

**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  
COLONIAL PENN LIFE INSURANCE COMPANY**

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Colonial Penn Life Insurance Company (“CPL”) hereby submits these reply comments in response to the comments submitted in response to the Commission’s Further Notice of Proposed Rulemaking 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.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

CPL markets its life insurance products to prospective customers who solicit additional information about those products by leaving their phone number, as detailed in our comments. Despite the fact that prospective customers have solicited information from CPL about CPL’s life insurance products, CPL’s calls to these same prospective customers are routinely blocked or mislabeled by voice service providers<sup>2</sup> and application providers (“App Providers”), working separately or in combination. Other businesses commenting in this proceeding reflect the same experience, where their legitimate, solicited calls, often carrying critical information, are routinely

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<sup>1</sup> 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*”).

<sup>2</sup> CPL agrees with the Commission’s definition of “voice service providers” and recommends that unblocking requirements should be applied both to those providers as well as app providers that perform the same blocking and labeling functions as voice service providers. See Comments of Colonial Penn Life Insurance Company (“CPL Comments”) at 2, fn. 3 (Jan. 23, 2018).

blocked and mislabeled.<sup>3</sup> The businesses adversely impacted come from a wide array of industries and establish a clear record that, as the Commission suggested by issuing its *Order and FNPRM*, there is an overblocking and mislabeling problem that needs to be addressed. These are companies that, like CPL, appear to have gone to great ends to ensure that they comply with the Telecommunications Consumer Protection Act (“TCPA”). Starting with the harm to CPL’s life insurance business, the record establishes harm to businesses across a broad spectrum of legitimate American enterprises, including:

- Life Insurance: “efforts to encourage call blocking . . . 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.”<sup>4</sup>
- Credit Unions: “credit unions have faced challenges in even providing their members with important informational calls.”<sup>5</sup>
- Retail Energy: “Unfortunately, the illegal blocking of RESA’s members’ marketing efforts threatens to impede the further growth of competitive energy suppliers . . . .”<sup>6</sup>
- Electronic Payment Companies: expressing concern about the blocking of “informational calls and other communications between businesses and their existing customers.”<sup>7</sup>
- Debt Collection Companies: “valid debt collection calls often get lumped into the same category of ‘robocall’ as *any* call made to a wireless number using a dialer.”<sup>8</sup>
- Satellite Radio: entirely legal calls to prospective SiriusXM customers currently being illegally blocked and mislabeled.<sup>9</sup>

CTIA concedes in its comments that if “a problem emerges from the carrier blocking authorized in the [2017] *Report and Order*, and legitimate callers are not receiving help, then the FCC can

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<sup>3</sup> See, e.g., Comments of Sirius XM, Inc. (“SiriusXM Comments”) at 2 (Jan. 23, 2018).

<sup>4</sup> CPL Comments at 3. To the extent that CPL refers to portions of other comments that CPL supports, this should not be taken as an endorsement of all the positions taken in any other party’s comments.

<sup>5</sup> Comments of the National Association of Federally-Insured Credit Unions at 1 (Jan. 23, 2018).

<sup>6</sup> Comments of the Retail Energy Suppliers Association (“RESA Comments”) at 3 (Jan. 23, 2018).

<sup>7</sup> Comments of the Electronic Payments Association at 2 (“EPA Comments”) (Jan. 23, 2018).

<sup>8</sup> Comments of Encore Capital Group, Inc. (“ECG Comments”) at 1 (Jan. 23, 2018).

<sup>9</sup> SiriusXM Comments at 2.

consider acting based on evidence and experience.”<sup>10</sup> In fact, the problem of overblocking and mislabeling of has been emerging since the Commission’s overbroad 2015 TCPA Order. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, WC Docket No. 07-135, Declaratory Ruling and Order (rel. July 10, 2015) (“*2015 TCPA Order*”). And this record is now replete with the evidence and experience CTIA claims is necessary in order for the Commission to act to resolve this pressing problem.

There is also a clear consensus among virtually all call originators that near-term Commission action is necessary, including significant support for CPL recommendations that the FCC should: 1) require notification of call blocking and labeling by call intercept messages; 2) require immediate relief from undue call blocking and mislabeling upon request by a call originator that attests it is TCPA-compliant; and 3) require that Caller ID only, without other labels, be displayed, upon request by a TCPA-compliant company that passes Caller ID.

## **II. THE COMMENTS REFLECT BROAD SUPPORT FOR CPL’S RECOMMENDATIONS**

### **A. Call Originators Offer the Only Clear and Consistent Standard as to When the Commission Should Permit Calls to be Blocked or Labeled**

One of the most insidious problems with call blocking and labeling is that it is currently being applied arbitrarily to business of all stripes without any transparency or standards as to why calls are being blocked or labeled. A number of commenters assert the right to continue to block and mislabel calls, based on these hidden standards and undisclosed data. Hiya, for example, asserts a right to continue these arbitrary tactics:

In terms of providing a guarantee to call originators that their calls will no longer be blocked or labelled differently, Hiya must stress that this should be at the

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<sup>10</sup> CTIA Comments at 6.

discretion of analytics companies, who have sophisticated algorithms in place to classify types of calls made by call originators.<sup>11</sup>

Hiya's approach is consistent with its response to CPL when CPL requested that Hiya stop blocking calls to CPL's prospective customers who had solicited information from CPL. Hiya refused to commit that it would cease blocking the solicited calls.<sup>12</sup> Other parties filing comments provided similar, vague, systems-driven standards that are all but assured of blocking legitimate calling. *See, e.g.,* Comments of Transaction Network Services, Inc., at 4 (touting its "real-time telephone number reputation analysis"); Comments of CTIA, at 5 (referring to First Orion's "analytic scoring system" and Verizon's "risk meter"). The Commission cannot permit third parties to establish arbitrary and non-public standards as to how and when calls will be blocked or labeled.

By contrast, a number of commenters have recommended the straightforward, bright-line rule that businesses that make the concerted effort to ensure that they are TCPA-compliant should be permitted to have their calls unblocked on relatively short notice. Colonial Penn Life recommended a rule whereby any business willing to attest to its TCPA compliance should receive such immediate relief.<sup>13</sup> Encore Capital Group also provided a bright line definition, focusing on the only publicly available legal standards: the TCPA, the Telemarketing Sales Rule, and federal and state fraud statutes.<sup>14</sup> These are all public, transparent, and discernible standards that businesses can understand and with which they can ensure full compliance. Allowing businesses to certify to such standards should ensure that their calls are not blocked or mislabeled.

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<sup>11</sup> Hiya Comments at 2-3 (filed Jan. 23, 2018).

<sup>12</sup> *See* Ex Parte Letter from James C. Falvey, counsel for Colonial Penn Life Insurance Company, to Ms. Marlene H. Dortch, FCC Secretary, CG Docket No. 17-59 (Sept. 21, 2017).

<sup>13</sup> CPL Comments at 5-7; SiriusXM Comments at 4; RESA Comments at 7-10.

<sup>14</sup> ECG Comments at 2.

Consumer advocates were the only other commenters to even proffer a meaningful standard.<sup>15</sup> Most of the consumer advocates' standard is in complete accord with the CPL's standard. They would require that: 1) the call originator is not spoofing; 2) the call is not illegal (with reference to the do Not Call Registry and current and historical TCPA compliance); and 3) numbers blocked individually by the call recipient should never be overridden.<sup>16</sup> So far, so good.

The consumer advocates go on, however, to selectively cite to the Commission's *2015 TCPA Order* for the proposition that call blockers have been given a free pass by the Commission to block any calls that they accurately or inaccurately group into categories, like "telemarketers."<sup>17</sup> USTelecom likewise makes the same mistake. USTelecom Comments at 5 ("a calling party that claims to have been incorrectly blocked or mislabeled has no legal basis to require the blocking service provider . . . to unblock any traffic or to change how it categorizes or scores its calls."). The fact is that the Commission's *2015 TCPA Order* did not provide carte blanche to block any and all calls, repeatedly focusing on "unwanted calls." *See 2015 TCPA Order*, ¶¶ 152, 155, 156, 157, 158, 159. *See also id.*, ¶¶ 154, 157, 161 (expressing concern about "mass unsolicited calling" events). And critically, from CPL's perspective, the *2015 TCPA Order* ***specifically required*** call blocking entities to refrain from blocking calls that were solicited by customers:

In order to aid customers in making such informed choices, we encourage technologies designed for blocking incoming calls that are part of mass unsolicited calling events to provide features that will allow customers to ensure that calls that are solicited . . . are not blocked, and that will allow customers to check what calls have been blocked and easily report and correct blocking errors.

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<sup>15</sup> Comments of Consumers Union, National Consumer Law Center, on behalf of its low-income clients, Consumer Action, Consumer Federation of America, National Association of Consumer Advocates, Public Citizen, and Public Knowledge at 4 (Jan. 23, 2018).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 4.

Despite this directive, more than one of the largest call blocking providers, informed by CPL that CPL's calls were solicited by CPL's customers, refused to confirm that CPL's calls would not be blocked. (To its credit, Nomorobo did provide such confirmation.) The Commission should make it clear (again) that call blocking providers must unblock and cease labeling solicited calls.

More generally, the *2015 TCPA Order* is a poor starting point for the Commission's analysis in 2018. The Order was not informed by the recent recognition that many consumer complaints emanate not from legitimate businesses making calls, but from spoofers and scammers impersonating them.<sup>18</sup> It was issued prior to the November 2017 *Order and FNPRM*, which has now forcefully addressed the issue of spoofing and other illegal actions. The *2015 TCPA Order* was entirely focused on cutting back on the volume of robocalls, with no attention to legitimate business operations. Now that the pendulum has swung too far in the direction of indiscriminate call blocking, the Commission should act to curtail those activities.

**B. There is a Broad Consensus Among Call Originators That Intercept Messages Would Serve a Critical Pro-Business Function**

The long list of commenters complaining about legitimate calls being blocked and mislabeled attest to the fact that call blocking and labeling providers are not accurately separating the wheat from the chaff. The algorithms clearly lack the ability to make the necessary subjective judgments about *why* calling parties are calling; in CPL's case, for example, they cannot detect that CPL is calling *back* its prospective customers. CPL submits that the Commission should not rule out putting call blocking and labeling on hold until there is a consensus as to how it can be done accurately and without widespread false positives. The

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<sup>18</sup> CPL has recently become aware that it currently the victim of a widespread spoofing campaign.



confusion and chaos, for both calling and called parties, is comparable to a world where self-driving cars have been legalized, with the kinks to be worked out later. Just because the Commission started down this blocking and labeling path, does not mean it needs to continue down it. At a bare minimum, the Commission should require providers to implement effective mechanisms to notify calling parties that they have been blocked or labeled, by what entity, and with a contact to provide a near-term remedy the overblocking and/or mislabeling.

This begins with effective notification. CPL believes that call intercept messages are the only means to provide the necessary information to calling parties whose businesses are being disrupted.<sup>19</sup> Having a mere signal returned indicates a problem, but does not provide the means to resolve it. A wide variety of commenters likewise support intercept messages and/or notifications.<sup>20</sup> Hiya, which proposes several constructive solutions to the issue of overblocking, also advocates the transmission of error codes.<sup>21</sup> If such error codes were provider-specific, this would represent progress. All blocking providers should be required to provide such intercept messages when calls are blocked and additional information, such as how a certain number is classified in a provider's database, within three (3) business days of a request.<sup>22</sup>

The few commenters opposing notification base their positions on a rationale that is not compelling. A common refrain in the comments is that any measure designed to stop the ongoing disruption of business outreach will only aid the "bad guys": "USTelecom is concerned that the use of challenge mechanisms or intercept messages would be an equally valuable tool when used by illegal actors."<sup>23</sup> The Commission's *Order and NPRM* and the implementation of

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<sup>19</sup> CPL Comments at 8.

<sup>20</sup> *See, e.g.*, RESA Comments at 8; PACE Comments at 5; ECG Comments at 2; SiriusXM Comments at 6-7.

<sup>21</sup> Hiya Comments at 2.

<sup>22</sup> CPL Comments at 8-9.

<sup>23</sup> USTelecom Comments at 3.

SHAKEN and STIR will route out illegal robocallers. In light of the Commission’s longstanding policy supporting call completion, notification is necessary for legitimate callers to know their calls are being blocked or labeled.

**C. The Comments Support a Speedy Mechanism to Unblock and Unlabel Calls**

While a variety of commenters vaguely recommended a “challenge mechanism,”<sup>24</sup> CPL urges the Commission to mandate quick turnaround on requests to unblock and unlabel calls. Merely creating a mechanism to challenge the undue blocking of calls does not address the current problem unless there is a specific, concrete requirement to bring near-term closure to such challenges.

The comments recommend that without this second bookend, the delays and inaction faced by CPL when requesting unblocking will continue. As Transaction Network Services (“TNS”) readily admits, providers are ill-equipped to respond to overblocking: “A formal challenge mechanism is, in our experience, a delicate system to put in place, and each assertion requires significant research.”<sup>25</sup> If TNS and others are not equipped to unblock and unlabel calls quickly, they should not be permitted to block and mislabel calls in the first instance.

Again, bad actors are used as an excuse by USTelecom for not addressing the issue of overblocking and mislabeling head on: “Illegal robocallers are notoriously adaptable and quick to adjust to countermeasures implemented by industry.”<sup>26</sup> However, the proposals of CPL and others would require an attestation that the company is TCPA-compliant as well as

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<sup>24</sup> See, e.g., ETA Comments at 2; Hiya Comments at 1.

<sup>25</sup> TNS Comments at 7.

<sup>26</sup> USTelecom Comments at 3.

other basic identifying information. It goes without saying that any bad actor that submitted a false affidavit would be exposing itself to significant Commission penalties or worse. And the unblocking of a number does not preclude a later complaint that a call originator is not TCPA-compliant.

Other commenters reflect the pushback CPL has received from App Providers, as certain commenters recommend deference, for example, to the absolute “discretion of analytics companies.”<sup>27</sup> CTIA meanwhile merely recommends additional workshops in 2018 to resolve this urgent problem.<sup>28</sup> Others like First Orion urge call originators to load information into websites like calltransparency.com, but with no guarantee that the information provided will be protected in any way and, more importantly, no Commission-guided ruleset as to what can be done with such information and when calls can rightfully be blocked.

While CPL is not opposed to further meetings and workshops, these have been going on for over a year. They will not help corporate bottom lines in FY2018 and call originators therefore need the Commission to implement more specific near-term relief. Commenters have recommended a variety of time frames by which calls must be unblocked, ranging from immediately<sup>29</sup> to five (5) business days, absent proof of illegal calling.<sup>30</sup> Vague standards like the one proposed by First Orion (providers should have “a reasonable period of time” *after* “determining that an ‘unblock’ request is credible”<sup>31</sup>) provide undue license

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<sup>27</sup> Hiya Comments at 2-3.

<sup>28</sup> CTIA Comments at 7.

<sup>29</sup> Comments of NTCA at 3.

<sup>30</sup> Comments of CPL at 6; Comments of SiriusXM at 7. *See also* PACE Comments at 5 (1 business day response time); Comments of Noble Systems Corporation, at 9 (Jan. 23, 2018) (1 business day to act on a request).

<sup>31</sup> First Orion Comments at 4.

to these self-appointed arbiters of which callers obtain their seal of approval to delay indefinitely the unblocking of legitimate calls.

The comments of call originators whose businesses are directly impacted by blocking and labeling reflect the urgent need for many legitimate businesses to have access to a speedy mechanism to remove undue interruption to their entirely legal and productive marketing efforts. In CPL's case, the called parties have provided their phone numbers to obtain additional information about CPL's life insurance products. Obstructing that request is not doing the consumer a favor, not consistent with the *2015 TCPA Order*, and contrary to longstanding Commission policy in favor of call completion.

### **III. WHERE CALLER ID IS PASSED, THE COMMISSION SHOULD PROHIBIT CALL LABELING**

A number of commenters proposed that, for numbers for which accurate and appropriate Caller ID is passed by the calling party,<sup>32</sup> call labeling should not be permitted.<sup>33</sup> Current applications flash dire warnings to consumers on their smartphone screens when legitimate calls are placed, due to the inability of current technology to separate legitimate callers from scammers and spoofers. Commenters like First Orion and CTIA readily admit that this causes prospective customers to decline to answer calls.<sup>34</sup> Although labeling services are often presented as “consumer-driven” (*see* CTIA Comments at 5), the fact is that Voice Service Providers, analytics providers, and App Providers work together to classify calls from certain numbers into broad

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<sup>32</sup> Not all phones, including many services provided to wireless handsets, will show Caller ID. This is beyond the control of the calling party and the obligation should only be that Caller ID is not blocked and is made available by the calling party.

<sup>33</sup> CPL Comments at 8; SiriusXM Comments at 6; RESA Comments at 7.

<sup>34</sup> First Orion Comments at 6; CTIA Comments at 6.

categories, based on their own private data and analytics rather than individual number-specific choices or an informed and holistic view of the call.

Consumers opting into these services have no understanding that legitimate, solicited calls they have requested are being blocked and mislabeled. Comcast recognizes that customer-desired calls like appointment reminders have been labeled with negative labels like “nuisance likely.”<sup>35</sup> Comcast also recommends that the identities not only Voice Service Providers, but also the App Providers they partner with should be publicized through information posted on Voice Service Provider websites.<sup>36</sup>

There must be immediate recourse for numbers that are mislabeled, particularly where *solicited* calls were singled out for separate treatment in the *2015 TCPA Order*. In CPL’s direct, first-hand experience, App Providers have *not* been willing to: a) share information on whether and how calls from certain numbers are blocked or labeled; or b) confirm that solicited calls will no longer be blocked or labeled. It is these labeling apps and the underlying data analytics databases—whether ultimately branded by Sprint, T-Mobile, Verizon, or AT&T—that are a significant part of the problem. They should not, as CTIA suggests,<sup>37</sup> be excluded from this proceeding.

The Commission should require that call labeling not be permitted for a calling party that will attest it will pass its Caller ID. At a minimum, the Caller ID should be required to be displayed *before* any other label or description is interposed by third party interlopers in the call flow.

#### IV. CONCLUSION

CPL applauds the Commission for recognizing that there is a significant problem relating to the overblocking and mislabeling of legitimate calls. CPL also appreciate the good faith

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<sup>35</sup> Comcast Comments at 5.

<sup>36</sup> *Id.* at 6.

<sup>37</sup> CTIA Comments at 5, fn. 16.

efforts of all commenters in this proceeding to address the needs of consumers inundated with unwanted calls. CPL is interested in working with all parties to adopt proactive solutions to this urgent issue. CPL urges the Commission, however, to take an activist approach because industry efforts to date have not produced any results for call originators whose businesses are daily being hampered by indiscriminate, obstructive, and inaccurate call blocking and mislabeling.

Respectfully Submitted,

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