

June 3, 2019

Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, DC 20554

**Re: Reply to Written *Ex Parte* Filing
CG Docket No. 17-59; WC Docket No. 17-97**

Dear Ms. Dortch:

The American Bankers Association¹ appreciates the opportunity to submit this reply pursuant to Rule § 1.1206(iv) to the *ex parte* filing submitted this past Friday, May 31, 2019, by Twilio Inc.²

We are responding to Twilio's assertion that calls placed using its platform, which are often placed to a large number of recipients during an emergency, "could be blocked or mislabeled if a carrier's call-blocking algorithm is based on large bursts of calls in a short timeframe, low average call duration, or low call-completion ratio."³

ABA shares Twilio's concerns that the Declaratory Ruling, if adopted as drafted, would result in the erroneous blocking of lawful calls, including fraud alerts and other informational calls placed by banks. For these calls, the bank initiates a large volume of outbound calls from a number in a short period of time, which (as described in Twilio's *ex parte* filing) is one analytical factor used by voice service providers and third-party services to determine whether a call is labeled as "Potential Spam", "Suspected Spam", "Spam Number", "Nuisance Label", or "Debt Collector".

Many of the bank calls that are at risk of being blocked are **not** "unwanted" calls; rather, they are placed by the bank in response to a customer's request. One large bank reports that 76% of its automated outbound calls and text messages are placed in response to a customer's request; for example, they are responses to one-time passcode requests or low-balance alerts. An additional 5% of its automated outbound calls and texts are placed for fraud prevention purposes, such as to

¹ The American Bankers Association is the voice of the nation's \$18 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard nearly \$14 trillion in deposits, and extend more than \$10 trillion in loans.

² See *Ex Parte* Letter from Matthew S. DelNero, Counsel to Twilio Inc., CG Docket No. 17-59, WC Docket No. 17-97 (filed May 31, 2019), <https://ecfsapi.fcc.gov/file/105311270715993/Twilio%20-%20ex%20parte%20May%2031%202019.pdf>.

³ *Id.* at 3.

notify a customer of suspicious or atypical activity in the customer's account. Less than 20% of the bank's automated outbound calls and texts are related to collections, which some might characterize as "unwanted." However, as we have explained previously, blocking collections calls may prevent the bank from establishing live contact with a distressed or delinquent borrower.⁴ It is well-established that the earlier a creditor is able to communicate with a financially distressed borrower, the more likely that the creditor will be able to offer the borrower a loan modification, interest rate reduction, or forbearance on interest and fees, which will help limit avoidable late fees and negative credit reports.

ABA continues to urge the Commission to seek comment on the proposals in the draft Declaratory Ruling by recasting the Declaratory Ruling as a Notice of Proposed Rulemaking (NPR). As part of that NPR, the Commission should clarify that blocking would apply only to the blocking of illegal—not "unwanted"—calls. In addition, the Commission should propose that there be sufficient notice of blocking to the caller and to the call recipient, such as through use of an intercept message when a call is blocked, and propose to provide a mechanism for prompt release of any erroneously blocked numbers.

These steps would advance the Commission's goal, which we share, to reduce illegal automated calls while minimizing the risk that consumers will miss important, often time-sensitive calls from their bank.

Sincerely,

A handwritten signature in black ink that reads "Jonathan Thessin". The signature is written in a cursive style with a large, looping initial "J".

Jonathan Thessin
Senior Counsel, Regulatory Compliance and Policy

⁴ See Comment of American Bankers Association, CG Docket Nos. 18-152, 02-278, at 4-5 (filed June 28, 2018), <https://www.aba.com/Advocacy/commentletters/Documents/cl-FCC-TCPA20180628.pdf>.