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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.¹ 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 2017.² In 2017, consumers reported losses in excess of \$290 million as a result of frauds perpetrated by telemarketers,³ and Consumers Union reported that telemarketing scams have been a \$9.5 billion cost to the U.S. economy.⁴ 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

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

² 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).

³ *Id.* (remarks from Ms. Ohlhausen).

⁴ *Id.* (remarks from Mr. Bartholme).

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

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.⁷ 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.⁸

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.⁹ 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.¹⁰

⁵ 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)).

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

⁷ 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).

⁸ See 2018 Reply Comments at 2.

⁹ 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.

¹⁰ 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.¹¹

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.

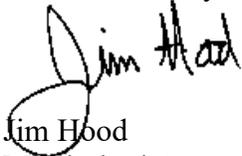
We further appreciate that, in service to its purpose to "improve enforcement" of the TCPA, the TRACED Act leaves undisturbed section 227(e) of the TCPA, which expressly provides that these regulations do not preempt state enforcement actions.¹²

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.

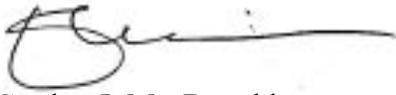
¹¹ FCC, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Report and Order, FCC 17-151 (Nov. 17, 2017).

¹² 47 U.S.C. § 227(e) (2012).

Sincerely,



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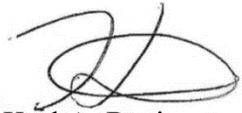
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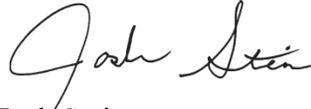
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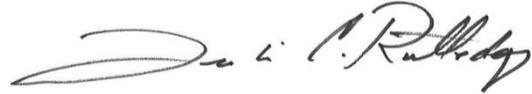
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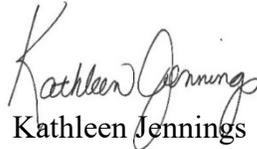
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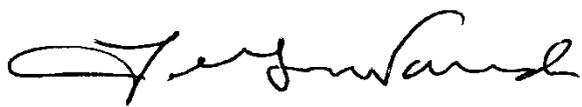
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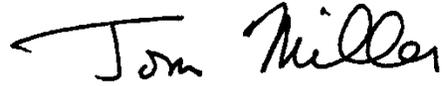
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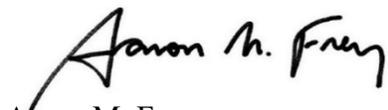
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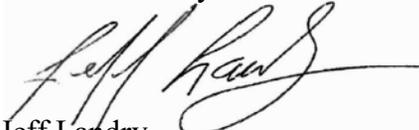
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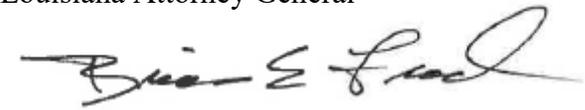
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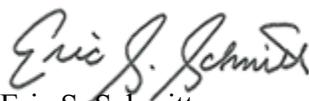
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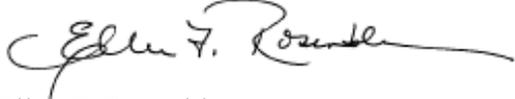
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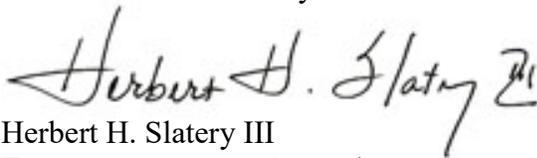
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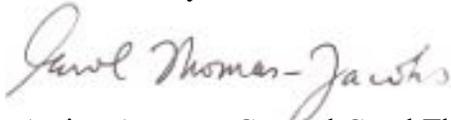
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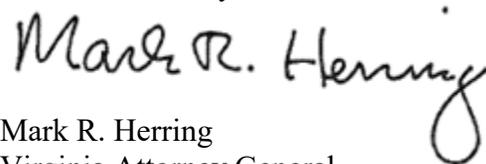
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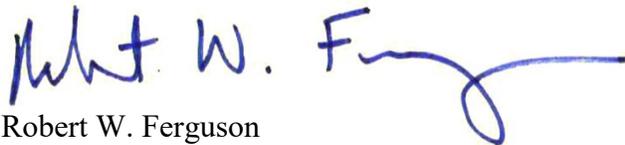
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