



December 16, 2022

Via Regulations.gov

The Honorable Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

RE: Notice of Proposed Rulemaking and Request for Public Comment, Trade Regulation Rule on Impersonation of Government and Businesses, 87 Fed. Reg. 62,741 (Oct. 17, 2022)

Dear Chair Khan:

The American Bankers Association, ACA International, American Association of Healthcare Administrative Management, Credit Union National Association, Mortgage Bankers Association, and National Association of Federally-Insured Credit Unions¹ (the Associations) appreciate the opportunity to comment on the Notice of Proposed Rulemaking (Proposed Rule) to prohibit the impersonation of government, businesses, and their officials, and to prohibit entities from providing the “means and instrumentalities” for another to impersonate a government or business.²

The Associations strongly support the Federal Trade Commission’s (Commission or FTC) Proposed Rule; we believe existing remedies are currently insufficient to stem the ever increasing tide of impersonation scams. Bad actors regularly impersonate banks, credit unions, other financial service providers, healthcare companies, and other legitimate callers by illegally “spoofing” phone numbers belonging to these businesses. A method used frequently is to cause the call recipient’s caller ID to display the name of a legitimate company instead of the name of

¹ A description of each trade association is listed in the Appendix.

² Notice of Proposed Rulemaking and Request for Public Comment, Trade Regulation Rule on Impersonation of Government and Businesses, 87 Fed. Reg. 62,741, 62,751 (Oct. 17, 2022) [hereinafter, *Proposed Rule*].

the actual caller, who is seeking to defraud the recipient.³ Alternatively, the bad actor may send a text message from a number that appears to belong to a legitimate business, often including links to fake websites, or send a text message from the bad actor’s own number, making it appear that it is from a legitimate business, with the intent to defraud the recipient.⁴ The goal of both call and text spoofing is to lead the recipient to believe the call or text was placed by a company with whom the recipient is doing business and to induce the consumer to divulge important information, such as account numbers or log-in credentials, to the fraudster. Bad actors also have illegally spoofed phone numbers belonging to the Consumer Financial Protection Bureau⁵ and the Centers for Disease Control and Prevention,⁶ posing as employees of the agency, all with the intent to defraud consumers.

Accordingly, we strongly urge the Commission to finalize the Proposed Rule as soon as feasible and, once finalized, to initiate enforcement actions against entities and individuals that impersonate a business. We support the Commission’s proposal to impose liability not only on those entities that impersonate a government or business, but also on those entities that “provide the means and instrumentalities” that allow another to impersonate a government or business.⁷ We agree with comments made by other stakeholders in an earlier stage of this proceeding that recommend liability for “individuals or entities that provide the means and instrumentalities for impersonators”⁸ As the National Association of Attorneys General stated, “when an entity provides substantial assistance or support to impersonators and knows or should have known that their products [or] services are being used in a fraudulent impersonation scheme, that company could also be held liable under the proposed impersonation rule.”⁹

Once the Proposed Rule is finalized, we urge the Commission to impose liability on telephone companies (Voice Service Providers) that provide consumers with unauthenticated and falsified Caller ID information in the consumer’s Caller ID display—i.e., those Voice Service Providers that “provide the means and instrumentalities” for another entity to impersonate a government or business. In an effort to combat illegal call spoofing, the Federal Communications Commission (FCC) has implemented a call authentication framework – known as “STIR/SHAKEN” – that requires Voice Service Providers that originate calls using IP-based technology to attest to the

³ See *In the Matter of Call Authentication Trust Anchor*, Comments of Am. Bankers Ass’n *et al.*, CG Docket No. 17-97, at 3 (rec. Dec. 12, 2022), <https://www.fcc.gov/ecfs/document/12132684621465/1>; Nat’l Ass’n of State Charity, Cmt. on ANPR, 3 (Feb. 23, 2022), <https://www.regulations.gov/comment/FTC-2021-0077-0165> (describing how bad actors engage in illegal call spoofing).

⁴ See *In the Matter of Targeting and Eliminating Unlawful Text Messages*, Comments of the Am. Bankers Ass’n *et al.*, CG Docket No. 21-402, at 3 (rec. Nov. 10, 2022), <https://www.fcc.gov/ecfs/document/1111457307833/1>.

⁵ See Bureau of Consumer Fin. Prot., Beware of Scammers Pretending to be from the CFPB (Sept. 1, 2022), <https://www.consumerfinance.gov/about-us/blog/beware-of-scammers-pretending-to-be-from-the-cfpb/>.

⁶ See Ctrs. for Disease Control & Prevention, Phone Scams, <https://www.cdc.gov/media/phishing.html> (last visited Dec. 16, 2022).

⁷ *Proposed Rule*, *supra* note 2, at 62,751 (proposed 16 C.F.R. § 461.4).

⁸ USTelecom, Cmt. on ANPR, 3 (Feb. 23, 2022), <https://www.regulations.gov/comment/FTC-2021-0077-0160>; see also International Housewares Association, Cmt. on ANPR, 2 (Feb. 22, 2022), <https://www.regulations.gov/comment/FTC-2021-0077-0144> (asserting that a rule targeting impersonation of businesses and government “would provide the Commission with greater capabilities to address impersonation scams . . .”).

⁹ Nat’l Ass’n of Attorneys General, Cmt. on ANPR, 10 (Feb. 23, 2022), <https://www.regulations.gov/comment/FTC-2021-0077-0164>.

authenticity of the telephone number that will be displayed in the recipient's caller ID.¹⁰ The FCC also is considering how best to implement a caller ID authentication framework for non-IP networks.¹¹ Despite the FCC's laudable efforts, the vulnerabilities in the current system continue to allow the impersonation of businesses using the Caller ID function. Therefore, as described above, we recommend that the FTC take immediate action against telecommunications companies that provide consumers with unauthenticated and falsified Caller ID information in the consumer's Caller ID display. When the authenticity of calls cannot be adequately verified through a direct and verified relationship with the call originator, the Voice Service Provider should not display data on the consumer's caller ID device. Only those calls that demonstrate a verified relationship between the originating Voice Service Provider and the call originator should be allowed to display any data in the caller ID device.

Relatedly, mobile applications that allow a user to spoof an outbound calling number are readily available for individuals to download for free from the Internet.¹² We urge the FTC and FCC to investigate these tools to determine the purpose for which they are being used and to publish the agencies' findings. Although some entities lawfully spoof their outbound calling number,¹³ these free apps may contribute to the proliferation of illegally spoofed calls.

In addition, the Associations that represent financial institutions ask the FTC, in its final rule, to state clearly that the mere provision of a payment service that is used by a bad actor to perpetrate the unlawful impersonation of a government or business would not constitute providing the "means and instrumentalities" of the unlawful impersonation. The FTC previously made clear that an entity may be liable for passing on a false or misleading representation only if it has "knowledge or reason to expect that consumers may possibly be deceived as a result."¹⁴ When a financial institution that provides a payment service has no knowledge or reason to expect that its customer is using the payment service to unlawfully impersonate a government or business, the institution is not providing the means or instrumentalities for the impersonation.

¹⁰ Each intermediate Provider in the call path that has an IP network must pass this STIR/SHAKEN attestation information to next downstream IP-based Provider until the call reaches the terminating Provider.

¹¹ *In the Matter of Call Authentication Trust Anchor*, Notice of Inquiry, FCC 22-81, CG Docket No. 17-97 (Oct. 28, 2022). In addition, the FCC has proposed a rule to require mobile wireless providers to block, at the network level, illegal texts messages; to require the blocking of texts sent from numbers on a Do-Not-Originate list; and to require providers to implement a caller ID authentication framework for texts. *In the Matter of Targeting and Eliminating Unlawful Text Messages*, Notice of Proposed Rulemaking, FCC 22-72, CG Docket No. 21-402, 87 Fed. Reg. 61,271 (Oct. 11, 2022).

¹² See *Accurate Reviews, Top Free Spoof Calling Apps, 2022*, <https://www accuratereviews.com/top-free-spoof-calling-apps-2022/> (June 20, 2022) ("When you search for Caller ID Spoofing apps for Android in the Google Play Store, you'll find hundreds of them, just like any other category.").

¹³ For example, banks may lawfully spoof their outbound calling number to a phone number in the customer's area code, so that the customer can easily return the call. In addition, domestic violence shelters may lawfully spoof the origin of their calls placed to domestic violence victims. See *Phone Numbers Alaska, What is Alaska Phone Spoofing?*, <https://alaska.phonenumbers.org/scams/spoofing/> ("Organizations involved in providing shelters for victims of domestic violence employ caller ID spoofing legitimately for security purposes."). In neither of these two use cases does the caller intend to deceive the call recipient.

¹⁴ *In re Shell Oil Company*, Docket No. C-3912 (1999) (statement of Robert Pitofsky, Chairman, Fed. Trade Comm'n), <https://www.ftc.gov/sites/default/files/documents/cases/2000/01/shellpitofskystmnt.htm>.

Thank you for your consideration of these views.

Sincerely,

American Bankers Association

ACA International

American Association of Healthcare Administrative Management

Credit Union National Association

Mortgage Bankers Association

National Association of Federally-Insured Credit Unions

APPENDIX

The American Bankers Association is the voice of the nation's \$23.6 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$19.4 trillion in deposits and extend \$12 trillion in loans.

The American Association of Healthcare Administrative Management (AAHAM) is the premier professional organization in healthcare administrative management.

ACA International represents approximately 1,800 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates, in an industry that employs more than 125,000 people worldwide. Most ACA member debt collection companies are small businesses. The debt collection workforce is ethnically diverse, and 70% of employees are women. ACA members play a critical role in protecting both consumers and lenders. ACA members work with consumers to resolve their past debts, which in turn saves every American household more than \$700 year after year. The ARM industry is instrumental in keeping America's credit-based economy functioning with access to credit at the lowest possible cost.

The Credit Union National Association, Inc. (CUNA) is the largest trade association in the United States representing America's credit unions, which serve more than 130 million members. Credit unions are not-for-profit, financial cooperatives established "for the purpose of promoting thrift among [their] members and creating a source of credit for provident and productive purposes."

The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 400,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of more than 2,200 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

The National Association of Federally-Insured Credit Unions (NAFCU) advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 133 million consumers with personal and small business financial service products. NAFCU members are from across the country and of all asset sizes. It provides members with representation, information, education, and assistance to meet the constant challenges that cooperative financial institutions face in today's economic environment. NAFCU proudly represents many smaller credit unions with relatively limited operations, as well as many of the largest and most sophisticated credit unions in the Nation. NAFCU represents 78 percent of total federal credit union assets and 62 percent of all federally-insured credit union assets.