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James A. Himes

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May 10, 2019

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th St. SW
Washington, D.C. 20554

Dear Chairman Pai:

We write to urge you to work to ensure that banks, credit unions, and other financial institutions are not hampered in their ability to notify customers of “suspicious activity” on the customer’s account that suggests a risk of fraud or identity theft. After the U.S. Court of Appeals for the District of Columbia Circuit last year struck down key provisions of the Federal Communications Commission’s (“FCC”) 2015 Declaratory Ruling and Order, there is a lack of clarity over the Telephone Consumer Protection Act’s (TCPA) application to calls and text messages that legitimate businesses seek to place to their customers. Prompt FCC action is necessary to eliminate uncertainty and ensure that businesses can send fraud alerts to their customers using modern communications technologies.


As the FCC has recognized, financial institutions must be able to contact their customers quickly to alert them to fraud on their account. Phone calls and text messages placed for this purpose serve consumers’ interests and can be conveyed most efficiently and reliably by automated calls to consumers’ telephones, which increasingly are wireless devices. Automated text messages are nearly instantaneous, and automatically-dialed voice calls and texts can reach more customers in any given period of time than manually-dialed calls, saving possibly crucial time to ensure the extent of the fraud is minimized.

As you know, the TCPA restricts callers’ ability to make autodialed or prerecorded calls, including informational calls, to wireless phones without prior express consent. When Congress passed the TCPA in 1991, Congress sought to protect consumers from abusive telemarketing and did not intend for the law to “be a barrier to the normal, expected or desired communications between businesses and their customers.”¹ However, if the financial institution has not obtained a customer’s documented consent to be called, financial institutions may be discouraged from sending the fraud alert, depriving the customer of information about potentially fraudulent activity on his or her account.

¹ H.R. Rep. No. 102-317, at 17 (1991).

Consistent with the purpose underlying the TCPA, the FCC should act now to ensure that banks, credit unions, and other financial institutions are not discouraged from contacting their customers quickly, using automated means, in the event of suspected fraud on the account.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Himes", is written over a horizontal line.

JIM HIMES
Member of Congress