



October 8, 2018

Submitted via electronic filing: <http://apps.fcc.gov/ecfs/>

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Comments in Response to the Public Notice concerning the Request of the Consumer and Government Affairs Bureau to Refresh the Record on Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59; Public Notice DA 18-842

Dear Ms. Dortch:

ACA International (“ACA”) respectfully submits these comments in response to the Public Notice concerning the Request of the Consumer and Government Affairs Bureau to Refresh the Record on Advanced Methods to Target and Eliminate Unlawful Robocalls.¹ ACA appreciates the Commission’s continued interest in this important topic.

ACA International is the leading trade association for credit and collection professionals representing approximately 3,000 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs more than 230,000 employees worldwide.

I. Background

The credit and collection industry is a highly regulated industry complying with applicable federal and state laws and regulations regarding debt collection, as well as ethical standards and guidelines established by ACA. ACA members contact consumers exclusively for non-telemarketing and legitimate business reasons to facilitate the recovery of payment for services that have already been rendered, goods that have already been received, or loans that have already been provided. The use of modern technology is critical for the ability to contact consumers in a timely and efficient manner. Often if the consumer is put on notice of a debt

¹ CG Docket No. 17-59 (August 10, 2018).

sooner and earlier in the collection process, their chances improve of resolving the matter more favorably.

The primary law that governs the credit and collection industry is the Fair Debt Collections Practices Act (“FDCPA”).² However, ACA members must also comply with various other consumer financial services laws as well as numerous state laws and regulations. Many states require ACA members to be licensed as debt collectors. Calls made by ACA members are legitimate business calls and not telemarketing calls. Notwithstanding this fact, and despite compliance with federal and state laws and regulations, in the last year ACA members have seen a significant increase in the number of their legitimate calls being erroneously blocked or improperly mislabeled.³ These practices are occurring with both voice service providers (“carriers”) and third party application providers (“app providers”) that operate independently or in tandem with carriers.

Carriers in the marketplace should not be permitted to use technologies that enable third parties to unilaterally determine what calls consumers should receive in place of federal laws and regulations that already govern communications with consumers. For example, the Federal Communications Commission’s (FCC) *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Report and Order and Further Notice of Proposed Rulemaking⁴ (“Call Blocking Report and Order and Further Notice”) set forth specific criteria for carriers to use in blocking illegal robocalls. No such requirements were mandated for app providers even if they are working in conjunction with carriers. Regardless of the type of entity, technologies including mobile applications and carrier services should not unfairly mislabel or erroneously block legal calls being made for business purposes. Moreover, even when calls are blocked or mislabeled as a result of faulty analytics rather than intentional misconduct, there should be consequences for this harmful activity that impedes communications that may be needed and even essential. ACA respectfully requests that the FCC further analyze this harm to consumers in coordination with other agencies such as the Federal Trade Commission and Bureau of Consumer Financial Protection (“BCFP”), and take appropriate steps to address it.

Multiple regulatory agencies have recently recognized the value to consumers of open communications with credit and collection professionals, in the channels that the consumers prefer to use. As the U.S. Department of Treasury acknowledged in a July 2018 report, “debt collectors and debt buyers play an important role in minimizing losses in consumer credit markets, thereby allowing for increased availability of and lower priced credit to consumers.”⁵ Similarly, the Small Business Administration Office of Advocacy recently highlighted the need for communication with consumers concerning the Telephone Consumer Protection Act (“TCPA”), stating, “in an environment where fifty to seventy percent of a business’ customers might only be reachable by mobile phone, it is important that the FCC move quickly to establish

² 15 U.S.C. § 1692 *et seq.*

³ Adams, Josh, The Impact of Call-blocking and Labeling Technologies on the Accounts Receivable Industry (September 2018).

⁴ 32 FCC Rcd 9706 (November 17, 2017).

⁵ U.S. Department of Treasury, A Financial System That Creates Economic Opportunities; Nonbank Financials, Fintech, and Innovation (July 2018), available at <https://home.treasury.gov/sites/default/files/2018-07/A-Financial-System-that-Creates-Economic-Opportunities---Nonbank-Financi....pdf>.

clear guidance to small business compliance without depriving customers of required or desired communications.”⁶ Further, the BCFP recently emphasized that, “consumers benefit from communications with consumer financial products providers in many contexts, including receiving offers of goods and services and notifications about their accounts.”⁷

Allowing carriers and app providers to impede communications and arguing that this activity falls outside of the scope of the Communications Act of 1934, as amended,⁸ and other laws under the jurisdiction of the FCC does not align with other actions the FCC has taken in this area such as encouraging a Robocall Strike task force to address these issues.⁹ Additionally, under the Truth in Caller ID Act,¹⁰ FCC rules prohibit any person or entity from transmitting misleading or inaccurate caller ID information with the intent to defraud, *cause harm*, or wrongly obtain anything of value. Mislabeling the identity of the caller can cause significant harm to the consumer if it fails to provide the consumer with accurate information about who is calling. As such, it is far from clear that app providers fall outside of the scope of jurisdiction or ancillary jurisdiction of the FCC.

Consumers who are deprived of information regarding an outstanding debt and ways to resolve it can suffer serious adverse consequences in the form of increased cost of credit and risk of litigation. Other types of calls, including calls from a school or medical facility, may also be at risk of improper blocking or labeling if new technologies are not carefully implemented. An effectively constructed statutory and regulatory framework ensures that consumers have the ability to receive necessary information while protecting them from harmful practices. Ungoverned disruption of this system by providers that block or mislabel legitimate business calls creates higher risk than benefit to consumers.

II. Overarching Themes

In response to the inquiries outlined in this Public Notice, ACA presents the following overarching themes.

A. Consumers are being channeled to block calls without measures in place requiring proper disclosures or provision of sufficient information to allow consumers to make an informed decision about the calls they wish to block.

⁶ Ex parte Notice of SBA Office of Advocacy, Consumer and Government Affairs Bureau Seeks Comment on Interpretation of the Telephone Consumer Protection Act in Light of the D.C. Circuit’s ACA International Decision, CG Docket Nos. 18-152, 02-278.

⁷ Comments of the Bureau of Consumer Financial Protection, In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act and CG Docket No. 02-278 Interpretations in Light of the D.C. Circuit’s CG Docket No. 18-152 ACA International Decision (June 13, 2018). (“BCFP Comment”)

⁸ 47 U.S.C. § 151 et seq.

⁹ See e.g. “Although several providers and third parties offer call blocking and caller identification verification

products, there is no ubiquitous solution that spans wireline and wireless communication networks. The industry has been called to action by the Robocall Strike Force to collaborate on creative solutions to this ever changing problem.” Robocall Strike Force Report, available at <https://transition.fcc.gov/cgb/Robocall-Strike-Force-Final-Report.pdf> (October 26, 2016).

¹⁰ 47 U.S.C. § 227(e).

ACA understands and appreciates consumer frustration in receiving unwanted and illegal calls on their cell phones. ACA members are consumers too, and this problem affects every consumer in the United States. However, proper call blocking involves consumer knowledge and provider responsibility. The cornerstone of all consumer protection regulation is the concept of disclosure. In this instance, however, a consumer is being provided a solution that in the end might not solve his or her problem.

As a recent ACA study indicates, 62% of ACA members report a decrease in right party contact and a 40% decline in call/contact ratios compared to prior years. In this report, 78% of ACA members surveyed reported that calls are being blocked.¹¹ While consumers have a right to block calls, this dramatic indication of change calls into question whether consumers are being fully informed that legitimate and necessary business and other calls are being blocked.

B. Carriers do not notify callers when their calls are blocked.

Despite having their legitimate calls blocked, ACA members are not notified when that occurs. In some instances ACA members report they learned of the mislabeled call from a consumer who reported that the call label provided by the carrier or app provider identified the debt collector caller as a “scam” call. This kind of mislabeling of a legitimate business call is false, and creates mistrust that makes a consumer less likely to answer a call,¹² and yet callers receive no notice of this mislabeling or call blocking.

In such a situation, carriers are doing nothing to advise callers that their calls are blocked or mislabeled, nor has there been any significant analysis of what mechanisms carriers are recommending to callers to challenge the blocked or mislabeled call. The FCC sought specific comment on this issue in its Call Blocking Report and Order and Further Notice. To allow callers to continue to make calls without knowledge that the calls are not getting through is a waste of time and resources that ACA members could be using to help other consumers resolve their debt amicably.

C. Carriers must not be able to block calls until the FCC issues rules for callers to challenge erroneously blocked or mislabeled calls.

Allowing carriers to block calls without any recourse available to legitimate callers is an unfair and unbalanced approach. At the same time, it is clear that blanket blocking of calls has not decreased the amount of illegitimate calls.¹³ It would be wise to suspend all call blocking and labeling until comprehensive rules are put in place that require legitimate callers to register their numbers and adopt a process for challenging erroneous blocking and mislabeling of calls.

III. ACA Comments and Recommendations to Specific Inquiries of the FCC

A. The FCC should consider mandatory corroboration prior to blocking calls.

¹¹ *Supra* note 2.

¹² *Id.*

¹³ Nearly 50% Of U.S. Mobile Traffic Will Be Scam Calls By 2019, First Orion, September 12, 2018; <https://firstorion.com/nearly-50-of-u-s-mobile-traffic-will-be-scam-calls-by-2019/>.

Before allowing call blocking, the caller must be given an opportunity to show the call is legitimate by confirming that the caller's number is i) a valid number ii) assigned by a carrier and iii) is currently be used. These are the same criteria that carriers must use when deciding whether to block a call. However, as it has been shown, these criteria are not preventing legitimate calls from being blocked, so more must be done.

ACA fully supports a registration or white list process in which legitimate callers can register their numbers as well as identify whether they want their call labeled in a certain manner. There should be significant penalties for callers that supply false information or make calls for illegitimate purposes. It must be noted that when calls are made for debt collection purposes, the FDCPA requires that consumers provide a written notice if they want a collector to stop contacting them.¹⁴ However, this written notice is made after a debt collector has, at a minimum, first contacted the consumer with the required statutory information about his or her debt and dispute rights.¹⁵ This regulatory approach has been carefully developed by the administrative process, and allowing it to be disrupted and compromised by unregulated measures is not consistent with good government practices.

The current FCC framework does not strike the appropriate balance for adequate consumer protection. Specifically, by not providing consumers with sufficient information to make well informed decisions and legitimate businesses the ability to communicate with consumers regarding important information about a consumer's credit and financial well-being. Throwing the baby out with the bath water and arguing that even if some legal calls are blocked, consumers are better off is dangerous precedent for telecommunications in the U.S. In its comments for example, First Orion argues that, "it is important not to let the perfect be the enemy of the very good when protecting consumers from illegal and unwanted calls. In fact, the Commission has previously recognized that, 'the fact that current . . . technology is not perfect does not prevent telephone carriers from being able to offer it to their customers.'"¹⁶ Allowing the use of far from perfect technologies has already proven to result in important legitimate communications not being received. Simply ignoring this and refusing to address it through regulatory action may be just the beginning of a dangerous environment in which consumers do not get critical information they need, with no telling what other types of critical communications outside of debt collection calls may be impeded in the future. This concern, and the seriousness of the situation in which consumers do not receive needed information, arguably may far outweigh any nuisance of an unwanted robocall in certain instances.

B. The FCC should seek data from app providers and carriers to assess the criteria used to block and mislabel calls.

As noted above, callers are often not aware of exactly what calls are being blocked, nor are callers advised what label is being assigned to incoming calls. ACA hopes that in response to this Public Notice, carriers will provide the data to show the number of calls that have been blocked

¹⁴ 15 U.S.C. § 1692c(c).

¹⁵ 15 U.S.C. § 1692g.

¹⁶ Comments of First Orion Corp. Public Notice, Consumer and Governmental Affairs Bureau Seeks to Refresh the Record on Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59 (Aug. 10, 2018).

and the methods and the criteria for doing so. However, more information is needed. The FCC should seek to get this same information from app providers in order to determine the volume and percentage of calls that are being blocked by each type of provider. This information would be useful especially as the FCC considers developing challenge mechanisms for erroneously blocked or mislabeled calls. Although the Call Blocking Report and Order and Further Notice promulgated certain criteria for carriers to consider when they choose to block calls, it would make sense for app providers to abide by the same criteria as a standard industry practice.

C. Carriers have not shown how they are avoiding false positives.

As it relates to the credit and collection industry, an abundance of evidence shows that legitimate calls are being blocked.¹⁷ Yet carriers have provided no significant data showing what efforts they are undertaking to address this problem. As demonstrated, carriers are not advising callers that their calls have been blocked or what label is being assigned to calls. In this Public Notice, the FCC seeks information about how “lawful callers currently work with providers’ blocking and labeling services to ensure their calls are not blocked or erroneously labeled.” ACA is not aware of any carrier (or its blocking and labeling services) that has worked with any of its members to unblock or re-label any call. In fact, industry members have met with some app providers; they have unequivocally refused to unblock or re-label any call. Several companies are offering services whereby they will advocate on behalf of callers to the carriers to encourage them to unblock calls. However, ACA knows of no instance in which a carrier has reversed a call block or re-labeled a legitimate debt collection call.

IV. Conclusion

In addition to our recent survey, ACA is currently working with its members to identify consumer harm resulting from faulty call blocking and the mislabeling of debt collection calls. We are also working to identify app providers that are characterizing highly legitimate and legal calls with labels such as “scam” or others that are even more injurious. We remain seriously concerned that in some instances these actions are slanderous and inhibiting First Amendment rights. As we continue to closely monitor how faulty call blocking and labeling is impacting ACA members, we look forward to further discussions with the FCC, the FTC and other regulators.

Thank you for your attention to these important matters. Please feel free to contact me with questions.

Sincerely,

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¹⁷ *Supra* note 2.