

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Advanced Methods to Target and Eliminate)	CG Docket No. 17-59
Unlawful Robocalls)	
)	

**COMMENTS OF
THE USTELECOM ASSOCIATION**

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Table of Contents

I. Industry Stakeholders Are Best Suited to Develop and Implement Mechanisms to Address Erroneously Blocked Calls.....	1
II. The Commission Should Distinguish Between Network-Level (Non-Opt-In) Blocking by Carriers, and Opt-In Blocking by Consumers	4
III. The FCC’s Complaint Framework is Ill Suited for Addressing Instances of False Positives.	6
IV. Measuring the Effectiveness of Robocalling Efforts.	9
V. Conclusion.....	12

Summary

The Commission should reject proposals that would require providers who block calls to provide some form of challenge mechanism to originating callers. Such rigid regulatory mandates are ill-suited to the highly fluid and dynamic robocalling environment. Instead, the Commission should encourage and support ongoing industry-led efforts that are developing approaches for addressing instances of false positives. A broad range of industry stakeholders are currently working collaboratively to develop frameworks and best practices for addressing instances of false positives, and the Commission should encourage such efforts. These industry-led efforts are far better suited for addressing instances of false positives since they are capable of greater flexibility, adaptability, and consensus than more rigid, regulatory frameworks.

The Commission should refrain from requiring challenge mechanisms and/or intercept messages associated with such blocking as proposed in the Notice, since illegal robocallers are notoriously adaptable and quick to adjust to countermeasures. Just as illegal robocallers have used autodialers and spoofing to carry out their campaigns, the use of challenge mechanisms or intercept messages would be an equally valuable tool when used by illegal actors. Such mechanisms would be the equivalent of a telephonic ‘radar detector’ that would provide illegal robocallers with affirmative, real-time information regarding which of their spoofed numbers are being blocked, and which are not.

Of course, there may be instances where some providers may choose to implement certain challenge mechanisms or intercept messages on a standing or periodic basis. However, the Commission should leave such operational decisions to the discretion of voice providers, and should not mandate a single framework or approach for use in such instances.

The Commission should also distinguish between the network-level blocking at issue in its Blocking Order, and consumer-opt-in blocking options offered by a wide variety of both service providers and third parties. The former includes the four narrow categories of carrier-initiated blocking adopted in the Blocking Order, while the latter category is not addressed in either the Notice or the Blocking Order. Consumer opt-in blocking has proliferated following the Commission’s clarification in the 2015 TCPA Order regarding providers’ implementation of call-blocking technology.

To maximize consumer utility, call blocking and/or labeling services should retain flexibility as to how narrowly (or broadly) calls are blocked and/or labeled. While already clear, the Commission should therefore reiterate that, under its 2015 TCPA Order, if a consumer has provided informed consent for her service provider or third party provider to block or label calls on their behalf, a calling party that claims to have been incorrectly blocked or mislabeled has no legal basis to require the blocking service provider (whether a service provider or a third party) to unblock any traffic or to change how it categorizes or scores its calls.

The Commission’s 2015 TCPA Order concluded that consumers have expansive rights in choosing whether and how to block, label, screen, decline or accept any call they receive – regardless of whether that call is legal or illegal, or wanted or unwanted. Such expansive rights will continue to accrue to the benefit of all consumers, since it encourages a diversity of options

for robocall blocking/labeling tools, with different providers competing with varying approaches to call blocking and labeling.

USTelecom maintains that instances of false positives are best addressed through voluntary industry collaborative efforts, and not through the Commission's complaint process. For a variety of reasons, the Commission's existing complaint framework is not well suited for addressing instances of false positives. For example, the Commission's current complaint database captures a broad range of telephony related complaints that may prove daunting for anyone submitting a complaint, and would also not be a sufficiently timely or even accurate method for resolving potential blocking disputes. There is also significant potential that bad actors – whether illegal robocallers, or nefarious agitators – could wreak havoc through abuse of the Commission's complaint database. A more timely approach – and one which a broad range of industry stakeholders are already moving towards – is to facilitate communications directly between call originators and voice and scoring/analytics providers.

Finally, the Commission should reject its mandatory reporting proposal limited solely to voice providers, and replace it instead with a more informative voluntary reporting framework covering a broader range of stakeholders. The Commission's narrow focus on voice service providers runs the risk of missing integral stakeholders and their key data inputs. The narrow reporting that would result from a framework limited just to voice service providers could also create significant consumer confusion, since it would provide the Commission and consumers with only a partial view of robocall efforts and effectiveness. For example, third-party blocking services such as YouMail and Nomorobo are not formally affiliated with any voice service provider, but nevertheless have blocked hundreds of millions of robocalls combined. Even third-party providers that have partnered with voice providers offer their services independently to consumers. Because such consumers fall outside the purview of voice providers, the Commission's proposed reporting mandate would miss a significant volume of blocked/labelled calls and would invalidate any attempt to evaluate the benefit of the Commission's efforts.

Moreover, a voluntary reporting framework would provide the Commission with greater flexibility for reporting criteria than would be available under a mandatory reporting framework. As the Commission is well aware, the robocall environment is a highly fluid, and rapidly evolving space, where tactics, technologies, measures and countermeasures quickly change over short periods of time. Avoiding a framework that would require both PRA and OMB approval, would enable the Commission to more quickly and efficiently adapt its reporting efforts to reflect changes in the marketplace.

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The USTelecom Association (USTelecom)¹ submits these comments in response to the Report and Order and Further Notice of Proposed Rulemaking (Notice) released by the Federal Communications Commission (Commission) in the above-referenced proceedings.² Through its Notice, the Commission seeks comment on proposed mechanisms to address instances of erroneously blocked calls (*i.e.*, false positives),³ as well as proposed reporting mechanisms for measuring the effectiveness of government and industry robocalling efforts.⁴

I. Industry Stakeholders Are Best Suited to Develop and Implement Mechanisms to Address Erroneously Blocked Calls

The Commission’s blocking order (“Blocking Order”) accompanying the Notice encouraged providers who block calls within the four established criteria to identify and quickly rectify instances of false positives. In its Notice, the Commission asks whether it should require

¹ USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

² Report and Order, Further Notice of Proposed Rulemaking and Notice of Inquiry, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, 32 FCC Rcd. 9706, FCC 17-151 (released November 17, 2017) (*Notice*).

³ *Notice*, ¶¶ 57 – 58.

⁴ *Id.*, ¶ 59.

providers who block calls to provide some form of challenge mechanism to originating callers.⁵ USTelecom maintains that such rigid regulatory mandates are ill-suited to the highly fluid and dynamic robocalling environment. Instead, the Commission should encourage and support ongoing industry-led efforts that are developing approaches for addressing instances of false positives.

A broad range of industry stakeholders are currently working collaboratively to develop frameworks and best practices for addressing instances of false positives. For example, in November of last year, USTelecom convened a widely attended workshop that broadly explored best practices with respect to identifying potentially unwanted calls and effectively communicating necessary information to consumers. Another important goal of the workshop was to explore appropriate industry mechanisms for ensuring efficient feedback mechanisms for legitimate robocallers to communicate relevant information to analytics engines in order to address the risk their calls may be mislabeled. USTelecom is currently planning its follow-up workshop, which will take place at either the end of the first quarter, or beginning of the second quarter, 2018.

An industry-led approach is far better suited for addressing instances of false positives because it is capable of greater flexibility, adaptability, and consensus than is a more rigid, regulatory approach. For example, industry stakeholders and collaborative industry forums can more rapidly respond and adapt to changing marketplace developments than can a federal agency's rulemaking process. To cite just one example, the Messaging Malware Mobile Anti-

⁵ *Id.*, ¶ 57.

Abuse Working Group has instituted a number of best practices and initiatives that have been instrumental in mitigating the effects of malware and e-mail spam.⁶

The Commission should also refrain from requiring challenge mechanisms and/or intercept messages associated with such blocking as proposed in the Notice.⁷ Illegal robocallers are notoriously adaptable and quick to adjust to countermeasures implemented by industry. For example, as the deployment of robocall mitigation tools increased over the last year, instances of neighbor spoofing – which randomize the caller identification numbers used in illegal robocalling schemes to closely match those of the call recipients – has increased and is more difficult to mitigate.

Just as illegal robocallers have used autodialers and spoofing to carry out their campaigns, USTelecom is concerned that the use of challenge mechanisms or intercept messages would be an equally valuable tool when used by illegal actors. Such mechanisms would be the equivalent of a telephonic ‘radar detector’ that would provide illegal robocallers with affirmative, real-time information regarding which of their spoofed numbers are being blocked, and which are not. Ironically, such mechanisms would likely benefit illegal robocallers more than others since they would serve as a beacon, immediately notifying them of when they need to change tactics.

Of course, there may be instances where some providers may choose to implement certain challenge mechanisms or intercept messages on a standing or periodic basis. However, the Commission should leave such operational decisions to the discretion of voice providers, and should not mandate a single framework or approach for use in such instances as such a diverse

⁶ See e.g., M3AAWG website, *Best Practices* (available at: <https://www.m3aawg.org/published-documents>) (visited January 23, 2018).

⁷ Notice, ¶ 57.

implementation of mitigation tools makes it more cumbersome for illegal robocallers to adjust their tactics.

II. The Commission Should Distinguish Between Network-Level (Non-Opt-In) Blocking by Carriers, and Opt-In Blocking by Consumers

As the Commission moves forward in this proceeding, it is important for it to distinguish between the network-level blocking at issue in the Blocking Order, and consumer-opt-in blocking options offered by a wide variety of both service providers and third parties (including smartphone apps, Nomorobo's simultaneous ring-based service, devices that plug into customers' phone jacks, etc.).⁸ The former includes the four narrow categories of carrier-initiated blocking adopted in the Blocking Order,⁹ while the latter category is not addressed in either the Notice or the Blocking Order. Rather, consumer opt-in blocking has proliferated following the Commission's clarification in the 2015 TCPA Order regarding providers' implementation of call-blocking technology.

In instances where carriers initiate blocking within the four narrow categories outlined in the Blocking Order, industry is moving to determine how best to address instances of false positives. For example, as noted in the report to the Commission on the do not originate (DNO) efforts of the Industry Traceback Group,¹⁰ USTelecom emphasized the significant safeguards put in place to ensure that false positives do not occur. Similar measures for avoiding false positives

⁸ The Commission's website includes an online portal that directs consumers to resources that help consumers of wireless, traditional landline, and VoIP voice services to stop annoying robocalls. See, Commission Robocall website, *Web Resources for Blocking Robocalls* (available at: <https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts>) (visited January 23, 2018).

⁹ See, Notice, ¶ 1 (allowing providers to block calls from phone numbers on a Do-Not-Originate (DNO) list and those that purport to be from invalid, unallocated, or unassigned numbers).

¹⁰ See, Ex Parte Notice, from Kevin G. Rupy, USTelecom, to Marlene H. Dortch, Secretary, Federal Communications Commission, CG Docket No. 17 – 59 (June 14, 2017).

are being developed and considered with respect to the three other categories of carrier-level blocking.

Moreover, as noted previously in these comments, various industry stakeholders – including USTelecom – have undertaken comprehensive efforts to identify and implement recognized best practices to ensure the appropriate integrity for call blocking efforts at all levels. Both voice service providers and third party application providers should develop best practices for fielding and processing input from call originators in the context of blocking or labeling services offered to consumers. These efforts include coordination between call originators, voice service providers, scoring and labelling services, as well as government stakeholders.

The Commission should keep in mind that, to maximize consumer utility, call blocking and/or labeling services should retain flexibility as to how narrowly (or broadly) calls are blocked and/or labeled calls. While already clear, the Commission should therefore reiterate that, under its 2015 TCPA Order, if a consumer has provided informed consent for her service provider or third party provider to block or label calls on their behalf, a calling party that claims to have been incorrectly blocked or mislabeled has no legal basis to require the blocking service provider (whether a service provider or a third party) to unblock any traffic or to change how it categorizes or scores its calls.¹¹ Such an approach would run counter to the 2015 TCPA Order, since it would afford rights to call originators that the Commission has expressly held belong to consumers.

¹¹ Declaratory Ruling and Order, *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 30 FCC Rcd 7961, 80 FR 61129, FCC 15-72 (released July 10, 2015) (*TCPA Order*).

Specifically, the 2015 TCPA Order acknowledges that “the Commission has established that *consumers* have a right to block calls,”¹² and that “services that allow consumers to designate categories of incoming calls (not just individual telephone numbers) to be blocked, such as a ‘telemarketer’ category, also constitute consumer choice within their right to block calls.”¹³ In other words, the Commission already has concluded that consumers have expansive rights in choosing whether and how to block, label, screen, decline or accept any call they receive – regardless of whether that call is legal or illegal, or wanted or unwanted.

Such expansive rights will continue to accrue to the benefit of all consumers, since it encourages a diversity of options for robocall blocking/labeling tools, with different providers competing with varying approaches to call blocking and labeling. The Commission should encourage such diversity and competition, and make clear that it does not intend to chill competition or innovation in this space by prescribing specific feedback mechanisms.

III. The FCC’s Complaint Framework is Ill Suited for Addressing Instances of False Positives.

The Commission also seeks comment as to whether its complaint process is an appropriate mechanism for addressing instances of false positives. USTelecom maintains that instances of false positives are best addressed through voluntary industry collaborative efforts, and not through the Commission’s complaint process. For a variety of reasons, the Commission’s existing complaint framework is not well suited for addressing instances of false positives.

¹² *TCPA Order*, ¶ 158 (emphasis in original).

¹³ *Id.*, ¶ 157.

For example, the Commission's current complaint database¹⁴ captures a broad range of telephony related complaints that may prove daunting for anyone submitting a complaint. Specifically, the Commission's complaint database already captures twelve diverse categories of complaints, ranging from unwanted calls and junk faxes, to open internet and rural call completion. Adding yet another category of complaints to the database could therefore make an already daunting process that much more challenging.

In addition, the Commission's existing complaint database framework would not be a sufficiently timely or even accurate method for resolving such disputes. In terms of timeliness, utilization of the Commission's complaint database would unnecessarily delay resolution of legitimate false positives. For example, aggrieved parties would presumably first need to file a complaint with the Commission through its database (assuming they are aware of it), and then await subsequent action by appropriate agency staff. In this regard, it is also unclear which bureau (or bureaus) within the Commission would be (or should be) responsible for coordinating such remediation efforts. Regardless, Commission staff would then need to make a determination as to whether the complaint is legitimate, where the source of the call blocking resides, and who to contact in order to obtain resolution. Ultimately, establishing such a portal through the Commission would only create an unnecessary bottleneck for call originators and providers working to resolve the instances of false positives.

Finally, there is also significant potential that bad actors – whether illegal robocallers, or nefarious agitators – could wreak havoc through the Commission's complaint database. For example, illegal robocallers could theoretically utilize the Commission's complaint database to

¹⁴ See, Commission website, Consumer Complaint Center (available at: <https://consumercomplaints.fcc.gov/hc/en-us>) (visited January 23, 2018).

remove blocks on specific numbers that they may be targeting (for example, those belonging to robocall victims who have previously given up money), or to otherwise overwhelm the system with bogus blocking complaints.

A more timely approach – and one which a broad range of industry stakeholders are already moving towards – is to facilitate communications directly between call originators and voice and scoring/analytics providers. Of particular importance, all of these stakeholders are highly motivated to develop and implement solutions to address illegal robocalls. Legitimate call originators are obviously motivated to ensure that they can communicate with their existing customers, whereas scoring and analytics companies want to provide the most accurate service possible to their subscribers.

For voice providers, it is an understatement to say that illegal robocalls impact our customers' experience. In some instances, illegal robocall events can range from merely annoying residential consumers, to impacting enterprise service customers through telephony denial of service attacks. Like other stakeholders engaged in these efforts, USTelecom's members desperately want to develop ways to combat this problem and in the most error-proof way possible, and industry-led efforts are far better suited for achieving this goal than are prescriptive regulatory mandates.

Of course, providers engaged in network-level blocking need to take reasonable measures both to identify appropriate numbers to block and to have mechanisms in place to un-block where calling parties identify false positives. With such measures in place, service providers should have a safe harbor from any liability.¹⁵ On the other hand, the Commission's complaint process is always available to the extent any party identifies a service provider that: (i) does not

¹⁵ See, Reply Comments of AT&T, CG Docket No. 17-59, pp. 4 – 12 (submitted July 31, 2017).

have such measures in place; and (ii) has shown a pattern of systematically acting in an unreasonable way with respect to blocking activities. The Commission should make clear that, regardless of whether a safe harbor is in place, isolated incidents of incorrectly blocked numbers or ranges of numbers, while unfortunate, should not and will not be deemed to be violations of the Commission's rules.

IV. Measuring the Effectiveness of Robocalling Efforts.

The Commission also seeks comment on how best to measure the effectiveness of its robocalling efforts as well as those of industry.¹⁶ In proposing a reporting mandate, however, the Commission defines "industry" to solely include "voice service providers." Such an approach is ill suited to the Commission's goal of examining the effectiveness of stakeholder efforts, since it would fail to capture valuable insights from multiple other stakeholders that play an integral role in robocall mitigation efforts. The Commission's reporting mandate should therefore be rejected, and replaced instead with a more informative voluntary reporting framework covering a broader range of stakeholders.

The Commission's narrow focus on voice service providers runs the risk of missing integral stakeholders and their key data inputs. The narrow reporting that would result from a framework limited just to voice service providers could also create significant consumer confusion, since it would provide the Commission and consumers with only a partial view of robocall efforts and effectiveness. For example, the Commission asks in its Notice what "consumer benefits would come from requiring all voice service providers to publicly report the

¹⁶ Notice, ¶ 59.

number of illegal robocalls blocked each day/month/year?”¹⁷ This question ignores the fact that a good deal of robocall blocking occurs outside the purview of voice service providers.

For example, third-party blocking services such as YouMail and Nomorobo are not formally affiliated with any voice service provider, but nevertheless have blocked hundreds of millions of robocalls combined. Even third-party providers that have partnered with voice providers offer their services independently to consumers. Because such consumers fall outside the purview of voice providers, the Commission’s proposed reporting mandate would miss a significant volume of blocked/labelled calls and would invalidate any attempt to evaluate the benefit of the Commission’s efforts.

The Commission could avoid such incomplete results by making its reporting framework voluntary. A voluntary reporting framework would offer all key stakeholders an opportunity to provide their valuable insights to the Commission. Such stakeholders include third-party application and service developers, consumer groups, academics, and government agencies at the local, state and federal level. Such an approach would provide the Commission with a broader range of information from an increased number of stakeholders operating in the robocall environment.

Moreover, a voluntary reporting framework would provide the Commission with greater flexibility for reporting criteria than would be available under a mandatory reporting framework. As the Commission is well aware, the robocall environment is a highly fluid, and rapidly evolving space, where tactics, technologies, measures and countermeasures quickly change over short periods of time. Since a mandated reporting obligation would be subject to the time-consuming requirements of Office of Management and Budget (OMB) and Paperwork Reduction

¹⁷ *Id.*

Act approval, it would be difficult for the Commission’s reporting framework to keep pace with the highly dynamic and rapidly evolving robocall space.

Moreover, avoiding a framework that would require both PRA and OMB approval, would enable the Commission to more quickly and efficiently adapt its reporting efforts to reflect changes in the marketplace. For example, the Commission’s video competition report in 2009 – which are not subject to PRA and OMB approval – dedicated an entire section to “Home Video Sales and Rentals.”¹⁸ Yet in its subsequent report, the Commission acknowledged the rapid changes in the video marketplace by replacing that category with one addressing online video distributors such as Netflix.¹⁹ If the Commission seeks valuable reporting insights in the robocall context, a mandated reporting framework will deprive it of the necessary flexibility and speed needed in the robocall environment.

Finally, the Commission should also encourage voluntary reporting about new tactics used by illegal actors in carrying out their robocall schemes. Such information could include the spoofing of legitimate numbers, neighbor spoofing and mirror spoofing, that bad actors may deploy in order to bypass blocking tools. Understanding and disseminating this type of information would be extremely informative to the Commission, industry and consumers, and should therefore be a part of the Commission’s overall robocall policymaking activities.

¹⁸ Thirteenth Annual Report, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 24 FCC Rcd 542, FCC 07-206, ¶¶ 164 – 167 (released January 16, 2009).

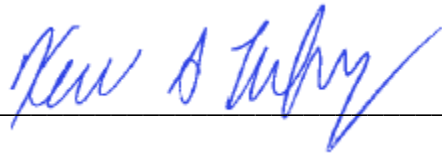
¹⁹ Fourteenth Annual Report, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 27 FCC Rcd 8610, FCC 12-81, ¶ 2, ¶¶ 237 – 342 (released July 20, 2012).

V. Conclusion.

USTelecom appreciates the Commission's proposals in this proceeding related to the ongoing battle against illegal robocalls. USTelecom encourages the Commission to continue to work in a collaborative manner with all stakeholders engaged on this issue, and to evaluate its proposals consistent with the issues and concerns discussed above.

Respectfully submitted,

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