

**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 COLONIAL PENN LIFE INSURANCE COMPANY

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Colonial Penn Life Insurance Company (“CPL”) hereby submits these comments in response to the Commission’s Further Notice of Proposed Rulemaking and request for comment on measures and mechanisms to prevent unlawful call blocking of legal calls in the wake of the Commission’s recent order cracking down on spoofing and other illegal practices.¹

CPL markets its life insurance products through various media channels and provides a phone number for prospective customers to call to express their interest in these products. When customers call and leave their phone numbers with an answering service expressing their interest in our products, CPL then returns phone calls to those customers to provide them additional information about our life insurance products. Despite the fact that CPL’s calls are entirely legitimate, invited by its prospective customers, CPL marketing calls are now routinely and categorically blocked by call blocking providers in contravention of longstanding Commission policies. CPL calls are also routinely mislabeled as “Spam” or unwanted calls, a practice that CPL considers tantamount to call blocking. Given the importance to CPL of rectifying widespread illegal call blocking and mislabeling, CPL appreciates the Commission’s recent

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

request for comment on mechanisms to unblock legal calls such as these return calls placed by CPL to prospective customers.

CPL supports the Commission's initiatives to dampen the recent increase in illegal robocalling, provided that it also takes near-term measures to ensure that legitimate businesses like CPL engaging in constructive sales and marketing activities are not caught up in efforts to weed out the bad actors. As far back as June 18, 2015, the Commission first gave the green light to carriers to work with call blocking providers to block illegal robocalls.² This led to an increase in the blocking and labeling (and often mislabeling) of legal calls and robocalls. Although carriers were not eager to block calls directly, they did not hesitate to coordinate with or refer customers to call blocking providers like Nomorobo, Truecaller, and Hiya. In 2016, the Commission convened its Robocall Strike Force ("Strike Force"). The Strike Force published its Robocall Strike Force Report ("Strike Force Report") on October 26, 2016 which requested that the Commission provide guidance on when voice service providers³ ("Voice Service Providers" or "Providers") could block illegal calls.

In March 2017, the Commission requested comment on measures it should take to address the recent increase in illegal robocalling, including "spoofing" of Caller ID. The Commission also requested comment on measures to ensure that legitimate callers were not stifled in the process, including the potential adoption of a shared "white list" of legitimate

² *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Order (rel. June 18, 2015).

³ The Commission's recent Order and rules applied to all "voice service providers," defined to include carriers, 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. In these comments, CPL refers to Voice Service Providers or Providers to apply to all such voice service providers. CPL supports the Commission's application of its rule broadly to all such Providers.

callers and potential mechanisms to allow legitimate callers to complete their calls.⁴ On September 21, 2017, CPL submitted a detailed ex parte letter recommending that the Commission establish a white list of legitimate callers, in light of the large number of Voice Service Providers and the practical difficulty associated with contacting all of them seriatim, merely to ensure that a company's fully legitimate calls are completed.⁵ On November 17, 2017, the Commission issued its *Order and FNPRM*, permitting limited blocking directly by Voice Service Providers of calls purporting to originate from invalid, unallocated, or unassigned numbers.

CPL is concerned that efforts to encourage call blocking, albeit with the best of intentions, have been launched without adequate protections for legitimate callers. The last few years' policies have led to widespread blocking and mislabeling of legitimate calls that, in CPL's case, are effectively return calls to prospective customers requesting more information about CPL's life insurance products. CPL appreciates the Commission's desire to implement an effective mechanism to unblock legitimate calls.

CPL urges the Commission to adopt a simple and streamlined mechanism whereby a legitimate caller can have its calls unblocked by any Voice Service Provider or call blocking provider (*e.g.*, Hiya). The mechanism should only require that a caller attest that it is not engaging in any of the activities prohibited by the Commission in the *Order and FNPRM* and is engaged in legitimate calling. Calls should be required to be unblocked within five (5)

⁴ See *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Notice of Proposed Rulemaking and Notice of Inquiry, ¶¶ 38-39 (rel. Mar. 23, 2017) ("*Robocall NPRM*").

⁵ Letter from James C. Falvey, Counsel for CPL, to Marlene H. Dortch (Sept. 21, 2017) ("*CPL Ex Parte*").

business days, absent specific evidence of *illegal* calling (not to include a mere showing of unidentified and unadjudicated customer complaints).

The Commission should ensure that the informal complaint process is available for FCC complaints that calls are not being unblocked and should consider making the Accelerated Docket available to callers that continue to be blocked after a bona fide request. The Commission should also establish a white list and require providers to add to the universal white list those callers and numbers that have attested to making only legal calls. Finally, CPL strongly urges the Commission to address inaccurate call labeling which is tantamount to call blocking, as further detailed herein.

I. A SIMPLE AND STREAMLINED MECHANISM WILL ENSURE THAT BUSINESSES CAN REACH PROSPECTIVE CUSTOMERS

A. The Commission's Longstanding Policies in Favor of Call Completion

The Commission has throughout the last century enforced a strong and consistent policy against the blocking of calls in order to ensure that calls complete, regardless of carrier disputes, technological incompatibilities, or other obstacles. The Commission continues to state clearly this historical policy, referring recently to its “strong policy against allowing voice service providers to block calls” and noting that it has allowed call blocking only in “rare and limited circumstances.” *Robocall NPRM*, ¶ 9. The Commission has a “longstanding general prohibition on call blocking” because it has 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) (“precedent does not permit unreasonable call blocking.”) As such, the Commission’s *Robocall NPRM* was focused solely on permitting

Providers to block illegal robocalls, and only under a limited set of circumstances. *See Robocall NPRM*, ¶¶ 10-13.

The Commission's *Order and FNPRM* reflect that emphasis:

a provider who blocks calls in accordance with these rules will not violate the call completion rules. Conversely, a provider that block 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 (citing 47 C.F.R. 64.2101 *et seq.*). *See also id.*, ¶ 8 (“The Commission has generally found call blocking by voice service providers to be unlawful.”) In light of this emphasis on the completion of legitimate calls, it is critical that the Commission adopt a simple and streamlined policy that will allow legitimate callers to quickly and efficiently ensure that calls from their numbers are not blocked.

B. The Mechanism To Unblock Calls Should Be Simple and Streamlined

If the Commission is to continue its longstanding policy of encouraging call completion, any mechanism to allow callers to request the unblocking of their calls must be simple, speedy, streamlined, and straightforward. We are starting from a point, unfortunately, where many legitimate callers are currently having their calls blocked by Voice Service Providers and call blocking providers without legal justification. CPL is just one of many companies whose legitimate calls have been caught in the recent increase in call blocking. The initiation of call blocking by call blocking providers was in most instances not subject to any review or legal standard. CPL has approached call blocking providers and found that their decisions to blacklist callers can be based on a certain level of complaints from the “user community.” The level or nature of the complaints are thoroughly undocumented and there is no transparency. CPL is concerned that Voice Service Providers will make similar undocumented decisions. If there is undue red tape or litigation required to unblock a phone number, these *ad hoc* decisions to block

certain numbers will continue in effect. The Commission's policy and rules favoring call completion therefore requires a simple and efficient mechanism to unblock phone numbers by legitimate requesting callers.

CPL recommends a mechanism whereby an originating calling party can attest that its calls are not of a kind prohibited by the *Order and FNPRM* and are legitimate calls. Any Voice Service Provider or call blocking provider⁶ that receives such a request must confirm receipt and unblock the number within five (5) business days, unless it can produce documented evidence of *illegal* calling. Call blocking providers will often cite to what they consider to be a large volume of "complaints" by the "user community" as their basis for blocking a certain phone number. This is not documented evidence of illegal calling.⁷ The Commission should require specific evidence of illegal calling, not merely high volumes of calls or an arbitrary number of unadjudicated complaints, to refuse any unblocking request. Where the illegal nature of calls involves alleged autodialing, the Commission should also require specific evidence that autodialing as defined by the Commission has been deployed.

All Voice Service Providers and call blocking providers should be required to provide upon the effective date of new rules a contact name, email address, and phone number that will

⁶ The Commission's rules and orders must apply to companies that provide call blocking applications and technology in addition to Voice Service Providers. In some instances, multiple Voice Service Providers will work in tandem with the same call blocking providers. Requiring these call blocking providers to abide by the same rules as Voice Service Providers will allow originating calling parties to have their calls unblocked more efficiently, without approaching every Voice Service Provider in the country. Moreover, the Commission can ensure jurisdiction over the most prominent call blocking providers by requiring them to register with the Commission, and prohibiting carriers from transacting any call blocking provider that has not registered. *See CPL Ex Parte* at 3.

⁷ Moreover, the volume of complaints is not meaningful without information as to how many calls are made from a given number. Complaints referenced by call blocking providers are neither documented nor adjudicated complaints, where research and review would reveal, for example, the nature of the calls and whether they were requested by the called party. A pharmacy, for example, might get a high volume of complaints, but most pharmacies are not making illegal calls but rather letting customers know their prescriptions are available for pick-up.

be responsive to requests for unblocking. The Commission should require that within three (3) months of the effective date of new rules, Voice Service Providers and call blocking providers should provide a web-based interface to accept requests for the unblocking of calls, with a seamless, one-step process whereby an originating calling party can make the attestation detailed above and receive timely notice that a particular number has been unblocked.

C. The Commission Should Address Call Labeling as Well as Call Blocking

The Commission's primary focus to date has been deterring the growing volume of illegal robocalling. This effort has had the unintended consequence of permitting an unacceptable level of illegal call blocking by Voice Service Providers and call blocking providers alike. But in the same time frame, an equal or perhaps even greater threat to ubiquitous call completion has been developing, the now widespread practice of random and arbitrary call labeling or, as is often the case, mislabeling. As the Commission addresses illegal call blocking, it should also be considering measures to prevent the mislabeling of calls, which can discourage call completion and have the same effect as call blocking.

To be clear, CPL understands that individual subscribers may choose to block certain calls or apply labels proactively to individual phone numbers that they have identified as unwanted calls. CPL is not advocating any measures that would inhibit individual end users decisions or actions relating to number-specific call blocking or labeling. CPL is, however, very concerned about call blocking providers and applications that generically label calls from their own proprietary and confidential database of numbers with often misleading or inaccurate labels. There is currently a complete lack of transparency in the manner in which such labels are applied and, as discussed further below, the Commission should, at a minimum, require better notification and transparency in connection with such labels.

False and misleading labels are all too common. One of the labels commonly used by call labeling providers is “Spam” or “Suspected Spam.” Yet the Commission’s definition of “spam” has no application whatsoever to phone calls, and is limited to unwanted email and text messages. *See* FCC Website at <https://transition.fcc.gov/cgb/consumerfacts/canspam.pdf> (last checked January 23, 2018). There is currently no policing of labels applied by call blocking and labeling providers, to the detriment of calling and called parties alike.

The simplest rule would be to require that upon a request by an originating calling party that can attest that its calls are entirely legal calls, a Voice Service Provider or call blocking provider must display only that calling party’s Caller ID to the called party. Caller ID after all is the only fully sanctioned messaging and provides the called party with the identity of the calling party. After that, the called party can make its own judgments as to the nature of the calls and whether it would like to individually block such calls in the future. Without such a rule, providers that engage in call labeling will continue to mislabel calls with false and misleading labels, effectively blocking large volumes of calls.

D. Notification and Transparency

CPL fully supports adopting a means to notify originating calling parties by means of an intercept notice that indicates that a call has been blocked and a contact number to unblock calls from that number. Given that such notices could take time for the industry to develop, CPL believes the Commission’s near-term priority should be an immediate requirement that all Voice Service Providers and call blocking providers respond within three (3) business days to any request by an originating calling party as to whether a particular number is currently being blocked or labeled. This should include information as to whether that number is included in any list of numbers that receive any kind of differential treatment, including

labeling of calls originating from that number. Voice Service Providers and call blocking providers should be required to detail: (a) what differential treatment (blocking, labeling, etc.) is being applied to that number; and (b) contact information to make a request to cease the call blocking and labeling.

E. Enforcement Mechanisms

CPL supports streamlined enforcement mechanisms to provide an efficient means to resolve disputes over illegal call blocking and call labeling. CPL supports the use of the FCC’s informal complaint process, as well as existing mediation procedures, to provide an immediate outlet for such disputes. Those who take advantage of such procedures should be permitted to do so without electing FCC jurisdiction as their sole forum, and should be permitted to have recourse to judicial processes in the event that the informal complaint and/or mediation processes fail.⁸ The Commission should also consider providing preferential recourse to the Commission’s Accelerated Docket as an additional avenue of relief.

II. THE COMMISSION SHOULD CONTINUE TO PURSUE WHITE LISTING OF NUMBERS USED FOR LEGAL CALLING

The Commission has previously requested comment on the manner in which a shared white list could be developed providing a single, universal list of numbers that should not be blocked by any provider. *Robocall NPRM*, ¶¶ 38-39. The Commission inquired whether a white list would assist “to proactively avoid” the blocking of calls. *Id.*, ¶ 38. The need for a white list stems from the fact that a calling party should not be required to chase down every LEC, CLEC, cable company, VoIP provider, and call blocking provider in the country in order to guarantee that their entirely legal and legitimate calls complete. Placing such a burden on parties, in many cases smaller companies, trying to place legitimate calls

⁸ See 47 U.S.C. § 207.

significantly undermines the Commission's longstanding rules and policy favoring call completion. The Commission may want to first adopt other measures creating an avenue for calls to be quickly unblocked, and then proceed to implement a white list mechanism that provides a more orderly, organized, and coordinated industry-wide mechanism to unblock certain calls. By taking a staged approach, the Commission can also provide for the security of the white list to protect against potential abuses of the list.

CPL has previously provided a detailed *ex parte* indicating that a white list would be a significant step in the right direction. *CPL Ex Parte*, at 4-5. The Commission could itself establish such a white list and permit calling parties to contact the Commission directly in order to have their numbers added to the white list by making the attestation detailed above. Alternatively, the Commission could require that any number white listed by a Voice Service Provider or call blocking provider be added by that provider to a centralized Commission white list. In the *CPL Ex Parte*, CPL recommended that providers be given ten (10) business days to place a company's number on their own white list, and an additional ten (10) business days to notify the Commission that such number has been white listed.

III. CONCLUSION

CPL applauds the Commission for recognizing the need to create a streamlined process to ensure that legitimate calls are not blocked or mislabeled. CPL urges the Commission to adopt simple, streamlined procedures that will allow originating calling parties to ensure that their calls are no longer blocked or labeled; to address the issue of call labeling as well as call blocking; to require transparency by all providers; and to require an industry-wide white list as a long-term solution to provide a more coordinated and comprehensive solution to the problem of call blocking and labeling.