

**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 THE RETAIL ENERGY SUPPLY ASSOCIATION

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The Retail Energy Supply Association (“RESA”)¹ hereby submits these reply 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

I. Introduction

The record in this proceeding reflects a broad consensus that the status quo should not be allowed to continue. The comments filed with the Commission clearly indicate that robocall blocking is impeding legitimate commerce. Companies are fully complying with the Telephone Consumer Protection Act of 1991 (“TCPA”) but are nonetheless having calls

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*”).

blocked by voice service providers³ (“Voice Service Providers” or “Providers”). Like many commenters, RESA supports the Commission’s actions to curb illegal robocalls, including permitting Voice Service Providers to block certain illegal robocalls.⁴ However, the Commission must take steps to ensure that its efforts strike an appropriate balance and avoid the unintended disruption of legitimate commerce.

As noted in RESA’s initial comments filed in this proceeding, RESA is a non-profit organization and trade association comprised of over twenty retail electricity and natural gas suppliers operating throughout the United States.⁵ However, the comments filed by other entities demonstrate that the problems that RESA’s members have experienced with illegal call blocking are affecting not only retail energy suppliers but many other industries as well, including life insurance, banking, electronic payments, and satellite radio.⁶

It is clear that call blocking has gone well beyond the Commission’s intended limited targeting of spoofing and other illegal practices. Call blocking is now interfering with potential business transactions, preventing important customer communications, and reducing the ability of new entrants to compete in many markets. RESA’s members provide service in states that have specifically decided to open their retail energy markets to competition and encourage the

³ 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.

⁴ *Id.*

⁵ Comments of the Retail Energy Suppliers Association at 2-4 (Jan. 23, 2018)(“RESA Comments”); *see also Who We Are*, RESAUSA.ORG, <https://www.resausa.org/about-us/who-we-are> (last visited January 22, 2018).

⁶ *See, e.g.,* Comments of Colonial Penn Life Insurance Company (“CPL Comments”) at 1-4 (Jan. 23, 2018); Comments of the National Association of Federally-Insured Credit Unions at 1 (Jan. 23, 2018); Comments of the Electronic Payments Association at 2 (“EPA Comments”) (Jan. 23, 2018); RESA Comments at 3-4; Comments of Sirius XM, Inc. (“SiriusXM Comments”) at 2 (Jan. 23, 2018).

entry of new competitive providers.⁷ Thus, the illegal call blocking that RESA's members have experienced directly undermines state-level statutory and regulatory regimes intended to foster competition and will ultimately lead to less choice for consumers. As detailed more fully below, the Commission should strive to strike a reasonable middle ground that curbs abusive practices but makes certain that the rules that it implements help rather than harm consumers and competition.

II. The Commission Must Take Action to Stop Unwarranted Call Blocking

RESA concurs with the sentiment of many of the comments filed in this proceeding that the current situation is simply untenable.⁸ Many Voice Service Providers and app providers are blocking the calls of TCPA-compliant companies, and companies whose legitimate phone calls are being blocked are many times left with no effective recourse.

RESA would support any concrete technical solution that proves workable. Mere communication between the respective companies has unfortunately proven ineffectual.⁹ What is needed is action from the Commission. RESA's members have yet to see an effective solution implemented, and yet to see a process that seems likely to produce one, save the instant proceeding. For example, the Robocalling Strike Force and other similar business-to-business groups have yet to offer a workable proposal. In RESA's members' experience, these types of closed industry-only meetings are unlikely to be helpful. Instead, this docket is the most appropriate forum in which to discuss solutions and the time to do so is now before anymore any additional damage is done.

⁷ *Map of Deregulated Energy States and Markets (Updated 2017)*, ELECTICCHOICE.COM, <https://www.electricchoice.com/map-deregulated-energy-markets/> (last visited Feb. 21, 2018).

⁸ *See, e.g.*, Comments of PACE, Alorica, Inc., and the Consumer Relations Consortium ("PACE Comments") at 9 ("the Commission should . . . require carriers to offer a call blocking mitigation service for callers and called parties.").

⁹ *See, e.g.*, CPL Comments at 6 & fn. 7.

Commenters that have suggested the Commission refrain from taking immediate action are those whose businesses have not yet been affected by illegal call blocking.¹⁰ However, carriers in particular should be supportive of any measure that assists with call completion. Should the present situation continue unabated, companies will be left with no choice but to use other means of reaching their customers and potential customers. Such an outcome will inevitably lead to a devaluation of carrier services and potentially the Public Switched Telephone Network (“PSTN”) itself.

In fact, most commenters agree with RESA that immediate Commission action is needed to counter continued abuses of the Commission’s current robocall policies.¹¹ One of Congress’s express goals in the creation of the Commission was to ensure that all can access the PSTN in a non-discriminatory fashion.¹² As a result, the Commission has maintained a long-standing policy of fostering call completion and discouraging or prohibiting call blocking.¹³

Like many commenters, RESA supports the SHAKEN and STIR frameworks. However, it will undoubtedly take a great deal of time before the industry is able to implement actual working systems based on these frameworks.¹⁴ Moreover, Voice Service Providers and app providers will likely still be able to illegally block calls and mislabel calls even after SHAKEN and STIR are implemented. Businesses that are being affected by call blocking need relief now, in FY2018, not several years from now. The Commission should provide it

¹⁰ See, e.g., Comments of CTIA at 7 (Jan. 23, 2018); Comments of USTelecom at 2 (Jan. 23, 2018); Comments of the Federal Trade Commission’s Staff at 2-3 (Jan. 23, 2018).

¹¹ See *supra* note 8.

¹² See 47 U.S.C. § 202(a).

¹³ See SiriusXM Comments at 3-4.

¹⁴ In addition to the time it will take to implement SHAKEN and STIR, IP interconnection is a prerequisite to making such call authentication work effectively.

in this proceeding. Any order that the Commission issues in response to the *FNPRM* should make it clear that the calls of companies demonstrating TCPA compliance must not be blocked or mislabeled in any way.¹⁵

III. The Commission Should Adopt Other Proposed Mechanisms to Ensure Call Completion

A. The Commission Should Implement and Maintain a White List

The concept of a Commission maintained white list garnered broad support among commenters.¹⁶ Although the SHAKEN and STIR frameworks certainly have a role to play, the issues of call blocking and mislabeling will certainly continue even after their implementation. Thus, a white list would still have a role to play even after the implementation of SHAKEN and STIR. Moreover, a centralized white list would be by far the most efficient system to ensure call completion for TCPA-compliant companies as it would eliminate the need for businesses to transact with every Voice Service Provider and app provider in the industry.

In reviewing the record in this proceeding, RESA was surprised that a few commenters speculated that a white list would only benefit illegal actors.¹⁷ However, such fears are belied by the many upstanding businesses that have expressed public support for a centralized white list and acknowledged the benefit it could provide them.¹⁸ Similarly, any concerns regarding the security of the white list database should be kept in perspective.

¹⁵ Moreover, based on the comments filed thus far, there appears to be a clear consensus that the mechanism to unblock calls should be brief and straightforward. *See, e.g.*, Comments of NTCA – The Rural Broadband Association at 3 (Jan. 23, 2018) (recommending immediate resolution); 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); CPL Comments at 3-4 (5 business days to resolve).

¹⁶ *See* SiriusXM Comments at 9; RESA Comments at 9; CPL Comments at 9-10; Comments of Encore Capital Group, Inc. at 2 (Jan. 23, 2018).

¹⁷ *See* Comments of the Federal Trade Commission's Staff at 5 (Jan. 23, 2018).

¹⁸ *See supra* note 16.

Database security is an issue for any regulatory compliance program that relies upon stored data. Although the Commission's information technology staff should take such concerns seriously, they are not a sufficient justification for failing to implement a common sense solution to a serious problem that is harming legitimate business activity.

B. The Commission Must Address Call Mislabeling

Many commenters recognized the significant problem stemming from misleading call labeling and urged decisive Commission action to end such practices.¹⁹ Call labeling is often functionally equivalent to call blocking as it results in the same disruption to legitimate commerce. However, unfettered call labeling also raises a host of other issues. It will likely lead to endless disputes before the Commission as to whether a particular label is inaccurate or unjustifiably discriminatory.²⁰

RESA believes that a reasonable middle ground would be to allow a company that demonstrates that it is TCPA-compliant to insist that only its Caller ID is passed to the called party. RESA concedes that this option should only be available to a calling party that passes Caller ID. To the extent that the Commission believes that some call labeling is appropriate, it should institute a further rulemaking wherein interested parties can provide public comment to assist with the creation of a framework for and limitations on such call labels. However, until the Commission can issue such additional guidance, the Commission should adopt the proposal put forward by RESA, and others, and ensure that calls are no longer effectively blocked by call mislabeling.

¹⁹ See, e.g., CPL Comments at 7-8; RESA Comments at 6-7; PACE Comments at 4.

²⁰ See SiriusXM Comments at 4-5.

IV. Conclusion

A wide variety of businesses and industries that have experienced call blocking and mislabeling have urged the Commission to take immediate action to address these problems. RESA believes that, in both its previously filed Comments and these Reply Comments, it has proposed common-sense, middle-of-the-road solutions that will help the Commission strike an appropriate balance between curbing abusive practices and allowing legitimate commerce to proceed unfettered. RESA looks forward to working with the Commission and all concerned parties to craft a solution that addresses the concerns of all stakeholders involved while maintaining a strong level of protection for consumers.

Respectfully Submitted,

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