

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of

Advanced Methods to Target and Eliminate
Unlawful Robocalls

CG Docket No. 17-59

REPLY COMMENTS OF SIRIUS XM RADIO INC.

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Sirius XM Radio Inc. (“SiriusXM”) hereby submits these reply comments on the issue of blocking and mislabeling of legitimate calls in response to the Consumer and Governmental Affairs Bureau’s August 10, 2018 Public Notice.¹

I. INTRODUCTION AND SUMMARY

Although the problem of false positives was the specific subject on which the Public Notice sought comment, many commenters did not even attempt to propose meaningful solutions to prevent the further blocking and labeling of legitimate calls, instead using their initial filings to minimize the severity and impact of overblocking. The Commission intended its call blocking initiative would address the problem of number spoofing and other illegal telephone calling, but these laudable efforts to eliminate illegal and fraudulent activity have also inadvertently led to widespread blocking and mislabeling of legitimate calls. The Commission should adopt the proposals of those commenters proposing meaningful solutions to this problem, including the American Bankers Association (“ABA”), SiriusXM, the Retail Energy Supply Association

¹ *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls, Consumer and Governmental Affairs Bureau Seeks Input for Report on Robocalling*, DA 18-638, CG Docket No. 17-59 (rel. Aug. 10, 2018) (“Public Notice”).

(“RESA”), the PRA Group, Inc. (“PRA”), Encore Capital Group, Inc. (“Encore”), ITTA – The Voice of America’s Broadband Providers (“ITTA”), and the Voice on the Net (“VON”) Coalition. Those commenters offered pragmatic recommendations like white lists, intercept messages, Caller ID requirements,² and mandatory time frames in which Voice Service Providers (“Providers”) must respond to complaints to halt the blocking of legal calls. SiriusXM urges the Commission to adopt these solutions in the near-term to halt the widespread harm that overblocking is causing to legitimate business activity.

The Commission should not heed the call of certain Providers for additional blocking authority, at least not until effective solutions to the problem of false positives have been fully implemented. Increasing blocking authority will simply lead to an increase in the number of false positives across the Public Switched Telephone Network (“PSTN”). As the VON Coalition highlights, implementing a safe harbor for Providers will give them even less reason to steer clear of legitimate business calls when blocking and labeling calls.³ Moreover, common carriers already have one-sided protections from liability in their tariffs and contracts and therefore do not need additional safe harbors that will only exacerbate the current false positive problem.

II. THE PROBLEM OF FALSE POSITIVES PERSISTS AND NEEDS TO BE ADDRESSED BY THE COMMISSION

Providers, data analytics companies, and app providers have all devoted significant resources to addressing and solving the problem of illegal and fraudulent calling, including the spoofing of phone numbers. SiriusXM appreciates the efforts of commenters in this proceeding

² Caller ID as used herein includes both the caller’s name and phone number, the former sometimes referred to as CNAM.

³ VON Coalition Comments at 2.

and parties throughout the calling ecosystem to block illegal calls and continues to work with these entities to find solutions. However, the comments filed by those responsible for overblocking propose little in terms of meaningful solutions to eliminate false positives. Discussions to resolve the problem at joint industry meetings have also yielded few results. The time has come for the Commission itself to step in to adopt solutions.

The Commission has appropriately teed up the issue of false positives and the record – as well as SiriusXM’s own experience – confirm that the problem persists today. The ABA reports that its bank members have experienced widespread labeling as “scam or fraud” by a popular third-party service⁴ and, this docket is rife with complaints from multiple sectors that legal calls are being blocked and mislabeled.⁵ The Commission should not be misled by AT&T’s claim that it has not received any call blocking complaints in two years.⁶ Rather, AT&T’s assertion that it has received no such complaints reflects the lack of information being provided to callers that their calls are being blocked, by whom, and whom they should contact for a resolution. To address this information gap, many parties suggest the need for some form of call intercept message, code, or other notification that would be transmitted back to companies whose calls are being blocked.⁷ Many of these companies would raise their complaints directly with AT&T and

⁴ ABA Comments at 4.

⁵ See, e.g., Comments of Colonial Penn Life Insurance Company at 1-4 (Jan. 23, 2018); Comments of the National Association of Federally-Insured Credit Unions at 1 (Jan. 23, 2018); Comments of the Electronic Payments Association (“EPA Comments”) at 2 (Jan. 23, 2018); Comments of the Retail Energy Suppliers Association (“RESA Comments”) at 3 (Jan. 23, 2018); SiriusXM Comments at 2 (Jan. 23, 2018).

⁶ AT&T Comments at 8. See also CTIA Comments at 22.

⁷ See, e.g., SiriusXM Comments at 9; RESA Comments at 7; and ABA Comments at 5. See also Ex Parte Letter from Leah Dempsey, Vice President and Senior Counsel, Federal Advocacy, ACA International to Marlene H. Dortch, Secretary, FCC, at 5 (Sept. 21, 2018) (“ACA Int’l Sept. 21 Ex Parte”).

other call blockers if only they could discern which entity is responsible for blocking their calls and how they should proceed toward a resolution. No such mechanism currently exists.

These and other comments support immediate Commission action to ensure that legitimate calls will no longer be blocked or mislabeled. The Commission's baseline policy for over 50 years⁸ has been to require that common carriers complete all legal calls and not pass substantive judgment on which of those calls are or are not deserving to be completed.⁹ Nothing in the record justifies changing that policy.

But that is precisely what is happening today, with each Provider adopting its own criteria as to what calls it should complete and with Providers or third parties deciding how to label calls. For example, AT&T says it "labels calls from numbers identified with other suspect or potentially unwanted sources, including telemarketer, suspected spam, and other categories of calls."¹⁰ Yet AT&T apparently identifies calls in this manner without considering critical factors in its labeling decision, such as whether the consumer has an existing business relationship with the calling company or has requested the call. Arbitrary distinctions -- often undefined or with definitions buried deep in the Provider's service guide -- provide further evidence of the Wild West array of obstacles that originating callers face when it comes to call completion, with each Provider unilaterally adopting its own standards for the types of calls it will block and label.¹¹

The Commission must intercede to avoid further harm to the orderly operation of the PSTN

⁸ See, e.g., *Anderson v. New York Telephone Co.*, 361 N.Y.S.2d 913, 915-16 (N.Y. 1974).

⁹ See ABA Comments at 4, fn. 12. *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Comments of SiriusXM at 3-4 (Jan. 23, 2018).

¹⁰ AT&T Comments at 2.

¹¹ As PRA recommends, "Carriers and their agents should be required to adhere to a more standardized process so that callers can quickly and easily address overblocking practices if and when they occur." PRA Comments at 7.

including, as SiriusXM has suggested,¹² by ensuring that prior business relationships are recognized in all circumstances where blocking and labeling takes place.

III. MANY COMMENTERS PRESENT NO MEANINGFUL RECOMMENDATIONS TO SOLVE THE PRESSING PROBLEM OF FALSE POSITIVES

Comments filed by Providers, data analytics providers, consumer groups, and app providers, were short on meaningful real-time solutions to the pressing problem of false positives. Some of those commenters offer inchoate solutions that appear designed to entrench the status quo and kick the can down the road. CTIA recommends “an ongoing and constructive dialog”¹³ and claims that blocking and labeling must be “better contextualized and understood.”¹⁴ SiriusXM wholeheartedly agrees with the consumer groups that the FCC and not “the industry” should solve this issue.¹⁵ But the consumer groups would postpone white lists until after SHAKEN/STIR is implemented,¹⁶ a process expected to take years to fully implement and one that is not even designed to address the problem of false positives, but rather the discrete issue of spoofing.

Consumer groups would also discourage solutions by imposing all the costs of solving this public policy quandary on call originators. This approach would delay implementation of broad solutions that would equally benefit all PSTN users. There are numerous reasons why the

¹² *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Reply Comments of SiriusXM at 13 (Aug. 20, 2018) (“*SiriusXM Aug. 20 Reply Comments*”).

¹³ CTIA Comments at 2.

¹⁴ *Id.*

¹⁵ Comments of Consumers Union, National Consumer Law Center, on behalf of its low-income clients, Consumer Federation of America, Consumer Action, National Association of Consumer Advocates, Public Citizen, and Public Knowledge (“*Consumer Group Comments*”) at 3.

¹⁶ *Id.* at 8.

costs of white lists and other solutions must be shared across the complete calling ecosystem.¹⁷

Call originators are hardly the sole beneficiaries of finding near-term solutions to the problem of false positives. Common carriers have a legal duty to complete all legal calls on a nondiscriminatory basis and, as such, they too would benefit from a white list to help ensure their compliance with their statutory duties not to engage in unjust and unreasonable, or discriminatory practices under 47 U.S.C. §§ 201-202. In addition, consumers receiving calls would benefit from a white list, to the extent they have requested those calls. Consumers also expect to receive calls regarding matters that could have critical importance to them, such as emergency evacuations, credit card fraud alerts, pharmacy pickups, doctor's appointments, and school closings. Implementation costs must therefore be shared broadly across all beneficiaries.

Comcast's only proffered solution is to have Providers list contacts and third party contacts on their websites.¹⁸ While having responsive contacts available is necessary, callers cannot complain if they don't know who blocked or mislabeled their call in the first place (further arguing for some form of intercept message or code or other feedback mechanism). Since it's impractical for originating callers to reach out to every originating, intermediary, and terminating Provider in the country who might be responsible for blocking their calls, white lists would provide a centralized system to support lawful callers. Charter recommends that ATIS and other industry standard setting bodies should develop solutions.¹⁹ Although such an approach has benefits, those bodies are dominated by the largest Providers and exclude

¹⁷ If feasible, the costs should instead be imposed on the true cost-causers, paid for out of penalties imposed on illegal scammers and spoofers.

¹⁸ Comcast Comments at 11.

¹⁹ Charter Comments at 5. Likewise, First Orion claims that "industry is best suited to establish standards that providers might adopt, such as a timeframe for adding numbers to a white list, and best practices for sharing the data with other providers." First Orion Comments at 12.

originating callers, smaller Providers, and consumer representatives, among others. Moreover, several years of discussions among the industry groups themselves have yielded very little in terms of concrete, effective solutions.

Charter also emphasizes “empowering consumers to decide what calls they receive.”²⁰ While SiriusXM agrees with this sentiment, empowering consumers must start with delivering Caller ID (including CNAM)²¹ on every call, whether wireline or wireless. To the extent there are impediments to the delivery of Caller ID over wireless services, the Commission should require the removal of all such impediments and emphasize the need to deliver Caller ID including CNAM before any other label could be displayed on a consumer’s handset. T-Mobile is leading the way by offering a service, called T-Mobile Name ID, that delivers Caller ID to its wireless customers who so request.²² If the Commission allows call labeling to continue, it should be permitted only where the Provider first populates Caller ID. Empowering consumers should also require that consumers are given clear disclosures about the definitions of various call labels, the adverse implications of call blocking and labeling,²³ and that calls will go through based on prior business relationships. This will require the use of terms far more refined than “telemarketer.”

²⁰ Charter Comments at 1.

²¹ As previously noted, references to Caller ID herein include CNAM.

²² See <https://www.t-mobile.com/resources/name-id> (last verified Oct. 9, 2018). First Orion claims that there are “call originator misunderstandings . . . the adoption levels of Caller ID/Name in the wireless ecosystem . . .” First Orion Comments at 12. SiriusXM understands that Caller ID (including CNAM) is less prevalent in the wireless ecosystem. But providers should not be permitted to add derogatory labels to calls, especially if they have not first made Commission-sanctioned CNAM available as the first label on the handset.

²³ See *SiriusXM Aug. 20 Reply Comments* at 8-9.

CTIA also claims that decreased answer rates could be caused by consumers simply not picking up their phone.²⁴ While this may be true, it ignores that overblocking has significantly contributed to consumer disenchantment with the telephone network, as many consumers perceive that the only calls successfully passing through the network are those coming from spoofers and scammers. Moreover, consumers' choosing not to answer their phones doesn't explain why originating callers often receive either busy signals on blocked calls or inaccurate out-of-service messages for numbers that in fact remain in service. CTIA also tries to distinguish between false positives and "consumers making informed decisions to decline calls using tools that have been made available by carriers and others."²⁵ But it is those very tools that are creating false positives by failing to provide consumers with adequate information on which they can base their decisions. This lack of information results in consumers' blocking or ignoring calls that they might actually have wanted to receive.²⁶

Blame for that problem largely rests with CTIA's member carriers, who apply or offer call labels (or who work closely with app providers who perform that function) but don't first provide Caller ID to give customers the name and number of the calling party. CTIA cannot claim that carriers are "unlikely to be the source of significant false positive errors" when AT&T and other carriers admit in their comments to broadly classifying callers as "telemarketers," without recognizing existing business relationships that may exist between callers and consumers.

²⁴ CTIA Comments at 20.

²⁵ *Id.*

²⁶ See, e.g., First Orion's statistic that its customers are dialing back a full 10% of calls labeled "Scam Likely." First Orion Comments at 9 & fn. 19.

Finally, First Orion tries to unduly limit the Commission’s valid inquiry by arguing that some of the most effective solutions are beyond the scope of this proceeding.²⁷ This inquiry is a broad one, as it should be. The Consumer and Governmental Affairs Bureau recognized that “third-party applications that offer call blocking or labeling services directly to consumers” were “generally” “beyond the scope” of its Public Notice,²⁸ but the scope of the Commission’s inquiry encompasses “the extent to which providers include access to these services as part of their own offerings”²⁹ The Public Notice also appropriately addresses Provider labeling, asking: “Should there be restrictions on how providers label calls?” and broadly inquires, “What measures could be used to reduce false positives?”³⁰ The Public Notice properly recognizes the breadth of this inquiry and as a result, the Commission should take whatever steps are necessary within the broad ambit of this proceeding to curb false positives.

IV. THE COMMISSION SHOULD IMPLEMENT THE FALSE POSITIVE SOLUTIONS OFFERED BY SIRIUSXM AND OTHER COMMENTERS

Many parties urged the Commission to adopt meaningful near-term solutions to the problem of false positives and the Commission should draw from those comments to implement such solutions.

²⁷ First Orion Comments at 8.

²⁸ Public Notice at 3.

²⁹ *Id.*

³⁰ *Id.* The Commission’s inquiry has been a broad one from the outset. *See, e.g., Advanced Methods to Target and Eliminate Unlawful Robocalls*, Notice of Proposed Rulemaking and Notice of Inquiry, CG Docket No. 17-59, para. 39 (rel. Mar. 23, 2017) (“Second, we seek comment on implementing a process to allow legitimate callers to notify providers when their calls are blocked and to require providers immediately to cease blocking calls when they learn that the calls are legitimate.”); *id.*, para. 37 (“We seek to avoid the blocking of such legitimate calls and, instead, seek to ensure that legitimate calls are completed. We thus seek comment on protections for legitimate callers. Specifically, should we require providers to ‘white list’ legitimate callers who give them advance notice? Should we establish a challenge mechanism for callers who may have been blocked in error?”).

White List/Trusted Caller Database. A wide variety of commenters recommended, as SiriusXM did,³¹ that the Commission should adopt an industry-wide white list database to insulate lawful callers from call blocking and derogatory labels. ITTA, representing broadband providers, recognized the value of such a list and making it industry-wide: “ITTA submits that an industry-wide white list will facilitate timely sharing of information among providers.”³² Any such industry-wide list must be under Commission jurisdiction to ensure that the list is properly managed, a task that can be performed only by a neutral third party administrator. In addition to SiriusXM and ITTA, the ABA, Encore, and RESA,³³ among others, have also called for the adoption of a white list or trusted caller database. This approach would vastly improve the ability of calls to transit the PSTN without undue interference. Those opposed to white lists have not offered any valid rationale against them. CTIA’s claim that white lists “are fundamentally antithetical to federal telecommunications policy of open and seamless call completion”³⁴ is doublespeak: the current practices of CTIA’s members frustrate the Commission’s policies on call completion and white lists would actually help further this longstanding policy by ensuring that calls are completed, not blocked. And contrary to CTIA’s claims, white lists would also not be especially “difficult to update” or any less secure than any other database.³⁵

Call Intercept Messages or Codes. Numerous commenters joined SiriusXM in recognizing the value of call intercept messages, codes, or some other form of notification to

³¹ SiriusXM Comments at 7-9.

³² ITTA Comments at 2.

³³ ABA Comments at 5; Encore Comments at 3-4; RESA Comments at 5-6.

³⁴ CTIA Comments at 22.

³⁵ See CTIA Comments at 22.

inform callers that their calls are being blocked and by what entity.³⁶ Originating callers need this basic feedback so they know what to do when they learn that a call has been blocked.

Again, there is no compelling argument against implementing a more accurate form of signaling to replace the inaccurate busy signals and other inaccurate signaling commonly used today. Such signaling does not “raise CPNI issues”³⁷ because the CPNI regulations are geared toward preventing carriers from abusing certain of their own customer information in their own marketing initiatives. Changing the signal sent back to make it accurate would also not, as CTIA argues, “create massive network overhead and congestion.”³⁸ Signals are already being returned on the calls in question, but they’re just not accurate, so changing the signaling would not increase congestion. These dire predictions are designed to dissuade the Commission from taking necessary action to resolve a highly pressing problem for a wide spectrum of American businesses.

Mandatory Caller ID. A number of commenters urged the Commission to require Caller ID be displayed before any other label on a call. SiriusXM and RESA have recommended that this would be an important step towards improving information flow to allow consumers to make informed choices.³⁹

Time Frame to Resolve Illegal Blocking. There was a consensus among many commenters that the Commission should adopt a specific, brief, time frame for Providers to

³⁶ See, e.g., RESA Comments at 7-8; ABA Comments at 5; Encore Comments at 4.

³⁷ CTIA Comments at 23.

³⁸ *Id.*

³⁹ SiriusXM Comments at 4; RESA Comments at 4.

resolve issues surrounding illegal call blocking and inaccurate labeling. SiriusXM recommended two business days, while others have recommended similarly tight timeframes.⁴⁰

SiriusXM urges the Commission to adopt these and other constructive solutions to begin to eliminate the false positives currently prevalent in the calling ecosystem.

V. THE COMMISSION SHOULD NOT EXPAND PROVIDER BLOCKING AUTHORITY OR ADOPT SAFE HARBORS UNTIL IT HAS FULLY ADDRESSED THE ISSUE OF FALSE POSITIVES

SiriusXM disagrees with the proposal of AT&T, CTIA and others that Providers be afforded even broader authority to block legal calls and a safe harbor from liability for blocking legitimate calls, provided certain criteria are met.⁴¹ Given the current state of overblocking and Providers' apparent inability to distinguish between legal and illegal calling, SiriusXM does not support broader blocking authority until measures are implemented to protect legal callers. Allowing broader authority prior to taking such measures is certain to lead to additional false positive blocking of legal calls.

The procedures that AT&T recommends are also flawed. AT&T states that the "telephone number at issue is dialed prior to placing a block,"⁴² yet AT&T says nothing about whether its procedures require that they actually reach a person when the number is dialed. Many legal dialers like school systems or doctor's offices could have numbers that are dedicated to making only outbound calls. Calls made to such numbers might well not be answered and yet AT&T could proceed with blocking without having verified that the calls are coming from a

⁴⁰ See, e.g., Comments of NTCA – The Rural Broadband Association at 3 (Jan. 23, 2018) (recommending immediate resolution); PACE Comments at 5 (1 business day response time); and Comments of Noble Systems Corporation, at 9 (Jan. 23, 2018) (1 business day to act on a request).

⁴¹ AT&T Comments at 9-10; CTIA Comments at 4-7.

⁴² AT&T Comments at 10.

legitimate source. In addition, AT&T sets the low bar of a “reasonable, good-faith basis” to believe the calls are illegal. Given the harm that can be caused legitimate businesses by having their legal calls blocked, there should be a much higher level of certainty. The fact that AT&T requests a safe harbor from liability further suggests that AT&T does not have confidence that its actions will block only illegal calls. Before granting AT&T broader authority to block calls, the Commission should refocus Providers, data analytics companies, and app providers on fixing the problem of false positives by implementing the meaningful solutions recommended in these and other comments in this proceeding.⁴³

While a safe harbor could be effective after the Commission has adopted appropriate means to ensure that legal calls are not blocked, it would be counter-productive to adopt a safe harbor at this point in time. As the VON Coalition explained:

Without a safe harbor for overly-broad and potentially clumsy call blocking techniques, carriers are rightfully under pressure to improve their current call screening measures. The FCC’s deferral on a safe harbor has already led to the advent and implementation of advanced call screening approaches and more agile algorithms from voice service providers.⁴⁴

SiriusXM agrees with the VON Coalition that adopting a safe harbor at this point could only make matters worse in terms of Providers’ implementing solutions to address false positives. Moreover, common carriers already have the opportunity to file tariffs and enter into contracts that provide protections from certain complaints relating to their activities necessary to complete calls on a common carrier basis. Those tariffs are part of the *quid pro quo* of becoming a common carrier: carriers take on the obligation to deliver all calls coming across their network

⁴³ If the Commission does proceed with a proposal along these lines, it should require the display of Caller ID first before any other label across all platforms of any participating carrier, including all wireline and wireless affiliates.

⁴⁴ VON Coalition Comments at 2.

on a nondiscriminatory basis to the intended called party but with tariff protections from those who might try to sue the phone company for actions performed in completing this expansive obligation.

SiriusXM also opposes the American Cable Association (“ACA”) proposal to offer an “informed opt-out process” whereby consumers would be required to opt-out of call blocking tools. ACA’s comments are clearly not focused on illegal calling but on so-called “unwanted” calls, stating: “Consumers receiving robocall-blocking technology from their providers on an opt-out basis can be confident the technology will block unwanted calls and allow other calls to be received.”⁴⁵ However, consumers could not have such confidence because the tools developed to date do not accurately separate legal from illegal calls, or wanted from unwanted calls, do not include clear definitions of categories, and do not provide them with the information they need to make informed blocking decisions. The lack of standards and definitions around these blocking tools makes them highly unpredictable and unreliable. Indeed, if consumers are not using these tools, it may not be, as the ACA suggests,⁴⁶ due to consumer inertia, but rather because the tools are not yet sufficiently refined and consumers are concerned that they will miss important, legitimate, and wanted calls. The Commission should therefore reject ACA’s proposals regarding the adoption of such tools through opt-out mechanisms. It should in fact prohibit the use of consumer-choice tools unless consumers are also given sufficient information enabling them to make informed decisions as to whether calls are in fact “wanted” or “unwanted.

⁴⁵ ACA Comments at 6-7.

⁴⁶ *Id.* at 5.

VI. CONCLUSION

SiriusXM appreciates the Commission's emphasis in the Public Notice on false positives, a serious problem plaguing originating callers as well as their customers who often fail to receive their calls as both calling and called parties intended. The Commission should act swiftly to adopt the concrete pragmatic recommendations offered by SiriusXM and others on how to curb such false positives. These include developing a white list or trusted caller database to ensure that legitimate callers are not blocked or mislabeled, consistent with the Commission's longstanding policy of requiring universal call completion by common carriers. The Commission should also adopt call intercept messaging or codes for blocked calls, require that Caller ID be transmitted before any other label on a phone display, and require a relatively brief time frame in which legal calls must be unblocked upon notice to the Provider by the originating caller.

Respectfully Submitted,

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