at 1-800-243-0618. Information about how consumers can add their number to the Do Not Call registry is also available on the Attorney General’s [website](#).

Joining Raoul in the coalition are the attorneys general from all 50 states and Washington, D.C. The companies that joined the coalition include AT&T, Bandwidth, CenturyLink, Charter, Comcast, Consolidated, Frontier, Sprint, T-Mobile, U.S. Cellular, Verizon, and Windstream.

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**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff,

v.

GLAMOUR SERVICES, LLC, a Illinois Limited Liability Company; AWE STRUCK, INC., an Illinois Corporation; and MATTHEW GLAMKOWSKI, individually and in his capacity as Manager of Glamour Services, LLC and as President of Awe Struck, Inc.,

Defendants.

No. 2019-cv-

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

1. Plaintiff, the People of the State of Illinois, by KWAME RAOUL, Illinois Attorney General, as a Complaint for Injunctive and Other Relief against Defendants Glamour Services, LLC, an Illinois limited liability company registered to do business in Illinois (“Glamour Services”), Awe Struck, Inc., an Illinois corporation (“Awe Struck”), and Matthew Glamkowski, as an individual and in his capacity as manager for Glamour Services, LLC and as President of Awe Struck, Inc., (“Glamkowski”), (collectively “Defendants”), states the following:

NATURE OF PLAINTIFF’S CLAIMS

2. This lawsuit arises under the Telephone Consumer Protection Act, 47 U.S.C. §227, *et seq.*, (“TCPA”), and the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §6101, *et seq.*, (“Telemarketing Act”), to challenge Defendants’ telephone solicitation practices. Plaintiff seeks a permanent injunction and other relief, based upon Defendants’

violations of the TCPA and of the Telemarketing Act in connection with placing telemarketing solicitations to consumers whose telephone numbers have been registered with the National Do Not Call Registry.

3. Plaintiff, as part of the same case or controversy, also brings this action pursuant to the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.*, (“Consumer Fraud Act”).

JURISDICTION AND VENUE

4. This court has jurisdiction over this matter pursuant to 28 U.S.C. §§1331 and 1337(a), 47 U.S.C. §227(g)(2), and 15 U.S.C. §6103(a), and supplemental jurisdiction over the state claims pursuant to 28 U.S.C. §1367.

5. Venue in this judicial district is proper pursuant to 28 U.S.C. §1391(b), in that a substantial part of the events or omissions giving rise to the claim occurred in this judicial district. Venue is also proper in this judicial district pursuant to 47 U.S.C. §227(g)(4) and 15 U.S.C. §6103(e), in that Defendants have transacted business in this district.

6. Plaintiff notified the Federal Communications Commission of this civil action in writing on or about June 21, 2019.

7. Plaintiff notified the Federal Trade Commission of this civil action in writing on or about June 21, 2019.

PARTIES

8. Plaintiff, as *parens patriae*, by and through its attorney, Kwame Raoul, Attorney General, is authorized by 47 U.S.C. §227(g)(1) to file actions in federal district court to enjoin violations of and enforce compliance with the TCPA on behalf of residents of the State of Illinois, and to obtain actual damages or damages of \$500 for each violation, and up to treble that amount for each violation committed willfully or knowingly.

9. Plaintiff, as *parens patriae*, by and through its attorney, Kwame Raoul, Attorney General, is authorized by 15 U.S.C. §6103 to file actions in federal district court to enjoin violations of and enforce compliance with the Telemarketing Act on behalf of residents of the State of Illinois, and to obtain damages, restitution, or other compensation on behalf of residents of Illinois, or to obtain such further and other relief as the court may deem appropriate.

10. Plaintiff, by Kwame Raoul Attorney General of the State of Illinois, is charged, *inter alia*, with the enforcement of the Consumer Fraud Act, 815 ILCS 505/7.

11. Glamour Services is a limited liability company organized under the laws of the State of Illinois.

12. Glamour Services's principal place of business is 245 West Roosevelt Road, Suite 104, West Chicago, Illinois 60185.

13. Awe Struck is a corporation organized under the laws of the State of Illinois.

14. Awe Struck's principal place of business is 245 West Roosevelt Road, Suite 104, West Chicago, Illinois 60185.

15. Glamkowski is sued individually, and in his capacity as manager of Glamour Services and as president of Awe Struck.

16. Glamkowski manages the day-to-day operations of Glamour Services and Awe Struck.

17. Glamkowski approved, authorized, directed, and participated in Defendants' telephone solicitation scheme by: (a) creating and approving the scripts that employees, agents, or third parties use to make the telephone solicitations; (b) creating and recording in advance the "ringless" voicemails to be distributed; (c) purchasing lists of consumers to target for telephone solicitations; (d) directing, training, and supervising employees, agents, or third parties to make the telephone solicitations; (e) determining the number and frequency of the telephone solicitations; and (f) approving payment or paying employees, agents, or third parties to conduct the telephone solicitations.

18. As described below, Defendants Glamkowski, Glamour Services, and Awe Struck have engaged, and continued to engage in a pattern and practice of defrauding consumers; thus, to adhere to the fiction of a separate corporate existence between Defendants Glamkowski and Glamour Services or between Defendants Glamkowski and Awe Struck would serve to sanction fraud and promote injustice.

19. For purposes of this Complaint, any references to the acts and practices of Defendants shall mean that such acts and practices are by Glamkowski and/or through the acts of Glamour Services's and Awe Struck's respective owners, officers, directors, members, employees, partners, representatives, and/or other agents.

DEFENDANTS' BUSINESS PRACTICES

20. Defendants are, and at all times relevant to this Complaint have been, doing business and transacting business as a provider of certain services, including, but not limited to the following: (1)

window washing, (2) pressure washing, (3) air duct cleaning, (4) gutter cleaning, and (5) carpet cleaning (hereinafter “cleaning service(s)”).

21. Defendants, in an attempt to sell their cleaning services, direct telemarketing solicitations to, or cause them to be directed to consumers, including but not limited to Illinois consumers.

Defendants’ Unfair and Deceptive Telemarketing Activities

22. On at least 28 occasions since 2014, Illinois consumers have complained to the Illinois Attorney General of receiving unsolicited telemarketing calls from Defendants, despite being enrolled on the National Do Not Call Registry.

23. Defendants have sent telemarketing calls to Illinois consumers whose numbers are registered on the National Do Not Call Registry but who have not complained to the Illinois Attorney General’s Office.

24. Over 1,000 consumer complaints have been submitted to law enforcement agencies by Illinois consumers who received unsolicited telemarketing calls from Defendants, despite being enrolled on the National Do Not Call Registry.

25. In numerous instances, Illinois consumers have complained that Defendants continued to call them despite the consumers informing Defendants they were on the National Do Not Call Registry and despite the consumers specifically requesting Defendants to take them off their call list(s).

26. In numerous instances, Defendants have initiated telephone solicitations to residential telephone subscribers in Illinois using an artificial or prerecorded voice to deliver a message without the prior express consent of the called subscribers.

27. In numerous instances, Defendants have initiated telephone solicitations that deliver prerecorded voice messages without identifying the identity of the seller Defendants.

28. These messages were prerecorded in the sense that Glamkowski recorded them ahead of time, and then the recording was played when the call was answered by consumers' voice mailboxes. The quality and preciseness of each message left confirm use of prerecorded messages. The number of consumers who report receiving identical messages confirms the messages were sent *en masse*.

29. In numerous instances, Defendants have harassed, hung up on, or otherwise failed to honor Illinois consumers' requests that they be removed from Defendants' telemarketing lists.

30. In numerous instances, Defendants have threatened Illinois consumers or used profane or obscene language against Illinois consumers during their telemarketing activities.

Defendants' Unfair and Deceptive Cleaning Service Practices

31. In some instances, Defendants have taken money from consumers and have failed to commence or complete the promised cleaning services and have failed to provide refunds to consumers.

32. In some instances, Defendants have failed to inform consumers of the prices Defendants intend to charge for each type of cleaning service prior to conducting work.

33. In some instances, the cleaning services Defendants perform are completed in a shoddy and unworkmanlike manner.

APPLICABLE STATUTES

FEDERAL LAWS

TELEPHONE CONSUMER PROTECTION ACT AND APPLICABLE RULES

34. The TCPA, enacted in 1991, amended the Communications Act of 1934 by adding 47 U.S.C. §227, which requires the Federal Communications Commission to

...initiate a rulemaking proceeding concerning the need to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object. ... The regulations required by [the TCPA] may require the establishment and operation of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations, and to make that compiled list and parts thereof available for purchase. If the Commission determines to require such a database, such regulations shall— ... (F) prohibit any person from making or transmitting a telephone solicitation to the telephone number of any subscriber included in such database ...

47 U.S.C. §227(c)(1) and (c)(3).

35. On June 26, 2003, the Federal Communications Commission revised its rules and promulgated new rules pursuant to the TCPA. These new rules provide for a National Do Not Call Registry.

36. 47 C.F.R. §64.1200(c) provides in part: “No person or entity shall initiate any telephone solicitation to: ... (2) A residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the Federal Government.”

37. 47 U.S.C. §227(a)(4) and 47 C.F.R. §64.1200(f)(14) provide in part: “The term telephone solicitation means the initiation of a telephone call or message for the purpose of encouraging the

purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person ...”

38. At all times relevant to this complaint, Defendants were engaged in the practice of conducting telephone solicitations as defined in the TCPA and the rules promulgated pursuant to the TCPA.

39. The TCPA provides in part:

Whenever the attorney general of a State, or an official or agency designated by a State, has reason to believe that any person has engaged or is engaging in a pattern or practice of telephone calls or other transmissions to residents of that State in violation of this section or the regulations prescribed under this section, the State may bring a civil action on behalf of its residents to enjoin such calls, an action to recover for actual monetary loss or receive \$500 in damages for each violation, or both such actions. If the court finds the defendant willfully or knowingly violated such regulations, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under the preceding sentence.

47 U.S.C. § 227(g)(1).

**TELEMARKETING AND CONSUMER FRAUD AND ABUSE PREVENTION ACT AND
TELEMARKETING SALES RULE**

40. In 1994, Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108. On August 16, 1995, the FTC adopted the Telemarketing Sales Rule (the “Original TSR”), 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the FTC amended the Original TSR by issuing a Statement of Basis and Purpose and the final amended TSR (“TSR”). Telemarketing Sales Rule, 68 Fed. Reg. 4580-01.

41. Among other things, the TSR established a “do-not-call” registry, maintained by the Commission (the “National Do Not Call Registry” or “Registry”), of consumers who do not wish to receive certain types of telemarketing calls. Consumers can register their telephone numbers on the Registry without charge either through a toll-free telephone call or over the Internet at <https://donotcall.gov/>.

42. Sellers, telemarketers, and other permitted organizations can access the Registry over the Internet at <https://telemarketing.donotcall.gov/> to download the registered numbers. Sellers and telemarketers are prohibited from calling registered numbers in violation of the TSR. 16 C.F.R. § 310.4(b)(1)(iii)(B).

43. Consumers who receive telemarketing calls to their registered numbers can complain of Registry violations the same way they registered, through a toll-free telephone call to 1-888-382-1222 or over the Internet at <https://donotcall.gov/>, or by contacting law enforcement.

44. The TSR also requires a telemarketer to honor a person’s request to no longer receive telemarketing calls made by or on behalf of the telemarketer. 16 C.F.R. §310.4(b)(1)(iii)(A).

45. The TSR prohibits a telemarketer from initiating an outbound telephone call that delivers a prerecorded message unless the message promptly discloses:

- a. the identity of the seller;
- b. that the purpose of the call is to sell goods or services; and
- c. the nature of the goods or services.

16 C.F.R. §310.4(b)(1)(v)(B)(ii).

46. Defendants are each a “seller” or “telemarketer” engaged in “telemarketing,” as defined by the TSR, 16 C.F.R. § 310.2(dd), (ff), (gg).

47. Section 6103(a) of the Telemarketing Act authorizes the Attorney General of a state to enforce the Telemarketing Act and the TSR, 15 U.S.C. §6103(a).

STATE LAW

CONSUMER FRAUD ACT

48. Section 2 of the Consumer Fraud Act, provides:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in section 2 of the 'Uniform Deceptive Trade Practices Act,' approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to section 5(a) of the Federal Trade Commission Act.

815 ILCS 505/2.

49. Subsection 1(f) of the Consumer Fraud Act defines "trade" and "commerce" as follows:

The terms 'trade' and 'commerce' mean the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this State.

815 ILCS 505/1(f).

50. Section 2Z of the Consumer Fraud Act states that any person who knowingly violates certain Illinois statutes, including the Automatic Telephone Dialers Act and the Telephone

Solicitations Act, “commits an unlawful practice within the meaning of this Act.” 815 ILCS 5050/2Z.

51. Section 30(b) of the Automatic Telephone Dialers Act provides that “[i]t is a violation of this Act to play a prerecorded message placed by an autodialer without the consent of the called party.” 815 ILCS 305/30.

52. Section 15 of the Telephone Solicitations Act states in relevant part:

- (a) No person shall solicit the sale of goods or services in this State by placing a telephone call during the hours between 9 p.m. and 8 a.m.
- (b) A live operator soliciting the sale of goods or services shall:
 - 1. immediately state his or her name, the name of the business or organization being represented, and the purpose of the call; and
 - 2. inquire at the beginning of the call whether the person consents to the solicitation; and
 - 3. if the person called requests to be taken off the contact list of the business or organization, the operator must refrain from calling that person again and take all steps necessary to have that person’s name and telephone number removed from the contact records of the business or organization so that the person will not be contacted again by the business or organization...
- (c) A person may not solicit the sale of goods or services by telephone in a manner that impedes the function of any caller ID when the telephone solicitor’s service or equipment is capable of allowing the display of the solicitor’s telephone number.

815 ILCS 413/15.

53. Section 25 of the Telephone Solicitations Act states in relevant part:

- (a) It is a violation of this Act to make or cause to be made telephone calls to any emergency telephone number as defined in Section 5 of this Act. It is a violation of this Act to make or cause to be made telephone calls in a manner that does not comply with Section 15.
- (b) It is a violation of this Act to continue with a solicitation placed by a live operator without the consent of the called party.
- (c) It is an unlawful act or practice and a violation of this Act for any person engaged in telephone solicitation to obtain or submit for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, or other account or on a bond without the person's express written consent.

815 ILCS 413/25.

54. Section 7 of the Consumer Fraud Act provides:

Whenever the Attorney General has reason to believe that any person is using, has used, or is about to use any method, act or practice declared by the Act to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the State against such person to restrain by preliminary or permanent injunction the use of such method, act or practice. The Court, in its discretion, may exercise all powers necessary, including but not limited to: injunction, revocation, forfeiture or suspension of any license, charter, franchise, certificate or other evidence of authority of any person to do business in this State; appointment of a receiver; dissolution of domestic corporations or association suspension or termination of the right of foreign corporations or associations to do business in this State; and restitution.

In addition to the remedies provided herein, the Attorney General may request and this Court may impose a civil penalty in a sum not to exceed \$50,000 against any person found by the Court to have engaged in any method, act or practice declared unlawful under this Act. In the event the court finds the method, act or practice to have been entered into with intent to defraud, the court has the authority to impose a civil penalty in a sum not to exceed \$50,000 per violation.

815 ILCS 505/7.

55. Section 10 of the Consumer Fraud Act provides, "In any action brought under the provisions of this Act, the Attorney General is entitled to recover costs for the use of this State."

815 ILCS 505/10.

VIOLATIONS

COUNT I - TCPA AND RULES

56. Paragraphs 1 through 55 are incorporated herein by reference.

57. Defendants have violated 47 U.S.C. §227(b)(1)(A)(iii), by engaging in a pattern or practice of initiating telephone solicitations through the use of automatic telephone dialing

systems or an artificial or prerecorded voice to telephone numbers assigned to cellular telephone services.

58. Defendants have violated 47 C.F.R. §64.1200(a) and 47 U.S.C. §227(b)(1)(B), by engaging in a pattern or practice of initiating telephone solicitations to residential telephone subscribers in Illinois, using an artificial or prerecorded voice to deliver a message without the prior express consent of the called subscribers.

59. Defendants have violated 47 C.F.R. §64.1200(c)(2) and 47 U.S.C. §227(c), by engaging in a pattern or practice of initiating telephone solicitations to residential telephone subscribers in Illinois, whose telephone numbers were listed on the National Do Not Call Registry.

PRAYER FOR RELIEF - COUNT I

WHEREFORE, Plaintiff prays that this honorable Court enter an Order:

- A. Finding that Defendants have violated the TCPA;
- B. Permanently enjoining Defendants from initiating telephone solicitations through the use of automatic telephone dialing systems or an artificial or prerecorded voice to telephone numbers assigned to cellular telephone services;
- C. Permanently enjoining Defendants from initiating telephone solicitations to residential telephone subscribers using an artificial or prerecorded voice to deliver a messages without the prior express consent of the called subscribers;
- D. Permanently enjoining Defendants from initiating telephone solicitations to residential telephone subscribers in Illinois, whose telephone numbers are listed on the National Do Not Call Registry;

- E. Assessing against Defendants damages of \$1,500 for each violation of the TCPA found by the Court to have been committed by Defendants willfully and knowingly; if the Court finds Defendants have engaged in violations of the TCPA that are not willful and knowing, then assessing against Defendants damages of \$500 for each violation of the TCPA, as provided by 47 U.S.C. §227;
- D. Assessing against Defendants all costs incurred by Plaintiff in bringing this action; and
- E. Awarding Plaintiff such other and additional relief as the Court determines to be just and proper.

COUNT II - TSR

60. Paragraphs 1 through 59 are incorporated herein by reference.

61. In numerous instances, in connection with telemarketing, Defendants have initiated or caused a telemarketer to initiate an outbound telephone call to a person's telephone number on the National Do Not Call Registry in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).

62. In numerous instances, in connection with telemarketing, Defendants have initiated or caused a telemarketer to initiate an outbound telephone call to a person who previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of Defendants, in violation of the TSR, 16 C.F.R. §310.4(b)(1)(iii)(A).

63. In numerous instances, in connection with telemarketing, Defendants have denied a person the right to be placed on any registry of names or telephone numbers that do not wish to receive calls by Defendants, including but not limited to, harassing persons that make such a request, hanging up on persons, and failing to honor persons' requests in violation of the TSR, 16 C.F.R. §310.4(b)(1)(ii).

64. In numerous instances, in connection with telemarketing, Defendants have engaged in the use of threats, intimidation, or the use of profane or obscene language against a person, in violation of the TSR, 16 C.F.R. §310.4(a)(1).

65. In numerous instances, in connection with telemarketing, Defendants have initiated outbound calls that deliver prerecorded voice messages that fail to disclose the identity of the seller in violation of the TSR, 16 C.F.R. §310.4(b)(1)(v)(B)(ii).

66. In numerous instances, in connection with telemarketing, Defendants have initiated telephone solicitations to residential telephone subscribers using an artificial or prerecorded voice to deliver a message without the prior express consent of the called subscribers in violation of the TSR, 16 C.F.R. §310.4(b)(1)(v)(A).

PRAYER FOR RELIEF- COUNT II

WHEREFORE, Plaintiff prays that this honorable Court enter an Order:

- A. Finding that Defendants have violated the Telemarketing Act and the TSR;
- B. Permanently enjoining Defendants from initiating telephone solicitations to person's telephone numbers on the National Do Not Call Registry;
- C. Permanently enjoining Defendants from initiating or causing outbound telephone calls to be made to persons who have previously stated that they do not wish to receive telephone calls made by or on behalf of Defendants;
- D. Permanently enjoining Defendants from denying a person the right to be placed on any registry of names or telephone numbers that do not wish to receive calls by Defendants, including but not limited to, harassing persons that make such a request, hanging up on persons, and failing to honor persons' requests;

- E. Permanently enjoining Defendants from engaging in the use of threats, intimidation, or the use of profane or obscene language against a person in connection with telemarketing;
- F. Permanently enjoining Defendants from initiating outbound calls that deliver prerecorded voice messages that fail to disclose the identity of the seller;
- G. Permanently enjoining Defendants from initiating telephone solicitations to residential telephone subscribers using an artificial or prerecorded voice to deliver a message without the prior express consent of the called subscribers;
- H. Assessing against Defendants damages for the residents of Illinois, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten monies;
- I. Assessing against Defendants all costs incurred by Plaintiff in bringing this action, including reasonable attorney's fees; and
- J. Awarding Plaintiff such other and additional relief as the Court determines to be just and proper.

COUNT III - CONSUMER FRAUD ACT

67. Paragraphs 1 through 66 are incorporated herein by reference.

68. Defendants were at all times relevant hereto, engaged in trade and commerce in the State of Illinois, in that Defendants advertised, offered for sale, and sold products and services including, but not limited to cleaning services to Illinois consumers and billed Illinois consumers for the same.

69. Defendants engaged in a course of trade or commerce that constitutes deceptive and/or unfair acts or practices declared unlawful pursuant to Section 2 of the Consumer Fraud Act by

continuing to place telemarketing calls to Illinois consumers after they requested that Defendants cease this activity.

70. Defendants engaged in a course of trade or commerce that constitutes deceptive and/or unfair acts or practices declared unlawful pursuant to Section 2 of the Consumer Fraud Act by representing to consumers, expressly or by implication, with the intent that consumers rely on the representation, that it was legal to place telemarketing calls to consumers when in fact the consumers had placed their phone number on the National Do Not Call Registry.

71. Defendants engaged in a course of trade or commerce that constitutes deceptive and/or unfair acts or practices declared unlawful under Section 2 of the Consumer Fraud Act by performing work in a shoddy and unworkmanlike manner and failing to refund consumers' money.

72. Defendants engaged in a course of trade or commerce that constitutes deceptive and/or unfair acts or practices declared unlawful pursuant to Section 2 of the Consumer Fraud Act by taking money from consumers and failing to commence or complete the promised work and failing to provide refunds to consumers.

73. Defendants engaged in a course of trade or commerce that constitutes deceptive and/or unfair acts or practices declared unlawful pursuant to Section 2 of the Consumer Fraud Act by failing to inform consumers, with the intent that consumers rely on the omission, of the material term of the prices Defendants intend to charge for each type of service prior to conducting work.

74. Defendants engaged in a course of conduct or trade that constitutes deceptive and/or unfair acts or practices declared unlawful pursuant to Section 2Z of the Consumer Fraud Act by knowingly making or causing to be made telephone calls using an autodialer to play prerecorded

messages without the consent of the called parties in violation of the Automatic Telephone Dialers Act, 815 ILCS 305/30.

75. Defendants engaged in a course of conduct or trade that constitutes deceptive and/or unfair acts or practices declared unlawful pursuant to Section 2Z of the Consumer Fraud Act by knowingly failing to refrain from calling persons who had requested to be taken off Defendants' contact list(s), in violation of the Telephone Solicitations Act, 815 ILCS 413/15(b)(3), 815 ILCS 413/25(a).

76. Defendants engaged in a course of conduct or trade that constitutes deceptive and/or unfair acts or practices declared unlawful pursuant to Section 2Z of the Consumer Fraud Act by knowingly failing to inquire at the beginning of the call whether the person called consents to the solicitation, in violation of the Telephone Solicitations Act, 815 ILCS 413/15(b)(2), 815 ILCS 413/25(a).

77. Defendants engaged in a course of conduct or trade that constitutes deceptive and/or unfair acts or practices declared unlawful pursuant to Section 2Z of the Consumer Fraud Act by knowingly continuing with a solicitation placed by a live operator without the consent of the called party in violation of the Telephone Solicitations Act, 815 ILCS 413/25(b).

PRAYER FOR RELIEF- COUNT III

WHEREFORE, Plaintiff prays that this honorable Court enter an Order:

- A. Finding that Defendants have violated Section 2 of the Consumer Fraud Act;
- B. Finding that Defendants have violated Section 2Z of the Consumer Fraud Act by knowingly violating the Automatic Telephone Dialers Act and the Telephone Solicitations Act;

- C. Permanently enjoining Defendants from continuing to place telemarketing calls to Illinois consumers after consumers request that Defendants cease this activity;
- D. Permanently enjoining Defendants from representing to consumers, expressly or by implication, with the intent that consumers rely on the representation, that it was legal to place telemarketing calls to consumers when in fact the consumers had placed their phone number on the National Do Not Call Registry;
- E. Permanently enjoining Defendants from performing work in a shoddy and unworkmanlike manner and failing to refund consumers' money;
- F. Permanently enjoining Defendants from taking money from consumers and failing to commence or complete the promised work and failing to provide refunds to consumers;
- G. Permanently enjoining Defendants from failing to inform consumers, with the intent that consumers rely on the omission, of the material term of the prices Defendants intend to charge for each type of service prior to conducting work;
- H. Permanently enjoining Defendants from knowingly making or causing to be made telephone calls using an autodialer to play prerecorded messages without the consent of the called parties;
- I. Permanently enjoining Defendants from knowingly failing to refrain from calling persons who had requested to be taken off Defendants' contact list(s);
- J. Permanently enjoining Defendants from knowingly failing to inquire at the beginning of the call whether the person called consents to the solicitation;
- K. Permanently enjoining Defendants from knowingly continuing with a solicitation placed by a live operator without the consent of the called party;

- L. Ordering Defendants to pay full restitution to all affected Illinois consumers;
- M. Ordering Defendants to pay a civil penalty of \$50,000.00 per deceptive or unfair act or practice and an additional amount of \$50,000 for each act or practice found to have been committed with intent to defraud, as provided in Section 7 of the Consumer Fraud Act, 815 ILCS 505/7;
- N. Assessing a civil penalty in the amount of Ten Thousand Dollars (\$10,000) for any method, act, or practice declared unlawful under the Consumer Fraud Act and directed towards a person 65 years of age or older;
- O. Requiring Defendants to pay all costs for the prosecution and investigation of this action, as provided by Section 10 of the Consumer Fraud Act, 815 ILCS 505/10; and
- P. Awarding Plaintiff such other and additional relief as the Court determines to be just and proper.

Dated: June 25, 2019

Respectfully submitted,

THE PEOPLE OF THE STATE OF ILLINOIS,
by KWAME RAOUL,
Illinois Attorney General

BY:



GREG GRZESKIEWICZ

BY:

/s/ Tracy Walsh

TRACY WALSH

KWAME RAOUL
Illinois Attorney General

SUSAN ELLIS, Chief
Consumer Protection Division

GREG GRZESKIEWICZ, Chief
Consumer Fraud Bureau

ANDREA LAW, Unit Supervisor
Consumer Fraud Bureau

TRACY WALSH, #6297889
Assistant Attorney General
Illinois Attorney General - Consumer Fraud Bureau
100 W. Randolph St., 12th floor; Chicago, IL 60601
(312) 814-2159; twalsh@atg.state.il.us

No. 19-631

IN THE
Supreme Court of the United States

WILLIAM P. BARR, ATTORNEY GENERAL, ET AL.,
Petitioners,

v.

AMERICAN ASSOCIATION OF POLITICAL CONSULTANTS,
INC., ET AL.,
Respondents.

**On Writ of Certiorari to the United States
Court of Appeals for the Fourth Circuit**

**BRIEF OF INDIANA, NORTH CAROLINA,
AND 31 OTHER STATES
IN SUPPORT OF PETITIONERS**

JOSHUA H. STEIN
Attorney General

MATTHEW W. SAWCHAK
Solicitor General

RYAN Y. PARK
Deputy Solicitor General

NICHOLAS S. BROD
Assistant Solicitor
General

NORTH CAROLINA
DEPARTMENT OF JUSTICE
Post Office Box 629
Raleigh, NC 27602
(919) 716-6400
msawchak@ncdoj.gov

CURTIS T. HILL, JR.
Indiana Attorney General

*THOMAS M. FISHER
Solicitor General

KIAN J. HUDSON
Deputy Solicitor General

JULIA C. PAYNE
Deputy Attorney General

OFFICE OF THE INDIANA
ATTORNEY GENERAL
302 W. Washington St.
Indianapolis, IN 46204
(317) 232-6255
Tom.Fisher@atg.in.gov
**Counsel of Record*

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INTEREST OF *AMICI* STATES¹

The States of Indiana, North Carolina, Alabama, Alaska, Arkansas, Connecticut, Delaware, Hawaii, Idaho, Illinois, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire, North Dakota, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, and Wisconsin respectfully submit this brief as *amici curiae* in support of the United States Attorney General.

For decades, the States and the federal government have sought to protect consumers from unwanted robocalls—automated telephone calls that deliver a prerecorded message. These calls invade consumer privacy with harassing messages that come at all hours, day and night. Indeed, robocalls are the most common source of consumer complaints at many State Attorney General offices. *Comment from the State Attorneys General Supporting Enactment of the Telephone Robocall Abuse Criminal Enforcement and Deterrence (“TRACED”) Act 1* (Mar. 5, 2019), available at <http://bit.ly/390krVu>. By seeking to eliminate the robocall ban in its entirety, respondents threaten the ability of States to fight one of the most pressing consumer-protection issues that their residents face.

¹ No counsel for any party authored this brief, in whole or in part, and no person or entity other than *Amici* contributed monetarily to its preparation.

The robocall problem shows no signs of abating. In January 2020 alone, Americans received more than 4.7 billion robocalls. YouMail Robocall Index, *January 2020 Nationwide Robocall Data* (last visited Feb. 19, 2020), available at <https://robocallindex.com/2020/january>. And technological advances have helped robocalls proliferate. Robocalls inflict “more of a nuisance and a greater invasion of privacy than calls placed by ‘live’ persons.” S. Rep. No. 102-178, at 4 (1991), reprinted in 1991 U.S.C.C.A.N. 1968, 1972. They are notoriously cheap, which allows telemarketers to use them to bombard consumers with vast numbers of unwanted sales pitches and survey demands. *Id.* at 2. And because robocalls cannot engage with call recipients except in preprogrammed ways, they “do not allow the caller to feel the frustration of the called party.” *Id.* at 4. Moreover, these calls have become far more than just a nuisance. Last year alone, robocalls defrauded Americans of more than \$10 billion. Truecaller, *Phone Scams Cause Americans To Lose \$10.5 Billion In Last 12 Months* (Apr. 17, 2019), available at <http://bit.ly/2HCT08r>.

The Telephone Consumer Protection Act of 1991 (TCPA), Pub. L. No. 102-243, 105 Stat. 2394, is a critical piece of federal consumer-protection legislation that generally prohibits the use of any “automatic telephone dialing system or an artificial or pre-recorded voice” to make a call to numbers assigned to a cellular telephone service. 47 U.S.C. § 227(b)(1)(A). The TCPA also grants both state and federal courts concurrent jurisdiction over TCPA claims, *Mims v. Arrow Fin.*

Servs., LLC, 565 U.S. 368, 372 (2012), and State Attorneys General have partnered with federal agencies to enforce the robocall ban, *see, e.g.*, Fed. Trade Comm’n, *Call It Quits: Robocall Crackdown 2019: Federal, State, and Local Actions* (June 25, 2019) (describing recent enforcement actions), *available at* <http://bit.ly/2wxX0F9>; Comment from the State Attorneys General, at 2–3 (same); *accord* 47 U.S.C. § 227(g)(1) (permitting parens patriae actions by states to sue for any “pattern or practice” of violating the TCPA).

In addition, as the TCPA expressly forecloses federal preemption of state telephone privacy laws, 47 U.S.C. § 227(f)(1), forty States have enforceable prohibitions or restrictions on the use of robocalls.² Many of

² Ala. Code § 8-19A-3(3)(a); Alaska Stat. § 45.50.475(a)(4); Ariz. Rev. Stat. Ann. §§ 13-2919, 44-1278; Ark. Code § 5-63-204; Cal. Civ. Code § 1770(a)(22)(A); Cal. Pub. Util. Code § 2871; Colo. Rev. Stat. §§ 18-9-311, 6-1-302(2)(a); Conn. Stat. §§ 16-256e, 52-570c; Fla. Stat. § 501.059(8)(a); Ga. Code § 46-5-23; 815 Ill. Comp. Stat. § 305/1; Ind. Code § 24-5-14-5; Kan. Stat. § 50-670; Ky. Stat. § 367.461; La. Rev. Stat. Ann. § 45:810; Me. Rev. Stat. tit. 10, § 1498; Md. Pub. Util. Code § 8-204; Mass. Gen. Laws ch. 159C § 3, ch. 159 § 19B; Mich. Stat. § 484.125; Minn. Stat. §§ 325E.26, 332.37(13); Miss. Code §§ 77-3-451–59; Mont. Code § 45-8-216(1)(a)–(d); Neb. Stat. §§ 86-236 to 86-258; Nev. Stat. §§ 597.812, 597.814, 597.816, 597.818; N.H. Rev. Stat. Ann. § 359-E:1 to E:6; N.J. Stat. Ann. § 48:17-28; N.M. Stat. Ann. § 57-12-22; N.Y. Gen. Bus. Law § 399-p; N.C. Stat. § 75-104; N.D. Cent. Code § 51-28-04; 15 Okla. Stat. § 755.1; 21

these state laws were patterned on the federal robocall ban at issue here. In addition, many States also have separate restrictions on placing telemarketing calls of any type (even by a live operator) to consumers who register for no-call lists.³

Okla. Stat. § 1847a; Or. Rev. Stat. § 646A.370; 73 Pa. Stat. § 2245.2(j); R.I. Stat. §§ 5-61-3.4, 11-35-26; S.D. Stat. § 37-30-23; Tenn. Code Ann. § 47-18-1502; Tex. Bus. & Com. Code § 305.001; Utah Code Ann. § 13-25a-103; Va. Code § 59.1-518.2; Wash. Code § 80.36.400; Wis. Stat. § 100.52(4).

Two more States have enacted robocall prohibitions that have been enjoined. *See* S.C. Stat. § 16-17-446 (enjoined by *Cahaly v. Larosa*, 796 F.3d 399 (4th Cir. 2015)); Wyo. Stat. § 6-6-104 (enjoined by *Victory Processing, LLC v. Michael*, 333 F. Supp. 3d 1263 (D. Wyo. 2018), *appeal filed*, No. 18-8063 (10th Cir.)).

³ *See* Ind. Code § 24-4.7-4-1; Alaska Stat. § 45.50.475; Ariz. Rev. Stat. Ann. § 44-1282; Cal. Bus. & Prof. Code § 17591; Colo. Rev. Stat. § 6-1-904; Ga. Code Ann. § 46-5-27; Haw. Rev. Stat. § 481P-2; Idaho Code Ann. § 48-1003A; Kan. Stat. Ann. § 50-670; La. Rev. Stat. Ann. § 45:844.16; Me. Rev. Stat. tit. 10, § 1499-B; Mass. Gen. Laws ch. 159C, § 1; Mich. Comp. Laws § 445.111a; Mont. Code Ann. § 30-14-1602; Nev. Rev. Stat. § 228.550; N.H. Rev. Stat. Ann. § 359-E:11; N.J. Stat. Ann. 56:8-130; N.M. Stat. Ann. § 57-12-22; N.C. Gen. Stat. § 75-102; N.D. Cent. Code § 51-28-04; 73 Pa. Cons. Stat. § 2245.2; R.I. Gen. Laws § 5-61-3.5; S.C. Code Ann. § 37-21-70; S.D. Codified Laws § 49-31-99; Tenn. Code Ann. § 65-4-410; Tex. Bus. & Com. Code Ann. § 304.051; Utah Code Ann. § 13-25a-109; Vt. Stat. Ann. tit. 9, § 2464a; Va. Code Ann. § 59.1-514; Wis. Stat. § 100.52; Wyo. Stat. Ann. § 37-2-132.

Notwithstanding the compelling government interests at stake, the Fourth Circuit deemed a narrow TCPA exemption for calls to collect debt backed by the federal government to be impermissible content-based discrimination. But that ruling overlooks that the exception applies based on a call's purpose and the relationship between the parties—not based on the call's content.

The Fourth Circuit correctly held, however, that the proper remedy for any First Amendment problem with the federal-government-debt exemption was to sever the exemption and leave in place the robocall ban. Similar to the TCPA, state telephone privacy laws frequently include minor, incidental exemptions justified on content-neutral grounds. Because such laws protect the privacy of consumers, *Amici* States have a compelling interest in defending the TCPA's robocall ban as written—and in preserving the underlying restriction even if the challenged exemption is unlawful. The *Amici* States also have a strong interest in ensuring this Court reaches a ruling that will preserve their ability, under state law, to protect their citizens from the harms caused by robocalls.

SUMMARY OF THE ARGUMENT

No court has ever questioned the constitutionality of the TCPA's robocall restriction. Not even respondents argue that the robocall ban, standing alone, violates the First Amendment. Nor could they: the robocall restriction is a classic content-neutral speech

regulation. It applies to anyone who makes a robocall to speak on any topic—or no topic at all—and is narrowly tailored to serve the government’s compelling interests to protect individual and residential privacy.

Respondents instead claim that a single, narrow exemption from the robocall ban—the federal-government-debt exemption, which exempts calls made “solely” to collect a debt owed to or backed by the federal government, 47 U.S.C. § 227(b)(1)(A)(iii)—violates the First Amendment. That exemption, however, is content-neutral—it applies depending on a call’s purpose (to collect a debt) and depending on the debtor-creditor relationship between the call recipient and the federal government. Its applicability does not depend on the content of the call. And as a content-neutral speech regulation, the federal-government-debt exemption easily survives intermediate scrutiny by directly—and narrowly—advancing a substantial government interest in protecting the public fisc.

Even if the Court holds that the federal-government-debt exemption *does* violate the First Amendment, it should abide by the TCPA’s severability clause and sever the exemption from the remaining robocall ban rather than invalidate the ban entirely. The robocall ban is fully functional even without the exemption; it was enforced for twenty-four years before Congress added the exemption to the TCPA in 2015, which proves Congress did not intend the ban to be conditioned on the exemption. Indeed, the case for severability is sufficiently straightforward that the

Court may wish to consider it first. *See I.N.S. v. Chadha*, 462 U.S. 919, 931 n.7 (1983) (“In this case we deem it appropriate to address questions of severability first.”).

ARGUMENT

I. The Robocall Ban Safeguards Personal and Residential Privacy in Conformity with the First Amendment

A. The ban prohibits highly intrusive robocalls regardless of content and therefore passes First Amendment scrutiny

The TCPA permissibly prohibits the use of any “automatic telephone dialing system or an artificial or prerecorded voice” to make “any call” to a cell phone. 47 U.S.C. § 227(b)(1)(A)(iii). No court has ever held that such a blanket ban on robocalls violates the First Amendment. Indeed, every court to consider the matter has held that such laws are valid, content-neutral regulations on the manner by which speech is delivered. *See Patriotic Veterans, Inc. v. Zoeller*, 845 F.3d 303 (7th Cir. 2017) (upholding Indiana’s robocall ban); *Gomez v. Campbell–Ewald Co.*, 768 F.3d 871 (9th Cir. 2014) (upholding the TCPA before it was amended to add the federal-government-debt exemption), *aff’d on other grounds*, 136 S.Ct. 663 (2016); *Bland v. Fessler*, 88 F.3d 729 (9th Cir. 1996) (upholding California’s robocall ban); *Van Bergen v. Minnesota*, 59 F.3d 1541, 1549–56 (8th Cir. 1995) (upholding the TCPA and

Minnesota’s robocall ban); *Moser v. Fed. Commc’ns Comm’n*, 46 F.3d 970 (9th Cir. 1995) (upholding the TCPA).

These decisions are well-justified. Under the First Amendment, laws that “serve[] purposes unrelated to the content of expression” are constitutional so long as they “promote[] a substantial government interest that would be achieved less effectively absent the regulation.” *Ward v. Rock Against Racism*, 491 U.S. 781, 791, 799 (1989) (internal quotation marks and citations omitted). The robocall ban concerns the manner, not the content, of speech, and is narrowly tailored to serve the government’s interests in protecting consumers’ personal and residential privacy.

1. To decide whether a statute is content-based, the Court first looks to the statute’s text and asks whether the statute draws content distinctions “on its face.” *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2228 (2015). If the statute is facially neutral, the Court then looks to the statute’s purpose, subjecting it to strict scrutiny only if it “cannot be justified without reference to the content of the regulated speech” or was adopted because of the government’s disagreement with the message the speech conveys. *Id.* at 2227. Here, neither the text nor the purpose of the robocall ban pertain to the content of a telephone call’s speech.

First, the text of the robocall ban does not draw content-based distinctions. By its terms, the robocall ban applies to “any call,” 47 U.S.C. § 227(b)(1)(A)(iii),

so content is irrelevant. Instead, the prohibition applies based on the technology used to make and receive calls: It prohibits calling a cell phone with an “automatic telephone dialing system” or an “artificial or prerecorded voice.” *Id.* The statute therefore bans robocalls selling products, promoting candidates, pranking friends, or addressing any other topic. Indeed, a caller could violate the statute without saying a word. *See McCullen v. Coakley*, 573 U.S. 464, 480 (2014) (explaining that the challenged law was content-neutral because one could violate it “without . . . uttering a word”).

Second, the purpose of the robocall ban does not reflect impermissible content-based discrimination. Congress enacted the restriction because “telephone subscribers consider automated or prerecorded calls, regardless of the content or the initiator of the message, to be a nuisance and an invasion of privacy”—not because the calls discussed any specific subject. Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, § 2(10), 105 Stat. 2394. Nothing in the legislative record shows that Congress adopted the restriction because of disagreement with the messages that robocalls convey.

2. Because the robocall ban is content-neutral, it is reviewed under intermediate scrutiny. *Ward*, 491 U.S. at 791. Under that standard, restrictions on speech are constitutional so long as they are narrowly tailored to further an important government interest.

See id. The robocall ban principally serves the important government interest in protecting personal and residential privacy.

The Court has recognized that “in the privacy of the home . . . the individual’s right to be left alone plainly outweighs the First Amendment rights of an intruder.” *Fed. Commc’ns Comm’n v. Pacifica Found.*, 438 U.S. 726, 748 (1978). When Congress enacted the TCPA, it found robocalls to be “pervasive” and an “intrusive invasion of privacy” that “outraged” consumers. Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, § 2(1), (5), (6), 105 Stat. 2394. Congress observed that consumers found robocalls to be a particularly severe invasion of privacy because “automated calls cannot interact with the customer except in preprogrammed ways,” and “do not allow the caller to feel the frustration of the called party.” S. Rep. No. 102-178, *reprinted in* 1991 U.S.C.C.A.N. 1968, 1972.

Advances in technology have enabled even more widespread privacy invasions. Robocall software is inexpensive and easy to access online. Marguerite M. Sweeney, *Do Not Call: The History of Do Not Call and How Telemarketing Has Evolved*, Nat’l Attorneys Gen. Training & Research Inst. (Aug. 2016), *available at* <http://bit.ly/2SbCCkn>. Robocalls have proliferated as a result. *See id.*

Although the specific provision challenged here applies to calls made to cellphones—calls that may or may not take place in the home—the privacy interests

at stake are no less compelling. 47 U.S.C. § 227(b)(1)(A)(iii). After all, residential landline phones are increasingly rare. See Stephen J. Blumberg & Julian V. Luke, Nat'l Ctr. for Health Statistics, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July–December 2017* 2, available at <https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201806.pdf> (finding that more than half all households in the United States no longer have landline phones). As a result, in the modern era, protecting residential telephone privacy means protecting against harassing calls to cell phones. In any event, individuals have constitutionally protected expectations of privacy in their cellphones. *Carpenter v. United States*, 138 S. Ct. 2206, 2218 (2018); *Riley v. California*, 573 U.S. 373, 393–94 (2014). The proliferation of robocalls undermines that compelling privacy interest.

The robocall ban is narrowly tailored to serve these government interests. By prohibiting calls using an automatic telephone dialing system or an artificial or prerecorded voice, Congress targeted precisely the kinds of calls that are most likely to invade individual privacy. See *Moser v. Fed. Commc'ns Comm'n*, 46 F.3d 970, 975 (9th Cir. 1995) (“Congress may reduce the volume of intrusive telemarketing calls without completely eliminating the calls.”).

For these reasons, the general robocall ban easily passes intermediate scrutiny.

B. The federal-government-debt exemption applies regardless of call content and complies with the First Amendment

Exemptions from a prohibition on speech necessarily facilitate speech. Thus, “[i]t is always somewhat counterintuitive to argue that a law violates the First Amendment by abridging *too little* speech.” *Williams-Yulee v. Florida Bar*, 575 U.S. 433, 448 (2015). Although a law’s underinclusivity can “raise[] a red flag, the First Amendment imposes no freestanding underinclusiveness limitation.” *Id.* at 449 (internal quotation marks and citations omitted). Exemptions raise First Amendment concerns only when they discriminate based on content and thereby betray government disfavor of a particular topic or viewpoint, or when they reveal insufficient tailoring. *See id.*; *see also City of Ladue v. Gilleo*, 512 U.S. 43, 50–51 (1994).

Neither of these concerns is implicated here. In 2015, Congress amended the TCPA to add an exemption for calls “made solely to collect a debt owed to or guaranteed by the United States.” Bipartisan Budget Act of 2015, Pub. L. No. 114-74, § 301(a), 129 Stat. 584, 588, codified at 47 U.S.C. § 227(b)(1)(A)(iii). The federal-government-debt exemption is both content-neutral and sufficiently tailored to advance important government goals.

1. The federal-government-debt exemption does not depend on a call's content

The federal-government-debt exemption depends only on the purpose of the call and the relationship of the call recipient to the federal government—*not* on the call's content. It applies only when the call is placed for a specific purpose—“solely to collect a debt”—and only when the call recipient is in debt to the government or a government-backed creditor. 47 U.S.C. § 227(b)(1)(A)(iii).

As courts have held, speech regulations of this kind are content-neutral. *See Wisconsin v. Mitchell*, 508 U.S. 476, 489 (1993) (holding that motive-based speech regulations are content-neutral); *Zoeller*, 845 F.3d at 304 (same, for laws that regulate communications based on the relationship of the parties involved); *Van Bergen*, 59 F.3d at 1550 (same).

Deciding whether a call fits within the federal-government-debt exemption does not require delving into the content of speech. What the caller says on the call does not determine whether the federal-government-debt exemption applies. The exemption is therefore content-neutral. *See McCullen*, 573 U.S. at 479.

2. The federal-government-debt exemption survives intermediate scrutiny

As discussed, a content-neutral speech regulation need only satisfy intermediate scrutiny; it is constitu-

tional if it advances a substantial or important government interest without substantially burdening more speech than necessary. *Ward*, 491 U.S. at 799–800. Here, the federal-government-debt exemption serves the substantial government interest of protecting the public fisc. See *Duguid v. Facebook, Inc.*, 926 F.3d 1146, 1156 (9th Cir. 2019) (crediting this interest), *petition for cert. pending*, No. 19-511 (filed Oct. 17, 2019). The exemption is also sufficiently tailored to achieve that interest. *Ward*, 491 U.S. at 800.

The Fourth Circuit held otherwise, but only by concluding, without evidence, that the federal-government-debt exemption would swallow any residential-privacy benefit conferred by the general robocall ban. But to be sufficiently narrowly tailored, a content-neutral law prohibiting a manner of speech need only have a “reasonable fit” with its objective. See *Bd. of Trs. of the State Univ. of N.Y. v. Fox*, 492 U.S. 469, 480 (1989) (“What our decisions require is a ‘fit’ between the legislature’s ends and the means chose to accomplish those ends—a fit that is not necessarily perfect, but reasonable.” (internal citations omitted)). And here, even with the federal-government-debt exemption, the robocall ban is reasonably tailored to advance the government’s interest in protecting individual and residential privacy. The exception applies only to calls made “solely to collect a debt owed to or guaranteed by” the federal government, 47 U.S.C. § 227(b)(1)(A)(iii), and the record contains no evidence showing that such calls make up such a significant

percentage of all robocalls that the exemption would significantly erode the robocall ban's privacy benefits.

The Fourth Circuit also erred when it faulted the federal-government-debt exemption for lacking the consent rationale of the TCPA's exceptions for emergency calls and calls pertaining to certain business relationships. Consent underscores the content neutrality of those exemptions, but (as explained above) the federal-government-debt exemption achieves content-neutrality in its own way. The relevant question for narrow-tailoring purposes is whether, notwithstanding the federal-government-debt exemption, the robocall ban reasonably advances the mission of safeguarding individual and residential privacy. While many people may owe debts backed by the federal government, robocalls are used far beyond this narrow context. It therefore stands to reason that the general commercial use of low-cost robocalls is far more massive, and correspondingly far more intrusive, than automated calls made "solely" to collect federal-government debts.

In any case, without actual proof that government-debt robocalls would erase the privacy gains of the general robocall ban, the Court should not presume such a result. By way of example, nearly two decades ago Indiana adopted a do-not-call registry law that exempted calls placed by employees or volunteers of newspapers, real estate and insurance agents, and charities. Notwithstanding these exemptions, nearly 98% of those registered for the no-call list reported

that they observed benefits from the law. *Nat'l Coal. of Prayer, Inc. v. Carter*, 455 F.3d 783, 785 (7th Cir. 2006).

As this experience shows, even exemptions from telephone privacy protections that seem significant on the surface may not significantly diminish the benefits of a basic underlying prohibition on intrusive and unwanted calls. Similarly here, notwithstanding the federal-government-debt exemption, the TCPA's robocall ban advances the government's robust interest in protecting individual and residential telephone privacy. Accordingly, the law is sufficiently narrowly tailored overall to withstand First Amendment scrutiny.

II. If Invalid, the Federal-Government-Debt Exemption Is Severable from the Remainder of the Robocall Ban

Because the TCPA's robocall ban is itself a valid, content-neutral prohibition, *see supra* Part I.A., even if the federal-government-debt exemption is invalid, the Court should sever the exemption and permit enforcement of the underlying robocall ban.

The Court has repeatedly held that “[t]he unconstitutionality of a part of an Act does not necessarily defeat or affect the validity of its remaining provisions.” *Free Enterprise Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 508 (2010) (quoting *Champlin Refining Co. v. Corporation Comm'n of Okla.*, 286 U.S. 210, 234 (1932)). Accordingly, “the

‘normal rule’ is ‘that partial, rather than facial, invalidation is the required course.’” *Id.* (quoting *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 504 (1985)); see also *Regan v. Time, Inc.*, 468 U.S. 641, 652 (1984) (“[A] court should refrain from invalidating more of the statute than is necessary”).

That is, “[w]hen confronting a constitutional flaw in a statute,” the Court generally “sever[s] any ‘problematic portions while leaving the remainder intact.’” *Free Enterprise Fund*, 561 U.S. at 508. (quoting *Ayotte v. Planned Parenthood of N. New Eng.*, 546 U.S. 320, 328–29 (2006)). The Court declines to sever *only* when (1) the statute’s other provisions are “incapable of functioning independently,” or (2) when “the statute’s text or historical context makes it evident that Congress . . . would have preferred no [statute] at all to” one without the offending provision. *Id.* at 509 (internal quotation marks and citations omitted). Neither of these conditions is present here.

1. The TCPA is plainly capable of functioning without the federal-government-debt exemption. It operated without the exemption for more than two decades, from the time the TCPA was originally enacted in 1991, see Pub. L. 102-243, 105 Stat. 2394, until the exemption was added in 2015, see Pub. L. 114-74, Title III, § 301(a), 129 Stat. 588. During that time, no one ever claimed that the robocall ban was somehow ineffective because it *lacked* an exception for calls to collect debts owed to the federal government. Moreover,

many *Amici* States have enacted robocall bans patterned, except for the federal-government-debt exemption, after the TCPA, which confirms that the exemption is not critical to the ban’s proper functioning.

In addition, the TCPA prohibits “*any* call” made “using *any* automatic telephone dialing system or an artificial or prerecorded voice,” and provides just three narrow exemptions to this rule—(1) calls made for “emergency purposes,” (2) calls made with the “prior express consent of the called party,” and (3) calls “made solely to collect a debt owed to or guaranteed by the United States.” 47 U.S.C. § 227(b)(1)(A) (emphasis added). Faced with such a statute, the commonsense solution is to invalidate the narrow federal-government-debt exemption and allow the broad prohibition on robocalls to continue in force.

That is, for example, what the Court did in *Sorrell v. IMS Health Inc.* 564 U.S. 552 (2011). There, the challenged law permitted pharmacies to “share prescriber-identifying information with anyone for any reason save one: They must not allow the information to be used for marketing.” *Id.* at 572 (citing Vt. Stat. tit. 18, § 4631). The Court held that singling out marketing for disfavored treatment was unconstitutional and that the *exemption* therefore could not be enforced. *Id.* at 580.

Indeed, the Court has declined to invalidate an entire statute on First Amendment grounds even when

the regulation is “pierced by exemptions and inconsistencies.” *Greater New Orleans Broad. Ass’n, Inc. v. United States*, 527 U.S. 173, 190 (1999). The federal statute at issue in *Greater New Orleans Broadcasting* prohibited radio and television stations from broadcasting advertisements for lotteries and similar games of chance, but exempted gaming conducted by (1) an Indian tribe pursuant to a tribal-state compact, (2) state and local governments, (3) nonprofits, and (4) commercial organizations where the promotional activity was ancillary to the organization’s primary business. *Id.* at 178–79. Although the Court concluded that these exemptions undermined the government’s rationale for the broadcast prohibition, it did *not* invalidate the entire law; it instead “h[e]ld that [the law] may not be applied to advertisements of private casino gambling that are broadcast by radio or television stations located in Louisiana, *where such gambling is legal.*” *Id.* at 176 (emphasis added); *see also* 1999 WL 642904 (E.D. La. Aug. 23, 1999) (decision on remand “declaring unconstitutional those portions of [federal law] which prohibit advertisements of private casino gambling that are broadcast by radio or television stations located in Louisiana”).

The TCPA’s broad prohibition on robocalling is far more workable than the exemption-riddled broadcasting prohibition the Court allowed to remain in place in *Greater New Orleans Broadcasting*. Accordingly, the Court’s First Amendment cases reinforce the conclusion that the robocalling prohibition’s independent functionality should ensure the prohibition continues

in force even if the Court concludes that the federal-government-debt exemption is unconstitutional.

2. Because the TCPA “remains ‘fully operative as a law’” without the federal-government-debt exemption, the Court “must sustain its remaining provisions ‘[u]nless it is evident that the Legislature would not have enacted those provisions . . . independently of that which is [invalid].’” *Free Enterprise Fund*, 561 U.S. at 509 (quoting *New York v. United States*, 505 U.S. 144, 186 (1992)) (alterations in original); *see also Alaska Airlines v. Brock*, 480 U.S. 678, 685 (1987). “[A] court cannot use its remedial powers to circumvent the intent of the legislature,” *Nat. Fed. of Indep. Businesses v. Sebelius*, 567 U.S. 519, 586 (2012) (quoting *Ayotte*, 546 U.S. at 330), and the “relevant inquiry” is therefore “whether the statute [as severed] will function in a manner consistent with the intent of Congress,” *Alaska Airlines*, 480 U.S. at 685 (emphasis in original). Accordingly, the TCPA’s robocall ban should be allowed to continue in force “[u]nless it is evident that the Legislature would not have enacted those provisions which are within its power, independently of that which is not.” *Id.* at 684 (quoting *Buckley v. Valeo*, 424 U.S. 1, 108 (1976) (*per curiam*)).

The surest way to determine whether Congress would have adopted the statute even absent the invalid provision is the existence of an explicit severability clause. “[T]he inclusion of such a clause creates a presumption that Congress did not intend the validity of the statute in question to depend on the validity of the

constitutionally offensive provision.” *Id.* at 686. And here the TCPA *does* include a severability clause: “If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.” 47 U.S.C. § 608.

While the Court has in some circumstances declined to apply severability clauses, it has done so only where the challenger has shown a “clear probability that the Legislature would not have been satisfied with the statute unless it had included the invalid part.” *Carter v. Carter Coal Co.*, 298 U.S. 238, 312–13 (1936). The Court may invalidate an entire statute notwithstanding a severability clause only if “the provisions . . . are so interwoven that one being held invalid the others must fall.” *Id.* at 313; *see also Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 884 (1997) (ignoring severability clause where “[t]he open-ended character of the [statute] provides no guidance whatever for limiting its coverage”); *Williams v. Standard Oil Co. of La.*, 278 U.S. 235, 242–43 (1929) (refusing to apply severability clause where non-severable provisions were “mere adjuncts” or “mere aids” to the unconstitutional provision), *overruled in part on other grounds, Olson v. Nebraska ex rel. W. Reference & Bond Ass’n*, 313 U.S. 236 (1941); *Hill v. Wallace*, 259 U.S. 44, 70 (1922) (explaining that provision was “so interwoven” with the remaining statute “that they cannot be separated”).

The TCPA is far from such extreme circumstances. Again, Congress enacted the robocall ban in 1991, more than two decades before it added the federal-government-debt exemption in 2015. This timing proves both that the ban and exemption are not so interwoven as to justify disregarding the law’s express severability clause. It also shows that Congress was satisfied with the ban sans exemption. One cannot plausibly infer that Congress would have repealed the ban altogether in 2015 if it had lacked the votes for the exemption. Thus, Congress would never have intended for the exemption to threaten the validity of the robocall ban itself. *See Ayotte*, 546 U.S. at 330 (“[T]he touchstone for any decision about remedy is legislative intent, for a court cannot use its remedial powers to circumvent the intent of the legislature”).

Moreover, retaining the robocall ban while striking the exemption fulfills the legislative purpose of “protecting telephone consumers from th[e] nuisance and privacy invasion” of robocalls—not to mention the severability clause. 47 U.S.C. §§ 227, 608. Congress enacted the TCPA in light of evidence that “residential telephone subscribers consider automated or prerecorded telephone calls, regardless of the content or the initiator of the message, to be a nuisance and an invasion of privacy.” *Id.* § 227. The robocall ban protects that privacy with or without the federal-government-debt exemption, and it did so for twenty-four years before Congress added the exemption.

3. In respondents' view, however, the TCPA's express severability directive merely requires the Court to sever the *robocall ban* from the remainder of the TCPA. Similar to many severability clauses, section 608 directs courts to sever an invalid "provision" from the "remainder" of the statute. *Id.* § 608. But while respondents argue that the entirety of section 227(b)(1)(B) constitutes the relevant severable "provision," the term "provision" does not imply any particular level of generality. Over the run of the Court's precedents, a severable "provision" has included "anywhere from six words to 281." Kenneth A. Klukowski, *Severability Doctrine: How Much of a Statute Should Federal Courts Invalidate*, 16 *Tex. Rev. L. & Pol.* 1, 78 (2011). In some cases it has meant "one subpart of one subsection of a statute," *id.* (citing *I.N.S. v. Chadha*, 462 U.S. 919, 932 (1983)), but in other cases it has meant "one paragraph of an otherwise-valid section," *id.* (citing *Alaska Airlines v. Brock*, 480 U.S. 678, 697 (1987)), or even "a single clause," *id.* (citing *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 494 (1985)).

Indeed, it is not too much to say that the fundamental unit of a statute subject to severability can be but a single word—" [t]hat is, a court can remedy a violation of the Constitution by striking down a single word or a group of words, but it need not strike down the larger legislative unit (be it a section, statute, chapter, or title) that contains those words." Eric S. Fish, *Severability as Conditionality*, 64 *Emory L.J.* 1293, 1313 (2015); *see also Hershey v. City of Clearwater*, 834 F.2d 937, 939 (11th Cir. 1987) ("The fact that

an invalid portion of a statute is not self-contained in separate sections does not prohibit the court from applying the severability rule to strike the invalid portion and to preserve the rest of the enactment.”).

Respondents also contend that because they have “challenged the TCPA’s *restriction* on automated calls,” not the exemption, they have fully answered the severability question. Br. of Respondents in Support of Cert. 18–19 (emphasis in original). But legislative intent and functionality—not the relief claimants demand—is the test for severability. *See Ayotte*, 546 U.S. at 330.

If severability were answered simply by deferring to the plaintiff, the Court’s discussion of severability in *Free Enterprise Fund*, for example, would have been much shorter—and would have reached the opposite result. There, the plaintiffs wanted “a declaratory judgment that the [Public Company Accounting Oversight] Board is unconstitutional and an injunction preventing the Board from exercising its powers.” 561 U.S. at 487. The Court, however, refused to grant such relief: It held that the constitutional problem should be fixed by simply refusing to enforce the restrictions on Board members’ removal, rejecting the “far more extensive” alterations to the statute the plaintiffs had proposed. *Id.* at 510.

Similarly, in *United States v. Booker*, the Court enjoined provisions of the federal sentencing guidelines that made their application mandatory, even though

Booker challenged the judicial determination of the sentencing enhancements, not their mandatory nature. 543 U.S. 220, 245 (2005). Salvaging maximum application of the statute was most “consistent with Congress’ likely intent in enacting the Sentencing Reform Act” because it “preserve[d] important elements of that system while severing and excising two provisions.” *Id.* at 265.

The same is plainly true here. The principles of minimal judicial intervention and maximum statutory salvage require that, if the federal-government-debt exemption violates the First Amendment, the Court should, per 47 U.S.C. § 608, sever that “provision” from the “remainder” of the robocall ban, which should remain fully enforceable.

CONCLUSION

The judgment of the Fourth Circuit should be reversed.

Respectfully submitted,

JOSHUA H. STEIN
Attorney General
MATTHEW W. SAWCHAK
Solicitor General
RYAN Y. PARK
Deputy Solicitor General
NICHOLAS S. BROD
Assistant Solicitor
General
NORTH CAROLINA
DEPARTMENT OF JUSTICE
Post Office Box 629
Raleigh, NC 27602
(919) 716-6400
msawchak@ncdoj.gov

CURTIS T. HILL, JR.
Indiana Attorney General
*THOMAS M. FISHER
Solicitor General
KIAN J. HUDSON
Deputy Solicitor General
JULIA C. PAYNE
Deputy Attorney General
OFFICE OF THE INDIANA
ATTORNEY GENERAL
302 W. Washington St.
Indianapolis, IN 46204
(317) 232-6255
Tom.Fisher[atg.in.gov

**Counsel of Record*

ADDITIONAL COUNSEL

STEVE MARSHALL
Attorney General
State of Alabama

KWAME RAOUL
Attorney General
State of Illinois

KEVIN G. CLARKSON
Attorney General
State of Alaska

TOM MILLER
Attorney General
State of Iowa

LESLIE RUTLEDGE
Attorney General
State of Arkansas

DEREK SCHMIDT
Attorney General
State of Kansas

WILLIAM TONG
Attorney General
State of Connecticut

JEFFREY M. LANDRY
Attorney General
State of Louisiana

KATHLEEN JENNINGS
Attorney General
State of Delaware

AARON M. FREY
Attorney General
State of Maine

CLARE E. CONNORS
Attorney General
State of Hawaii

BRIAN E. FROSH
Attorney General
State of Maryland

LAWRENCE G. WASDEN
Attorney General
State of Idaho

MAURA HEALEY
Attorney General
Commonwealth of
Massachusetts

DANA NESSEL
Attorney General
State of Michigan

KEITH ELLISON
Attorney General
State of Minnesota

ERIC SCHMITT
Attorney General
State of Missouri

TIMOTHY C. FOX
Attorney General
State of Montana

AARON FORD
Attorney General
State of Nevada

GORDON MACDONALD
Attorney General
State of New
Hampshire

WAYNE STENEHJEM
Attorney General
State of North Dakota

MIKE HUNTER
Attorney General
State of Oklahoma

ELLEN F. ROSENBLUM
Attorney General
State of Oregon

JOSH SHAPIRO
Attorney General
Commonwealth of
Pennsylvania

JASON R. RAVNSBORG
Attorney General
State of South Dakota

HERBERT H. SLATERY
III
Attorney General
State of Tennessee

SEAN REYES
Attorney General
State of Utah

MARK R. HERRING
Attorney General
Commonwealth of
Virginia

ROBERT W. FERGUSON
Attorney General
State of Washington

PATRICK MORRISEY
Attorney General
State of West Virginia

ERIC J. WILSON
Deputy Attorney
General
State of Wisconsin

Counsel for Amici States