

PRESIDENT  
Jeff Landry  
*Louisiana Attorney General*

PRESIDENT-ELECT  
Tim Fox  
*Montana Attorney General*

VICE PRESIDENT  
Karl A. Racine  
*District of Columbia  
Attorney General*

IMMEDIATE PAST PRESIDENT  
Derek Schmidt  
*Kansas Attorney General*

EXECUTIVE DIRECTOR  
Chris Toth

March 5, 2019

U.S. Senate Committee on Commerce, Science, & Transportation  
Senator Roger Wicker, Chairman  
Senator Maria Cantwell, Ranking Member  
512 Dirksen Senate Building  
Washington, DC 20510

Re: Comment from the State Attorneys General supporting enactment of the Telephone Robocall Abuse Criminal Enforcement and Deterrence (“TRACED”) Act.

Dear Senators Wicker and Cantwell:

On behalf of the undersigned State Attorneys General (“State AGs”), we write to express our support for the recently introduced bipartisan Senate bill for the Telephone Robocall Abuse Criminal Enforcement and Deterrence (“TRACED”) Act.<sup>1</sup> We believe that this legislation effectively addresses many of the concerns raised by federal regulators, voice service providers, private businesses, consumer advocacy groups, and other interested parties to combat illegal robocalls and spoofing, and we are heartened that it enables the telecom industry, federal regulators, and our offices to take meaningful steps to abate the rapid proliferation of these illegal and unwanted robocalls.

The State AGs are on the front lines of enforcing do-not-call laws and helping consumers who are harassed and scammed by unwanted telemarketing calls and robocalls. Robocalls and telemarketing calls are currently the number one source of consumer complaints at many of our offices, as well as at both the FCC and the FTC. The total number of complaints rose by over one million complaints in each of 2016 and 2017.<sup>2</sup> In 2017, consumers reported losses in excess of \$290 million as a result of frauds perpetrated by telemarketers,<sup>3</sup> and Consumers Union reported that telemarketing scams have been a \$9.5 billion cost to the U.S. economy.<sup>4</sup> At the beginning of 2018, the industry expected a 33% increase in the number of robocalls, “meaning spammers and scammers [would have] disrupt[ed] our children’s homework, our dinner, our relaxation time, and even our sleep, to the tune of over 40

1850 M Street, NW  
Twelfth Floor  
Washington, DC 20036  
Phone: (202) 326-6000  
<http://www.naag.org/>

<sup>1</sup> Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, S. 151, 116th Cong. (1st Sess. 2019)

<sup>2</sup> FTC/FCC JOINT POLICY FORUM ON ILLEGAL ROBOCALLS, *Fighting the Scourge of Illegal Robocalls* (Mar. 23, 2018), <https://www.fcc.gov/fcc-ftc-robocalls-forum> (hereinafter “FTC/FCC POLICY FORUM”) (remarks from Ajit Pai, Chairman, FCC; Maureen K. Ohlhausen, Acting Chairman, FTC; Eduard Bartholme, Executive Director, Call for Action, and Chair, Consumer Advisory Committee, FCC).

<sup>3</sup> *Id.* (remarks from Ms. Ohlhausen).

<sup>4</sup> *Id.* (remarks from Mr. Bartholme).

billion illegal robocalls.”<sup>5</sup> At the end of 2018, the estimated number of illegal robocalls had, in fact, increased by more than 36% and reached almost 48 billion.<sup>6</sup>

## **I. The State AGs Applaud the TRACED Act’s Requirement that Voice Service Providers Participate in the Call Authentication Framework and Support its Timely Enactment.**

Since illegal robocalls continue to frustrate and harm consumers every day, we are encouraged that the TRACED Act prioritizes timely, industry-wide implementation of call authentication protocols.

Telemarketers increasingly rely on both automated dialing software and the internet-based telecommunications technology of Voice over Internet Protocol (“VoIP”). The hardware and software required to make robocalls is easy to obtain, is relatively inexpensive, enables “mass-dialing of thousands of calls for pennies,” and allows telemarketers to fake or “spoof” Caller ID information.<sup>7</sup> Although several providers and third parties offer call blocking and caller identification verification products, virtually anyone can send millions of illegal robocalls and frustrate law enforcement with just a computer, inexpensive software (i.e., auto-dialer and spoofing programs), and an internet connection.<sup>8</sup>

Many of the undersigned State AGs recently recommended that the FCC explore ways to encourage all domestic and international voice providers to implement the call authentication framework known as STIR/SHAKEN.<sup>9</sup> We are pleased to see that the TRACED Act requires implementation of this authentication framework, affirms the authority for a voice provider to block a call pursuant to this framework, and creates a safe harbor for the inadvertent blocking of legitimate calls. We have long encouraged the FCC to remove legal impediments to call-blocking. Several years ago, states encouraged the FCC to permit telecommunications companies to provide advanced call-blocking technology to consumers. On June 18, 2015, the FCC issued a declaratory ruling clarifying that nothing in the Communications Act or its rules prohibited providers from implementing call-blocking technology at the consumers’ request.<sup>10</sup>

---

<sup>5</sup> See *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Reply Comments of Thirty-Five (35) State Attorneys General, CG Docket No. 17-59 at 2–3 (filed Oct. 8, 2018) (hereinafter “2018 Reply Comments”) (citing PR Newswire, *Robocall Epidemic Breaks Annual Record with 30.5 Billion Calls in 2017*, <https://www.prnewswire.com/news-releases/robocall-epidemic-breaks-annual-record-with-305-billion-calls-in-2017-300580916.html> (Jan. 11, 2018)).

<sup>6</sup> *Robocall Index*, YOUMAIL, <https://robocallindex.com/history/time> (last visited Feb. 4, 2019).

<sup>7</sup> FTC/FCC POLICY FORUM (remarks from Ms. Ohlhausen); Marguerite M. Sweeney, *Do Not Call: The History of Do Not Call and How Telemarketing Has Evolved*, 1(4) NAGTRI JOURNAL 2, 5 (Aug. 2016).

<sup>8</sup> See 2018 Reply Comments at 2.

<sup>9</sup> 2018 Reply Comments filed in response to the public notice issued by the FCC’s Consumer and Governmental Affairs Bureau on how the FCC could further empower service providers to block illegal robocalls. See *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Public Notice, CG Docket No. 17-59, August 10, 2018, Bureau Seeks to Refresh the Record.

<sup>10</sup> FCC, CG Docket No. 02-278, Declaratory Ruling and Order, FCC 15-72 (June 18, 2015).

In November 2017, with the State AGs' explicit support, the FCC adopted rules to combat illegal robocalls by enabling voice service providers to block calls from phone numbers on a Do-Not-Originate ("DNO") list and to block calls from invalid, unallocated, or unused numbers before they reach consumers' phones.<sup>11</sup>

The TRACED Act gives voice service providers between twelve and eighteen months from its enactment to establish and implement a call authentication framework, which will greatly reduce the number of unwanted calls. Therefore, timely enactment of this legislation is paramount.

## **II. The State AGs Support the Creation of the Interagency Working Group and, Due to our Experience in this Area, Encourage the Working Group to Consult and Coordinate Regularly with our Offices.**

The State AGs' offices are on the ground every day talking with consumers about the disruptive and detrimental intrusions they suffer as a result of illegal and unwanted robocalls. In addition to handling consumer complaints, we have many years of experience bringing enforcement actions against illegal telemarketers and robocallers under state and federal law, including the Telephone Consumer Protection Act, 47 U.S.C. 227. For example, in 2015 ten State AGs worked with the Federal Trade Commission to sue a Florida-based cruise-line company that conducted a telemarketing campaign resulting in billions of robocalls. Caribbean Cruise Line, Inc. and the other defendants agreed to injunctive terms barring them from calling consumers whose phone numbers are on the DNC Registry, spoofing caller ID information, and placing illegal robocalls. In 2017, four State AGs and the United States Department of Justice obtained a \$280 million judgment against Dish Network for knowingly engaging in pervasive telemarketing misconduct, such as placing repeated calls to people on the National Do Not Call Registry and using prerecorded messages.

Because we have long been in the battle against bad actors who exploit inexpensive and ubiquitous technology to scam consumers and intrude upon their privacy, we advocate that the proposed Interagency Working Group, upon its creation, regularly consult with the State AGs about this pervasive problem.

We further appreciate that, in service to its purpose to "improve enforcement" of the TCPA, the TRACED Act leaves undisturbed section 227(e) of the TCPA, which expressly provides that these regulations do not preempt state enforcement actions.<sup>12</sup>

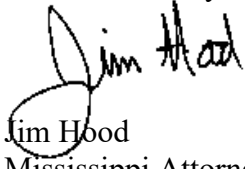
On behalf of all of our constituents, thank you for your work on this important matter. The undersigned Attorneys General support timely enactment of the TRACED Act.

---

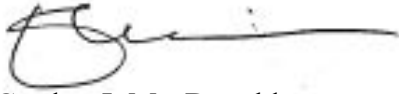
<sup>11</sup> FCC, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Report and Order, FCC 17-151 (Nov. 17, 2017).

<sup>12</sup> 47 U.S.C. § 227(e) (2012).

Sincerely,



Jim Hood  
Mississippi Attorney General



Gordon J. MacDonald  
New Hampshire Attorney General



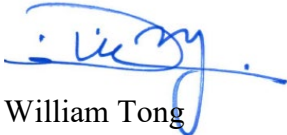
Steve Marshall  
Alabama Attorney General



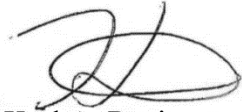
Mark Brnovich  
Arizona Attorney General



Xavier Becerra  
California Attorney General



William Tong  
Connecticut Attorney General




Karl A. Racine  
District of Columbia Attorney General



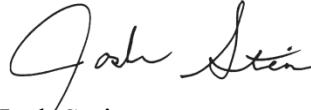
Christopher M. Carr  
Georgia Attorney General



Clare E. Connors  
Hawaii Attorney General



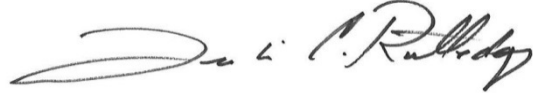
Douglas Peterson  
Nebraska Attorney General



Josh Stein  
North Carolina Attorney General



Kevin G. Clarkson  
Alaska Attorney General



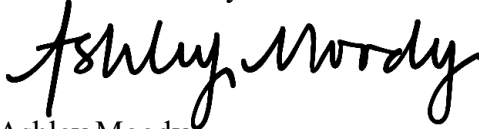
Leslie Rutledge  
Arkansas Attorney General



Phil Weiser  
Colorado Attorney General



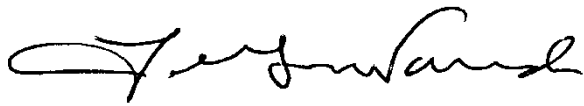
Kathleen Jennings  
Delaware Attorney General



Ashley Moody  
Florida Attorney General



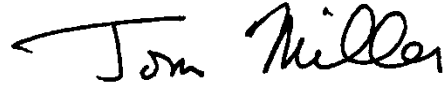
Leevin Taitano Camacho  
Guam Attorney General



Lawrence Wasden  
Idaho Attorney General



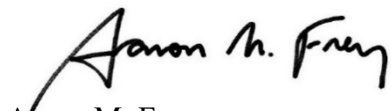
Kwame Raoul  
Illinois Attorney General



Tom Miller  
Iowa Attorney General



Andy Beshear  
Kentucky Attorney General



Aaron M. Frey  
Maine Attorney General



Maura Healey  
Massachusetts Attorney General



Keith Ellison  
Minnesota Attorney General



Tim Fox  
Montana Attorney General



Gurbir S. Grewal  
New Jersey Attorney General



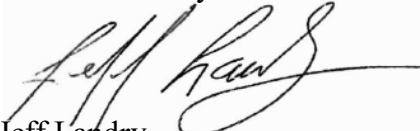
Letitia James  
New York Attorney General



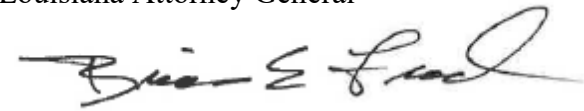
Curtis T. Hill, Jr.  
Indiana Attorney General



Derek Schmidt  
Kansas Attorney General



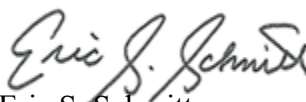
Jeff Landry  
Louisiana Attorney General



Brian Frosh  
Maryland Attorney General



Dana Nessel  
Michigan Attorney General



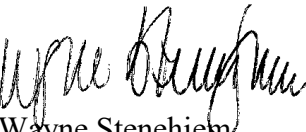
Eric S. Schmitt  
Missouri Attorney General



Aaron D. Ford  
Nevada Attorney General



Hector Balderas  
New Mexico Attorney General



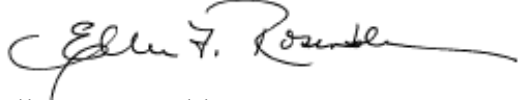
Wayne Stenehjem  
North Dakota Attorney General



Dave Yost  
Ohio Attorney General



Mike Hunter  
Oklahoma Attorney General



Ellen F. Rosenblum  
Oregon Attorney General



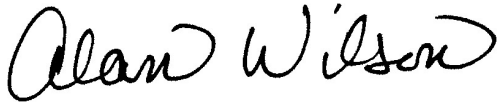
Josh Shapiro  
Pennsylvania Attorney General



Wanda Vázquez Garced  
Puerto Rico Attorney General



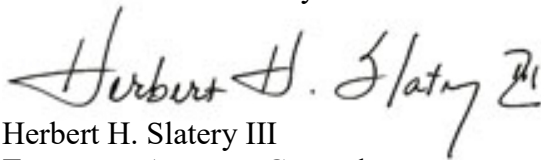
Peter Neronha  
Rhode Island Attorney General



Alan Wilson  
South Carolina Attorney General



Jason R. Ravensborg  
South Dakota Attorney General



Herbert H. Slatery III  
Tennessee Attorney General



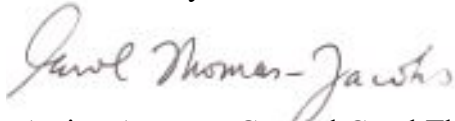
Ken Paxton  
Texas Attorney General



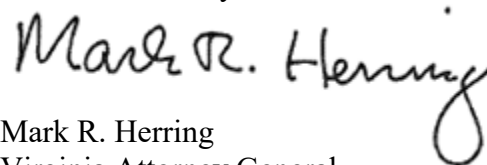
Sean Reyes  
Utah Attorney General



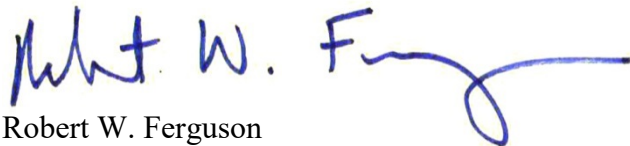
T.J. Donovan  
Vermont Attorney General



Acting Attorney General Carol Thomas-Jacobs  
Virgin Islands Attorney General



Mark R. Herring  
Virginia Attorney General



Robert W. Ferguson  
Washington Attorney General



Patrick Morrisey  
West Virginia Attorney General



Joshua L. Kaul  
Wisconsin Attorney General



Bridgett Hill  
Wyoming Attorney General