

**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 THE RETAIL ENERGY SUPPLY ASSOCIATION

James C. Falvey, Esq.
Robert J. Gastner, Esq.
Eckert Seamans Cherin & Mellott, LLC
1717 Pennsylvania Avenue, N.W.
12th Floor
Washington, DC 20006
(202) 659-6655
jfalvey@eckertseamans.com
*Counsel for the Retail Energy
Supply Association*

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The Retail Energy Supply Association (“RESA”)¹ 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 the unlawful blocking of legitimate phone calls.² This increasing impediment to legitimate commerce appears to be an unintended consequence of the Commission actions permitting carriers and other service providers to block illegal robocalls.³

¹ The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

² 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*”).

³ *Id.*

I. RESA's Members' Marketing Efforts Promote Electricity and Natural Gas Competition

RESA is a non-profit organization and trade association comprised of over twenty retail electricity and natural gas suppliers operating throughout the United States.⁴ Some members of RESA supply both electricity and natural gas to residential, commercial and industrial customers, while some members may supply only electricity or natural gas. However, all of RESA's members share the common vision that competitive retail electricity and natural gas markets deliver a more efficient, customer-oriented outcome than does the monopoly-protected, rate-regulated utility structure. The marketing efforts of competitive energy suppliers promoting competition in the retail electric and natural gas industries are critical to implementing important public goals in those markets.

Unsurprisingly, competition in electric and natural gas markets has had a similar effect to the earlier introduction of competition into telecommunications markets.⁵ Competitive choice for retail electricity and natural gas is now available in thirteen states and the District of Columbia.⁶ In these jurisdictions, average electricity prices fell against inflation, whereas average electricity prices far exceeded inflation in states with traditional monopoly regulation.⁷ Moreover, jurisdictions with competitive choice, as a

⁴ *Who We Are*, RESAUSA.ORG, <https://www.resausa.org/about-us/who-we-are> (last visited January 22, 2018).

⁵ *Telecommunications Act of 1996*, FCC.GOV, <https://www.fcc.gov/general/telecommunications-act-1996> (last visited January 22, 2018) (“The Telecommunications Act of 1996 is the first major overhaul of telecommunications law in almost 62 years. The goal of this new law is to let anyone enter any communications business — to let any communications business compete in any market against any other.”).

⁶ Philip R. O'Connor, Ph.D and Erin M. O'Connell-Diaz, *Evolution Of The Revolution: The Sustained Success Of Retail Electricity Competition*, HARVARD.EDU (July 2015), https://sites.hks.harvard.edu/hepg/Papers/2015/Massey_Evolution%20of%20Revolution.pdf (last visited January 22, 2018).

⁷ *Id.*

group, have outperformed states with traditional monopoly regulation in energy generation, attracting billions of dollars of investment in new, more efficient generation.⁸

Competitive energy supply is a product offering that consumers are increasingly demanding and a public policy objective that requires RESA members to have the ability to reach out to potential customers through phone calling, in addition to other marketing channels. From 2003-2014, in the fourteen jurisdictions served by electrical load served by competitive suppliers grew dramatically even in an era of overall flat growth in electricity consumption: 181% for commercial / industrial customers and 673% for residential, accounting for twenty of every one hundred kilowatt hours sold in the contiguous United States.⁹ Nonetheless, there is still more room for growth, and competitive energy suppliers continue to market their services diligently and using telephone marketing as their primary outreach channel.

Unfortunately, the illegal blocking of RESA's members' marketing efforts threatens to impede the further growth of competitive energy suppliers, thereby significantly degrading competition in retail energy markets and ultimately harming consumers. RESA has confirmed that its members' legitimate attempts to connect with current and future customers are being illegally blocked. RESA therefore urges the Commission: (1) to ensure that voice service providers¹⁰ ("Voice Service Providers" or "Providers,") clearly notify callers in instances when their calls are blocked; (2) to require

⁸ *Id.*

⁹ *Id.*

¹⁰ The Commission has defined "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. RESA supports the Commission's application of call unblocking requirements to all such voice service providers.

that Providers and app providers disclose upon request whether a particular number or numbers are being blocked or labeled; (3) to provide a simple mechanism whereby numbers relating to legitimate calls are unblocked within five business days; (4) to ensure that all Voice Service Providers and app providers designate an individual contact to respond to requests to cease illegal and unwarranted blocking; (5) to require Voice Service Providers and app providers to provide a near-term process to address requests relating to multiple phone numbers, as well as longer term implementation of web-based systems for requesting unblocking and checking on whether numbers are being blocked or labeled; (6) to provide a more efficient “white listing” mechanism to provide a coordinated repository of unblocked numbers; and (7) to ensure vigorous enforcement of these rules to prohibit illegal blocking or labeling.

II. The Commission Should Continue Its Longstanding Policy to Ensure Call Completion

The Commission should continue its longstanding policy that Providers must complete calls and should implement rules that will ensure that all Voice Service Providers complete all legal calls in order to ensure that legitimate commerce is no longer adversely impacted. The most efficient way for the Commission guarantee ubiquitous call completion is to require Providers to establish procedures to unblock and “unlabel” calls quickly.

As the Commission has stated in the past “because call blocking poses a threat to the ubiquity and seamlessness of the network, the Commission has long had a strong policy against allowing voice service providers to block calls.”¹¹ The Commission justified this longstanding general prohibition on call blocking because “call blocking has

¹¹ 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, ¶ 9 (rel. Mar. 23, 2017) (“*Robocall NPRM*”).

the potential to degrade the reliability of the nation's communications network and that call blocking harms consumers.” *Id.* In its *Robocall NPRM*, the FCC created a very narrow exception to this prohibition to allow Providers to block illegal robocalls under a limited set of circumstances. *See Robocall NPRM*, ¶¶ 10-13. However, the Commission stressed 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, in order to maintain the effectiveness of its longstanding prohibition on call blocking, should require all Voice Service Providers and blocking providers to adopt the unblocking mechanism described herein to ensure that call blocking continues to be strictly prohibited beyond the very limited circumstances permitted by the Commission. The Commission should also prohibit any illegal actions by Providers in coordination with third party application or software providers for two reasons. First, Voice Service Providers are in the best position to ensure the Commission’s call completion rules are being followed. They have network visibility and understand best the manner in which they might be working with third party app providers. Second, Voice Service Providers are subject to nondiscrimination requirements that require them to carry and complete all calls in a nondiscriminatory manner.¹² If a Voice Service Provider is integrating third party apps

¹² 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.

into their own products and services, encouraging users to adopt such apps, or otherwise coordinating and/or contracting with such third party providers, those Voice Service Providers should be held accountable for any such integration or coordination with such third party app providers.

III. Call Labeling is Just as Significant an Abuse as Call Blocking and Should Be Restricted by the Commission

Not only has illegal call block proliferated in recent years, but RESA members have also experienced a marked increase in inappropriate call labeling. Call labeling occurs when Providers or app providers associate incoming phone numbers with particular, often misleading or inaccurate, labels. Call labeling is problematic in that there is no standard as to how calls are labeled, the decision making used to attach labels to particular numbers is often arbitrary and not publicly available, and there is no current mechanism for calling parties to challenge such labeling.¹³

Increasingly, Providers and/or app providers are attaching negative labels to calls, labels that have the same adverse impact on RESA's members as call blocking. These labels often derive not from decisions by individual customers or reference to the Commission's rules, but rather from the arbitrary and opaque decisions of the app providers themselves. When applied to RESA's members, these call labels can be particularly damaging because they run the risk of casting in a negative light widespread marketing efforts specifically designed to implement and promote the policy of competitive electric and natural gas markets. Voice Service Providers that engage

47 U.S.C. § 202(a).

¹³ RESA does not take issue with individual subscribers who decide to block particular numbers on a number-by-number basis.

directly or indirectly in such random mislabeling are engaging in inappropriate discrimination through the differentiation of calling parties based solely upon purely arbitrary characteristics.¹⁴

The Commission should take this opportunity to address not only illegal call blocking but call labeling as well. Upon an attestation by any calling party that calls from a particular number are legal, the Commission should require that Providers and blocking providers can only provide the company's Caller ID as the label associated with calls from a particular phone number. In addition, the Commission should restrict Providers from coordinating or cooperating with any entity that engages in such practices.

IV. The Commission Should Adopt a Streamlined Mechanism to Unblock Calls and Halt Call Labeling

In order to ensure that lawful calling continues unabated, the Commission should adopt, at a minimum, the following additional policies:

Unblocking of Calls: Any process adopted by the Commission should require that Providers promptly address complaints and unblock lawful calls blocked in error. When an originating calling party attests that it is engaged in legal calling from certain phone numbers consistent with all Commission rules and orders, Providers and blocking providers should be required to unblock all calls from such numbers within five (5) business days. In addition, upon a similar request, a Provider should be required to discontinue any call labeling and to use only the calling party's Caller ID going forward. In order for a Provider or blocking provider to refuse such an unblocking or unlabeled

¹⁴ See 47 U.S.C. § 202(a).

request, it must provide documented evidence of illegal calling by such calling party from such numbers.¹⁵

Notification: Voice Service Providers should also be required to provide notice when calls are being blocked or labeled. In the past, the Commission has 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):

The Commission has found that practices by common carriers that deceive or mislead customers are unjust and unreasonable practices under section 201(b). It is a deceptive or 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.¹⁶

The Commission should therefore reiterate that any Provider currently providing a misleading notification due to call blocking applications when calls should be completed is in violation of section 201(b).

Transparency. The Commission should require that any calling party have the ability to determine whether a particular number is being blocked or labeled. Such a process should allow a calling party to make a request, again, supported by documentation that its calls are legal, to any Voice Service Provider or call blocking provider and receive a prompt response as to whether calls to certain numbers are being blocked or labeled.

¹⁵ The fact that a number is the source of a high volume of calls, or that called parties have in the past made unadjudicated complaints concerning calls from such numbers, does not constitute evidence of illegal calling.

¹⁶ *In the Matter of Establishing Just & Reasonable Rates for Local Exch. Carriers*, Declaratory Ruling and Order, WC 07-135, 22 F.C.C. Rcd. 11629, 11631, ¶ 5 (2007)(Internal Reference Omitted).

Individual Designated Contact. Moreover, the Commission should require Providers and app providers that engage in call blocking or call labeling to designate a specific individual within the organization to serve as contact person to address complaints regarding unwarranted blocking and labeling.

Multi-Number Requests. The Commission should also require Providers to implement a near-term system to handle multi-number requests. Providers and blocking providers must immediately be prepared to handle requests to unblock and unlabel calls from multiple numbers in one attested request so that calling parties can submit multiple numbers at once. The Commission should over time require web-based solutions to handle such multi-number unblocking requests. These systems should also allow a calling party to determine through a web-based solution whether a number is being blocked or labeled.

White Listing. The Commission has previously requested comment on the creation of a “white listing” process whereby the Commission would implement and maintain a master list of all numbers that are used to originate legal calling.¹⁷ A white list approach is far by the most efficient, consolidated means to guarantee that legitimate calls are not blocked or labeled. The Commission should continue to consider such a solution, including any measures to ensure the security of such a white list. The need to secure such a white list is not a valid reason not to implement one, and the Commission

¹⁷ 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*”). RESA recommends that the FCC should become the repository of any such “white list,” as a centralized system would be more secure and impose less of a burden on all of the entities involved.

could include in such implementation strict penalties for any effort to breach such a database or abuse content derived therefrom.

Enforcement. The Commission must ensure that Providers and app providers who do violate the rules are subject to the FCC's enforcement powers and can be brought before the Commission when necessary. As such, the Commission should expand its informal complaint and dispute resolution processes to encompass complaints with respect to these issues.¹⁸ The Commission should also apply strict penalties to any Provider or app provider found to violate call unblocking and "unlabeling" requirements. Strong enforcement is critical to ensuring that calls are quickly and efficiently unblocked.

V. CONCLUSION

RESA's members, like countless other business entities, utilize telephone marketing as a primary sales channel to reach consumers and promote competitive electricity and natural gas markets. The recent uptick in the blocking of legitimate phone calls impedes our members' ability to compete with incumbent energy suppliers. RESA supports the Commission's proposal to establish a challenge mechanism by which callers can inform Providers of erroneous blocking and receive speedy resolution of blocking and labeling complaints. RESA therefore strongly recommends that the Commission adopt the notice, transparency, unblocking, "unlabeling," and, other measures proposed herein.

¹⁸ Calling parties that make use of the informal complaint and mediation processes for this issue 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.

Respectfully Submitted,

James C. Falvey, Esq.
Robert J. Gastner, Esq.
Eckert Seamans Cherin & Mellott, LLC
1717 Pennsylvania Avenue, N.W.
12th Floor
Washington, DC 20006
(202) 659-6655
jfalvey@eckertseamans.com
*Counsel for the Retail Energy
Supply Association*