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September 9, 2014

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Wheeler,

The undersigned Attorneys General, on behalf of the millions of Americans regularly receiving unwanted and harassing telemarketing calls, formally request an opinion from the Federal Communications Commission (the “FCC”) regarding telephone carriers’ legal ability to implement call-blocking technology.

I. Background

On July 10, 2013, the U.S. Senate’s Subcommittee on Consumer Protection, Product Safety, and Insurance (the “Subcommittee”) held a hearing entitled “Stopping Fraudulent Robocall Scams: Can More Be Done?” During that hearing, representatives from US Telecom Association and CTIA-The Wireless Association testified that legal barriers prevented carriers from implementing advanced call-blocking technology to reduce the number of unwanted telemarketing calls. Examples of blocking technologies currently available include “NoMoRobo” for VOIP phones, developed by Aaron Foss, winner of the FTC’s \$50,000 Robocall Challenge; “Call Control” for smart phones, developed by the Kedlin Company; and “Telemarketing Guard,” developed by Primus Telecommunications Canada, Inc. for Canadian consumers. American consumers should not have to seek out piecemeal solutions—instead, carriers should make solutions more easily accessible to consumers.

During prepared statements at the 2013 hearing, the US Telecom representative stated:

“First, under existing laws . . . phone companies have a legal obligation to complete phone calls. These companies may not block or otherwise prevent phone calls from transiting their networks or completing such calls. The current legal framework simply does not allow [phone companies] to decide for the consumer which calls should be allowed to go through and which should be blocked.”

Thereafter, on August 16, 2013, Senator Claire McCaskill, chairwoman of the Subcommittee, sent a letter to the heads of US Telecom and CTIA-The Wireless Association. In this letter, Senator McCaskill asked for a “complete analysis of the challenges your industry foresees in implementing” call-blocking technologies.

On October 15, 2013, US Telecom responded to Senator McCaskill. In its response, US Telecom claimed that its members are subject to legacy common-carrier regulation and enforcement of the regulations by the FCC. US Telecom also alleged that “the FCC has concluded that call blocking is an unjust and unreasonable practice under section 201(b) of the Communications Act of 1934.” Indeed, US Telecom stated that if a phone carrier engages in call blocking, the FCC can assess a forfeiture of as much as \$150,000 for each violation, up to a total \$1,500,000 statutory maximum for a single act or failure to act.

Because solutions like NoMoRobo, Call Control, and Telemarketing Guard are call-blocking technologies, US Telecom concluded that the current legal framework prohibits its members from using them to protect their customers from unwanted robocalls.

II. Request of the Attorneys General

State law enforcement officials are doing everything possible to track down and prosecute those that engage in illegal telemarketing. However, law enforcement cannot fight this battle alone. Call-blocking technology like NoMoRobo, Call Control, and Telemarketing Guard appears to be the first major advancement towards a solution.

Nonetheless, the telephone companies’ resistance to embrace call-blocking technology, as evidenced by US Telecom’s response to Senator McCaskill, raises important questions. If a solution to the nation’s illegal telemarketing problem is possible, it will require the private sector—including telephone carriers—to get involved. To that end, we respectfully request a formal opinion from the FCC on the following issues:

- (1) What *legal and/or regulatory* prohibitions, if any, prevent telephone carriers from implementing call-blocking technology such as NoMoRobo, Call Control, and Telemarketing Guard? Does the answer change if the telephone companies’ customers affirmatively “opt into” the call-blocking technology (either for a fee or as a free service)?
- (2) US Telecom claims that telephone carriers “can and do block harassing and annoying telephone traffic at their end-user customer’s request,” but only for a “discrete set of specific phone numbers.” At a customer’s request, can telephone carriers legally block certain types of calls (*e.g.*,

telemarketing calls) if technology is able to identify incoming calls as originating or probably originating from a telemarketer?

- (3) US Telecom describes the FCC's position as "strict oversight in ensuring the unimpeded delivery of telecommunications traffic." Is US Telecom's characterization of the FCC's position accurate? If so, upon what basis does the FCC claim that telephone carriers may not "block, choke, reduce or restrict telecommunications traffic in any way"?

Thank you for your consideration on this matter. Hopefully, we can all work cooperatively to find a solution to the unwanted telemarketing problem in the United States.

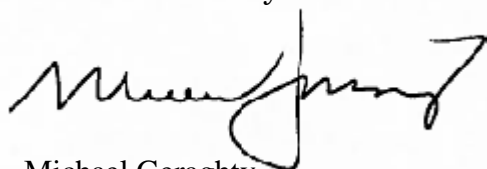
Respectfully,



Greg Zoeller
Indiana Attorney General



Chris Koster
Missouri Attorney General



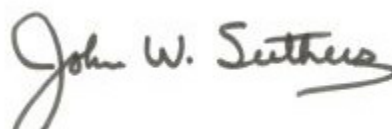
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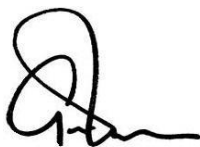
Tom Horne
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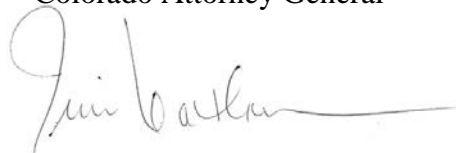
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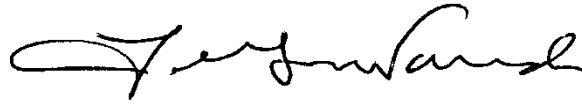
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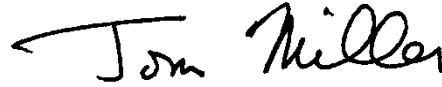
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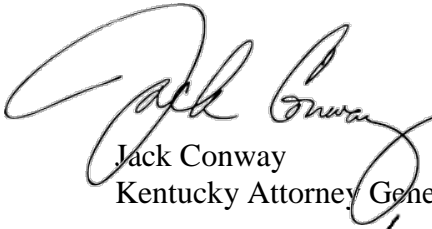
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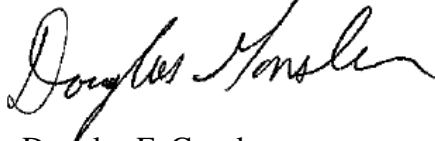
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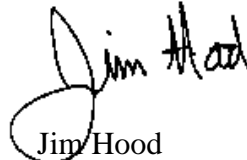
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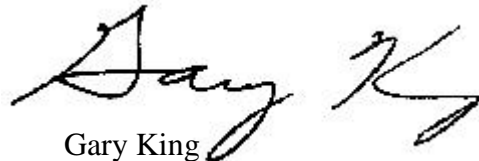
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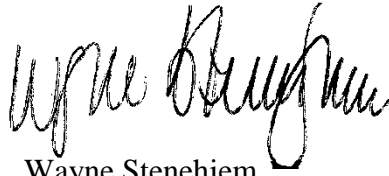
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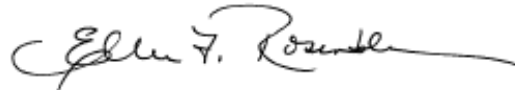
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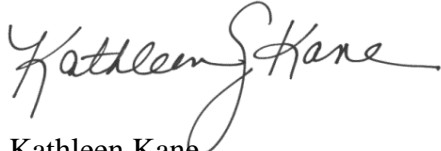
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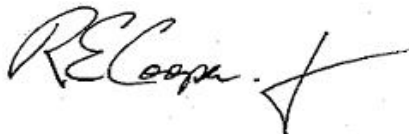
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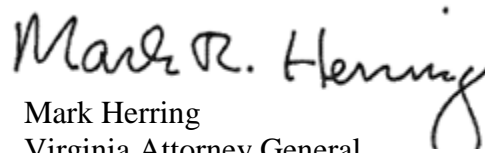
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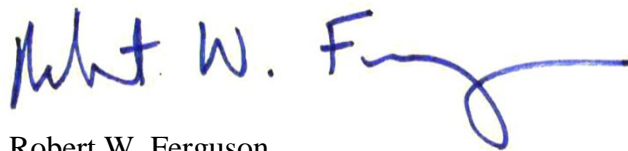
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