

**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

COMMENTS OF SIRIUS XM RADIO INC.

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Sirius XM Radio Inc. (“SiriusXM”) hereby submits these comments in response to the Commission’s Further Notice of Proposed Rulemaking and request for comment on mechanisms to prevent the increasingly prevalent and harmful unlawful blocking and labeling of legal phone calls.¹ This recent and alarming trend appears to have resulted from Commission actions permitting carriers and other service providers to block illegal calls in certain circumstances, including the Commission’s Order permitting voice service providers to block calls purporting to originate from invalid, unallocated, or unassigned numbers.²

SiriusXM is the world's largest radio company measured by revenue with approximately 32.7 million subscribers. SiriusXM’s satellite radio service is available in vehicles from every major car company and on smartphones and other connected devices as well as online at siriusxm.com. Similar to other legitimate businesses, SiriusXM makes telephone calls to its customers, often as follow-up calls to ongoing customers or to customers

¹ See *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, Report and Order and Further Notice of Proposed Rulemaking, FCC 17-151, CG Docket No. 17-59, ¶¶ 57-59 (rel. Nov. 17, 2017) (“*Order and FNPRM*”).

² *Id.*

who get a subscription with their purchase of a new or used vehicle. While sharing the Commission's desire to prevent "spoofing" and other illegal telemarketing practices, SiriusXM is being harmed by overly-aggressive blocking and mislabeling of legal, TCPA-compliant calls, which became a significant problem in the spring of 2017. As this result was not the intent of the Commission's actions, SiriusXM appreciates the Commission's prompt efforts to rectify this problem.

A significant number of SiriusXM's entirely legal calls are currently being illegally blocked. SiriusXM expressed this same concern in its November 8th and 9th meetings with the five Commissioners' offices.³ Consistent with the positions expressed in those meetings, SiriusXM urges the Commission to: (1) ensure that voice service providers⁴ ("Voice Service Providers" or "Providers") clearly notify callers when their calls are blocked; (2) require a designated contact person at each Provider to address complaints regarding illegal and unwarranted blocking; and (3) require that Providers establish procedures to resolve complaints to address illegal call blocking within five (5) business days. These comments expand on these recommendations in light of the Commission's request for further comment, including addressing the issue of illegal and inaccurate call labeling, the role of app providers, "white lists," and emphasizing the need for efficient mechanisms to unblock large blocks of numbers.

³ See Letter from Scott Delacourt, Wiley Rein, former counsel to Sirius XM Radio Inc. to Ms. Marlene H. Dortch, CG Docket No. 17-59 (Nov. 9, 2017).

⁴ While SiriusXM's prior submission focused on measures addressed to "carriers," the Commission's recent Order and rules applied to all "voice service providers." The Commission defines "voice service providers" to include telecommunications carriers, but also interconnected and one-way VoIP service providers, and CMRS providers, all of which are subject to the Commission's call completion rules. See *Order and FNPRM* at fn. 29. SiriusXM agrees that call unblocking requirements should apply to all voice service providers as defined by the Commission, and will refer to them herein as Voice Service Providers or Providers.

I. The Commission Should Continue to Enforce Its Longstanding Policy of Call Completion by Requiring Voice Service Providers to Complete All Legal Calls

The Commission should adopt rules reemphasizing Providers’ obligation to complete all legal calls pursuant to its longstanding prohibition against call blocking.⁵ Establishing and enforcing efficient, one-step mechanisms requiring Providers to unblock and “unlabel” calls will ensure that the public switched network continues be governed by the policy of ubiquitous call completion. Anything less than such an immediate mechanism will undermine and devalue the public switched network as the nation’s primary and universally available communications network.

The Commission has found that call blocking carries with it the “potential to downgrade the reliability of the nation’s communications network” and “harms consumers.” *Id.* See also *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, Declaratory Ruling and Order, 22 FCC Rcd 11629, 11629 (rel. June 28, 2007). The Commission has also said that “precedent does not permit unreasonable call blocking.” *Id.* The Robocall NPRM carried forward this policy with its focus on permitting Providers to block only illegal robocalls under a limited, clearly defined set of circumstances. See *Robocall NPRM*, ¶¶ 10-13. The Commission permitted call blocking consistent with its new rules but also cautioned that “a provider that blocks calls that do not fall within the scope of these rules may be liable for violating the Commission’s call completion rules.” *Order and FNPRM*, ¶ 9. The Commission’s recent proceeding on rural call completion reinforced the policy strongly favoring call

⁵ See *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, FCC 17-24, CG Docket No. 17-59, Notice of Proposed Rulemaking and Notice of Inquiry, ¶ 9 (rel. Mar. 23, 2017) (“*Robocall NPRM*”).

completion and the *Order and FNPRM* in this docket cited to its rural and non-rural call completion rules. *Id.* (citing 47 C.F.R. 64.2101 *et seq.*).

To ensure that call completion continues to be the default requirement, the Commission should require all Voice Service Providers to adopt the one-step unblocking mechanism described in Section III below. The Commission should also prohibit any blocking conducted by Providers in coordination with third party application or software “app” providers. Not only are Providers in the best position to ensure the Commission’s call completion rules are being followed, but Providers are also subject to the Act’s nondiscrimination requirements requiring them to carry and complete all calls in a nondiscriminatory manner.⁶ Either Providers are themselves preventing calls from being completed or they are in contractual arrangements or close coordination with those who are more directly responsible. The Commission should not allow Providers to hide behind algorithms implemented by app providers, particularly where Providers typically integrate such apps into their own products and services, encourage or direct customers to use those apps, or otherwise coordinate and/or contract with such third party providers. The Commission should hold Providers responsible for any such third party activity as though the Providers themselves were performing those actions.

⁶ Section 202(a) of the Communications Act provides:

It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

47 U.S.C. § 202(a).

II. Call Labeling is Tantamount to Call Blocking and Should Be Addressed by the Commission

The practice of call labeling, where Providers or app providers (or the combination of the two working in tandem) associate incoming phone numbers with typically unflattering or demeaning labels, is proliferating hand-in-hand with the increased incidence of illegal call blocking. For example, a wireless carrier might work in tandem with an app provider to offer call labeling of incoming calls by including such apps on phones or directing the Provider's customers towards such apps. The problem with call labeling is that the practice is inherently discriminatory because there are no standards defining how calls are labeled and the databases used to attach labels to particular numbers are arbitrary and not publicly available.

To be clear, if a consumer prefers to block a particular caller based on the consumer's perception of the call's value, that is the consumer's absolute prerogative and SiriusXM does not advocate interfering with that blocking decision. But increasingly, third parties are unjustifiably and inexplicably attaching negative labels to calls, and labels have the same practical effect as call blocking. These labels apparently derive from databases developed not by individual customers, but by app providers based on arbitrary standards that they themselves devise (and won't disclose). High call volumes, for example, are apparently unilaterally deemed by Providers and app providers as a sufficient basis to attach denigrating labels to all calls from those numbers. If a call is arbitrarily labeled as "spam" – a term the Commission reserves for email and texts⁷ – or "telemarketer" or "unwanted call," a called party is strongly discouraged from answering the call. This is particularly damaging when the customer has an existing business relationship or, in one form or another, agreed to be

⁷ See FCC Website at <https://transition.fcc.gov/cgb/consumerfacts/canspam.pdf> (last checked January 23, 2018).

contacted by the calling party and the customer in fact wants or needs the call to go through.⁸ Common carriers passing telephone calls with such random mislabeling are engaging in discrimination by treating some calling parties differently than others based upon arbitrary characteristics.⁹

The Commission should put an end to such call labeling by requiring that, upon request by any calling party attesting that its calls from a particular number are legal, Providers must display *only* the company's true Caller ID (in our case, "SiriusXM"), as the sole label associated with calls from that number. The Commission should prohibit any effort to categorize calls by type or category because any such categorization involves subjective value judgments and arbitrary, discriminatory decisions. The Commission can and should impose its authority over non-carriers involved in labeling calls by prohibiting Providers from contracting, coordinating, or cooperating with any entity that engages in such practices or passes telephone traffic including such labels.

III. The Commission Should Adopt a Simple One-Step Mechanism to Unblock Calls and Halt Call Labeling

The Commission should require that carriers implement a simple process to promptly unblock lawful calls blocked in error. As a first step in this process, Providers must provide

⁸ Numerous parties filing in this docket have expressed concerns that their desired calls could be blocked or inhibited. *See, e.g.*, Comments of the American Bankers Association at 2 (Sept. 26, 2017) (concern about inhibiting banks from placing many pro-consumer communications, including suspicious activity alerts, data security breach notifications, and low balance alerts); Ex Parte Letter from Paul G. Martino, Vice President, Senior Policy Counsel, National Retail Federation at 2 (Nov. 17, 2017) (referencing texts indicating package delivery times or unexpected delays in delivery, text messages notifying customers when their online orders are ready for in-store pick-up, and reminder calls or text messages to pharmacy customers that prescribed medicine is ready for pick-up); Comments of the Student Loan Servicing Alliance (SLSA) to the Second Notice Of Inquiry at 2 (Aug. 28, 2017) (student loan servicing trade association expressing concern about telephone calls to borrowers to educate them on and facilitate the use of myriad repayment options).

⁹ *See* 47 U.S.C. § 202(a).

callers with notice when their calls are being blocked or labeled. The Commission has already found that such accurate customer notification is necessary and that failure to provide such accurate notice can constitute an unjust and unreasonable practice in violation of Section 201(b) of the Act.¹⁰ Accordingly, any Provider that is currently signaling a fast busy for a legal call or is providing any other misleading notification due to call blocking applications when calls should be completed is in violation of Section 201(b).

As an immediate near-term solution, the Commission should require that a calling party can inquire as to whether any particular number is being blocked or labeled and receive an immediate response. That process will permit the calling party to make a request, accompanied by a sworn statement that its calls are legal under the Commission's rules, to have all calls from that number unblocked. Upon such a request, a Provider must unblock calls from that number in five (5) business days, absent documented proof of *illegal* calling. For this purpose, evidence of complaints of mere volumes of calls from a particular number will not suffice. It goes without saying that companies using telemarketing may make large volumes of calls, but volume alone doesn't render calls illegal or appropriate for blocking or discriminatory labeling.

The responsibility to ensure that calls are not blocked rests with Voice Service Providers, as does the responsibility to assess and remedy the problem. When a calling party finds that its calls are not completing, it cannot be the caller's obligation to determine where in the network the problem is occurring before directing its unblocking demand to the

¹⁰ See, e.g., *In the Matter of Developing a Unified Inter-carrier Compensation Regime; Establishing Just and Reasonable Rates for Local Exchange Carriers*, Declaratory Ruling, CC Docket No. 01-92, WC Docket No. 07-135, DA 12-154 (Feb. 6, 2012) at ¶ 13 ("it is a deceptive and misleading practice, and therefore unjust and unreasonable under section 201(b), to inform a caller that a number is not reachable or is out of service when the number is, in fact, reachable and in service.").

responsible party. To do so would delay resolution and place the caller in the position of having to evaluate the Provider's network, not to mention the networks of connecting carriers, the potential involvement of app providers, and the entire course of the call, to identify the source of the problem. This information is not within the control of calling parties nor is it easily ascertainable by them. Providers are in the best position to ascertain where the problem is occurring, they are the ones obligated by law to complete the calls in the first instance, and they cannot avoid the responsibility for compliance.

Providers and app providers engaging in call blocking or call labeling should be required to designate a contact person to address complaints regarding unwarranted blocking and labeling. Providers should also be required to: (1) adopt a web-based mechanism by a date certain to handle requests relating to larger volumes of phone numbers so calling parties can submit multiple numbers at once and (2) implement a web-based mechanism to look up whether a number is being blocked or labeled. The Commission could provide a reasonable time to establish these web-based interfaces, but it should make other more direct solutions immediately available to ensure that blocking of legal calls is strictly prohibited.

As one such immediate solution, the Commission must establish adequate enforcement mechanisms so Providers and app providers violating these rules can be brought before the Commission, including opening its informal complaint and mediation processes to complaints on these issues.¹¹ The Commission could also make its Accelerated Docket available to resolve issues of these types.¹² Finally, the Commission should apply strict penalties to any

¹¹ Calling parties that make use of the informal complaint and mediation processes for call blocking and labeling issues must be able to do so without being considered to have elected Commission remedies over other judicial remedies by merely filing informal complaints or requesting mediation. *See* 47 U.S.C. § 207.

¹² *See* 47 C.F.R. §§ 1.720-1.736.

Provider or app provider that flouts its call unblocking and “unlabeling” requirements.

SiriusXM supports the Commission’s efforts to adopt technical, long-term solutions to validate calls and mitigate unlawful spoofing to ensure the caller-indicated Caller ID is accurately represented. Such efforts include the development and implementation of the Secure Telephony Identity Revisited (“STIR”) and Signature-based Handling of Asserted information using toKENs (“SHAKEN”) authentication standards for voice calls.¹³ SiriusXM sees value in the SHAKEN/STIR initiative, but such long-term remedies are no substitute for the near-term solutions proposed herein which will provide immediate relief for calls currently being illegally blocked and labeled.

The Commission has also requested comment on “white listing,” a process that would create a master list of all numbers that are deemed to be used to originate legal calling.¹⁴ SiriusXM supports the concept of a white list, at least as an interim measure until SHAKEN/STIR is fully implemented. Rather than requiring companies initiating calls to make the same request to potentially scores of Providers and app providers, the Commission should become the repository of such a white list and require Providers and app providers to notify the Commission when numbers are white listed. Alternatively, the Providers could themselves develop a mechanism to jointly house and enforce a white list to which all Providers would have access. Ultimately, such a centralized solution would be significantly more efficient for all entities involved.

¹³ See *Call Authentication Trust Anchor*, Notice of Inquiry, 32 FCC Rcd 5988 (2017).

¹⁴ See *Robocall NPRM*, ¶¶ 38-39.

IV. CONCLUSION

The measures SiriusXM proposes will provide much-needed avenues so that legal, TCPA-compliant calls can be completed and completed without misleading or judgmental labels. Since the Providers themselves have not come up with any prompt and effective solution to this problem, SiriusXM appreciates the Commission's efforts to ensure that legal calls are no longer blocked. SiriusXM urges the Commission to adopt the requirements detailed herein.

Respectfully Submitted,

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