

**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 SIRIUS XM RADIO INC.

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Sirius XM Radio Inc. (“SiriusXM”) hereby submits these reply comments addressing the comments filed in response to the Commission’s Further Notice of Proposed Rulemaking (“FNPRM”) on mechanisms to prevent the increasingly prevalent and harmful unlawful blocking and mislabeling of legal phone calls.¹

I. Introduction

There is no question that illegal and harassing calls have created a significant problem requiring a solution. They not only scam consumers and interrupt them in the privacy of their homes, but also have the more widespread adverse impact of undermining consumers’ reliance on the Public Switched Telephone Network (“PSTN”), leading them to question the validity of calls they receive and making them less likely to even answer their phones. That result is bad for providers, bad for consumers, and bad for legitimate businesses like SiriusXM that use the PSTN to reach its customers.

¹ See *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, Report and Order and Further Notice of Proposed Rulemaking, FCC 17-151, CG Docket No. 17-59, ¶¶ 57-59 (rel. Nov. 17, 2017).

While furthering its mission to safeguard the viability of the PSTN for all consumers,² the Commission must ensure its efforts to prevent illegal calls don't inadvertently facilitate the blocking of large volumes of legal ones in the process. In order for the PSTN to remain functional for all users, the Commission should implement mechanisms—now and not at some indefinite time in the future—to promptly remedy the business harm caused by the apparently erroneous blocking of lawful calls.

The comments in this proceeding clearly reflect that blocking of such legal calls is disrupting legitimate commerce across a broad spectrum of American industries. Companies complying with the Telecommunications Consumer Protection Act (“TCPA”) are nonetheless having their calls blocked by telecommunications voice service providers (“Voice Service Providers” or “Providers”) and/or the application (“app”) providers coordinating with them.³ Blocking that was supposed to target spoofing and other illegal practices has been implemented either too quickly or without adequate controls, leading to the widespread blocking of legal calls. This activity is now interfering with legitimate commercial business opportunities, thwarting routine marketing calls, and suppressing sales revenue across many industries.

The companies calling the Commission's attention to the blocking of their legitimate business calls come from diverse market sectors, including life insurance,⁴ credit unions,⁵

² One of the Commission's principal strategic goals involves ensuring the availability of the PSTN for all Americans: “In addition to promoting the development of competitive networks, the FCC must also ensure that all Americans can take advantage of the services they provide without artificial impediments.” FCC Strategic Goal #3, FCC website, <https://www.fcc.gov/about/overview> (last checked February 22, 2018).

³ As SiriusXM noted in its comments, SiriusXM agrees with the Commission's focus on all Voice Service Providers. Comments of Sirius XM Radio Inc. (“SiriusXM Comments”) at fn. 4. SiriusXM's comments also urged the Commission to remedy harm being caused by the app providers that work closely in concert with such Providers. *Id.* at 4.

⁴ Comments of Colonial Penn Life Insurance Company (“CPL Comments”) at 1-4 (Jan. 23, 2018).

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

electronic payment companies,⁶ retail energy suppliers,⁷ and, of course, satellite radio.⁸ There is every reason to believe that additional businesses are also being adversely impacted by this undisciplined blocking and labeling. This record calls for the Commission to immediately take a few simple steps that will ensure call blocking efforts are appropriately targeted towards illegal calls.

II. Commission Action Is Necessary to Halt Illegal Blocking

A. Commission Action is Necessary Because the Current Problem Will Not Resolve Itself

A broad spectrum of parties agreed with SiriusXM that near-term, concrete specific Commission action is necessary to halt the excesses unleashed by the Commission's efforts to curb illegal calling practices.⁹ Some commenters reported as much as 20-30% reductions in call completion rates.¹⁰ As noted, one of the key pillars of the Commission's charter is to ensure the availability of the PSTN. Moreover, as detailed in SiriusXM's Comments, the Communications Act and Commission policy favor call completion and prohibit indiscriminate call blocking and discrimination among callers.¹¹

As a long-term technical improvement, SHAKEN and STIR has broad support from virtually all commenting parties, including SiriusXM. However, it will take years before

⁶ Comments of the Electronic Payments Association ("EPA Comments") at 2 (Jan. 23, 2018).

⁷ Comments of the Retail Energy Suppliers Association ("RESA Comments") at 3 (Jan. 23, 2018).

⁸ SiriusXM Comments at 2 (Jan. 23, 2018).

⁹ *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.")

¹⁰ *Id.* at 3-4.

¹¹ SiriusXM Comments at 3-4.

SHAKEN and STIR can be fully implemented¹² and its implementation will not prevent Voice Service Providers and app providers from blocking and mislabeling calls. Businesses urgently need an immediate solution to the problem and, in the absence of other options for an effective, short-term solution, the Commission should promptly implement a concrete and binding mechanism to prevent further call blocking and mislabeling and to ensure it is promptly remedied where it occurs.

Companies adversely impacted by call blocking agree that they need a brief response time—as short as one day—for a Provider or app provider to unblock calls after receiving a request from a TCPA-compliant caller.¹³ For those whose businesses are directly and adversely impacted by illegal call blocking, there is a consensus that the time frame should be quick and the mechanism should be straightforward.

B. Commission Inaction in the Short-Term is Not a Solution

The parties urging the Commission to adopt a “wait-and-see” approach¹⁴ are not experiencing the adverse impact to their businesses currently being caused by excessive call blocking. Voice Service Providers should have every incentive to support measures that make call completion more likely. If dependable call completion is not a hallmark of the PSTN, both callers and consumers will have less confidence in using Provider networks, devaluing Provider services and the PSTN, and making other channels to reach customers relatively more attractive. Had Providers’ comments in this proceeding offered a meaningful, concrete

¹² 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.

¹³ *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).

¹⁴ *See, e.g.*, Comments of CTIA at 7 (Jan. 23, 2018); Comments of USTelecom at 2 (Jan. 23, 2018).

technical solution, SiriusXM would be less inclined to urge Commission action; however, the fact that Providers have not proposed such a solution—either in this docket or otherwise—speaks volumes about their lack of commitment to promptly resolve the problem.

SiriusXM welcomes any such solutions but the Providers that oppose immediate Commission action have apparently retrenched to closed industry-only meetings and have not shared what alternative solutions they support or are developing.¹⁵ In theory, proposals to ensure call completion should come from the Providers themselves—not from network users like SiriusXM—because call completion and compliance with the nondiscrimination requirements of the Communications Act are the Providers’ obligations and the technical operations of their networks are understood better by the Providers than by anyone else. In the absence of solutions offered by Providers, the Commission has no choice but to implement rules to safeguard legitimate, TCPA-compliant call completion.

Now that the Commission has issued the FNPRM, all interested parties should be discussing concrete solutions in this proceeding. This is not an issue for future meetings and conferences, but rather now is the time for proposals to be put forth and a solution promptly implemented. SiriusXM is disappointed that none of the Providers commenting in this proceeding, with the exception of NTCA, have proposed specific, near-term solutions and timelines that would address and resolve the over-blocking problem. As other businesses threatened by over-blocking have explained, the problem will not go away merely by having Providers commit to work through these issues over time.¹⁶

¹⁵ SiriusXM participated in the Robocalling Strike Force, but has not been included in the Provider discussions that have followed after the conclusion of the Strike Force’s work.

¹⁶ See, e.g., CPL Comments at 6 & fn. 7.

In refusing to unblock legal calls, Providers and app providers substitute their own standards and interpose themselves or other third parties as the arbitrary decision-maker, basing their blocking and labeling decisions on non-public, non-transparent algorithms and standards.¹⁷ Lacking any clear, public standard as to when calls should be blocked or definitions as to how they should be labeled, this system is clearly not working legally, fairly, or as the Commission intended. Merely agreeing that there must be some form of “challenge mechanism”—a common refrain in the comments¹⁸—does not address the more important issues of how such challenges take place, to whom challenges should be made, how quickly challenges must be addressed and remedied, and other aspects of what it takes to mount a successful challenge.

III. SiriusXM Urges the Commission to Also Act to Halt Call Labeling

Numerous commenters noted the urgent problem of false and misleading call labeling, urging the Commission to address labeling in this proceeding and prohibit it.¹⁹ Call labeling is tantamount to call blocking because it has the same result: calling parties are unable to use the PSTN to place their calls. Call labeling is also inherently discriminatory²⁰ and will lead to endless disputes requiring the Commission to referee subjective, company-by-company questions as to whether particular labels are accurate. SiriusXM has proposed that a caller

¹⁷ See Comments of First Orion Corp. on Further Notice of Proposed Rulemaking at 1 (“Our call identification solutions identify suspected fraudulent calls as “Scam Likely,” and *potentially* unwanted, abusive, or illegal calls as “Nuisance Likely,” “Telemarketer,” “Survey,” or other categories as appropriate”) (emphasis added). See also Comments of Hiya at 2-3 (“In terms of providing a guarantee to call originators that their call will no longer be blocked or labelled differently, Hiya must stress that this should be at the discretion of analytics companies, who have sophisticated algorithms in place to classify types of calls made by call originators. Just because a call originator requests to be classified in a certain way, there should not be any guarantee that the information will be changed.”).

¹⁸ See, e.g., Hiya Comments at 1.

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.

attesting it is TCPA-compliant should have the ability to insist that only its Caller ID will be passed.²¹ SiriusXM would be willing to agree that this option should be available only to Providers that pass the Caller ID number and name. This is a reasonable compromise that the Commission should adopt as soon as possible.

If call labeling is to be allowed, it should be permitted only using meaningful, consistent, FCC-approved definitions, based on clear, uniform standards, and under the auspices of Commission oversight. No such oversight or public transparency currently exists, nor does any Commission-approved definitions of labels. Terms like “Scam *Likely*” or “Nuisance *Likely*” are by definition arbitrary and vague and don’t give consumers enough information for them to make an informed decision about whether to answer a call. Adopting the SiriusXM proposal will hit a sorely-needed reset button and ensure that calls are no longer effectively blocked solely because of misleading call labeling.

IV. The Commission Should Develop a White List Mechanism

Many commenters supported SiriusXM’s suggestion that the Commission adopt a white list of companies whose business calls should not be blocked or mislabeled.²² A white list is the most efficient mechanism to ensure that calls from TCPA-compliant companies will not be blocked or mislabeled without imposing an unwieldy and impractical requirement that callers separately contact each Voice Service Provider and app provider in the industry. The issues of call blocking and mislabeling will not disappear even after SHAKEN and STIR is adopted, so the Commission needs to develop a long-term solution to protect the commercial transactions of businesses across diverse market segments.

²¹ See *id.* at 6. See also CPL Comments at 7-8; RESA Comments at 7.

²² 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).

SiriusXM disagrees with the suggestion of a few commenters that a white list will benefit only illegal actors.²³ Many upstanding businesses are urging the Commission to adopt a centralized white list or other database knowing it would be a practical, pro-business solution.²⁴ Security is an issue for any database and a poor excuse not to solve this pressing problem that is throttling back productive business transactions. Hacking is an unfortunate part of everyday life, but even actual hacking incidents have not stopped the federal government from maintaining centralized personnel records or states from keeping electoral databases. Most any mechanism intended to prevent illegal robocalls or address over-blocking could be subverted by callers with ill-intent, so this mere possibility is not a valid reason for declining to adopt such mechanisms.

V. Conclusion

There is a broad consensus by the wide spectrum of businesses victimized by call blocking and mislabeling that the Commission should take near-term action to remedy these problems. The Commission should adopt a straightforward mechanism for TCPA-compliant callers to have their calls unblocked, and for businesses that are willing to pass their Caller ID

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

²⁴ See *supra* fn. 22.

to avoid the stigma of other random and arbitrary labels. SiriusXM looks forward to working with the Commission and all commenting parties to address and resolve these issues in the immediate future.

Respectfully Submitted,

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