



USTELECOM

THE BROADBAND ASSOCIATION

May 30, 2019

**Via ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: **Ex Parte Presentation**, CG Docket No. 17-59; WC Docket No. 17-97

Dear Ms. Dortch:

On May 28 and 30, 2019, Matthew Gerst of CTIA and Farhan Chughtai of USTelecom, along with representatives of voice service providers listed in Appendix A, met with representatives of the offices of Chairman Ajit Pai, Commissioner Michael O’Rielly, Commissioner Brendan Carr, Commissioner Jessica Rosenworcel, and the Consumer and Governmental Affairs Bureau listed in Appendix A to discuss CTIA and USTelecom’s support of the Commission’s *Draft Declaratory Ruling*<sup>1</sup> regarding robocall blocking.<sup>2</sup>

During the meeting, participants noted that voice service providers share the Commission’s goal of stopping the scourge of illegal and unwanted robocalls, while enabling consumers to choose the types of calls they want to receive. Today, voice service providers offer a variety of tools to enable consumers to protect themselves against unwanted calls.<sup>3</sup>

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<sup>1</sup> *Advanced Methods to Target and Eliminate Unlawful Robocalls; Call Authentication Trust Anchor*, Draft Declaratory Ruling and Third Further Notice of Proposed Rulemaking, CG Docket No. 17-59; WC Docket No. 17-97, FCC-CIRC1906-01 (draft released May 16, 2019) (*Draft Declaratory Ruling*).

<sup>2</sup> Beyond the *Draft Declaratory Ruling* discussed in the meeting, CTIA and USTelecom look forward to commenting on the FNPRM, which proposes to further enhance voice service provider’s ability to give consumers tools to harness the SHAKEN/STIR call authentication framework to reduce illegal and unwanted robocalls.

<sup>3</sup> See *Rosenworcel Releases Responses to Call for Robocall Blocking Tools*, Attachment (Jan. 28, 2019), available at <https://docs.fcc.gov/public/attachments/DOC-355921A2.pdf>.

CTIA and USTelecom explained that the *Draft Declaratory Ruling*, if adopted, establishes a sound framework for incentivizing more aggressive actions to help consumers mitigate unwanted robocalls.

CTIA and USTelecom noted that the FCC’s flexible approach in the *Declaratory Ruling* will permit voice service providers to offer, on an opt-out basis, consumer blocking tools that utilize “any reasonable analytics designed to identify unwanted calls.”<sup>4</sup> Some parties have expressed concerns that this *Draft Declaratory Ruling* will allow providers to block legitimate calls, including public safety. These concerns are misplaced. The *Draft Declaratory Ruling* would not give service providers the authority to block any calls that cannot be blocked by a consumer today.<sup>5</sup> If adopted, the *Draft Declaratory Ruling* would merely confirm that service providers can offer these tools on an opt-out basis. The permissive and flexible approach to consumer call blocking tools is the right approach given the fluid and evolving nature of unwanted calls.<sup>6</sup> CTIA and USTelecom also suggested that targeted modifications to the *Draft Declaratory Ruling* could provide the certainty necessary to further the Commission’s goal of aggressively combatting unwanted robocalls, while ensuring that consumers receive wanted calls.

Specifically, CTIA and USTelecom requested clarifications that could give voice service providers certainty to take advantage of the flexibility proposed in the *Draft Declaratory Ruling* to help consumers mitigate unwanted robocalls:

- (1) **Target of blocking:** The Commission should clarify that the target of authorized call blocking under the *Draft Declaratory Ruling* will be unwanted calls, which is a term broader than and inclusive of illegal calls. Further, the Commission should clarify that voice service providers may identify unwanted calls based on any reasonable analytics, as described in paragraph 33 of the *Draft Declaratory Ruling*. The *Draft Declaratory Ruling*’s interchangeable use of

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<sup>4</sup> *Draft Declaratory Ruling* ¶ 33.

<sup>5</sup> As explained below, the *Draft Declaratory Ruling* would not apply to carrier-initiated blocking already done at the network level, as permitted in the *2017 Call Blocking Order*.

<sup>6</sup> *Draft Declaratory Ruling* ¶ 33 (correctly reasoning that “limiting opt-out call-blocking programs to rigid blocking rules that prescribe in detail when a voice service provider may block is unnecessary when consumers have the option to opt out, could enable callers to evade blocking, and could impede the ability of voice service providers to develop dynamic blocking schemes that evolve with calling patterns”).

the terms “illegal” and “unwanted” may create uncertainty that deters voice service providers from taking aggressive actions.

- (2) **What type of call-blocking is covered:** The Commission should clarify that the focus of the *Draft Declaratory Ruling* is consumer-facing call-blocking “tools” offered by voice service providers, as opposed to network-level blocking “programs.” While both types of call blocking capabilities—network-level, carrier-initiated blocking programs *and* blocking tools that enable consumers to mitigate unwanted calls—are important in the multi-pronged fight against unwanted robocalls, they are distinct with respect to what stage of transmission the unwanted call blocking techniques are applied, and the role of the consumer in the blocking, among other things. To avoid confusion and ensure clear rules for voice service providers, the Commission should ensure that the *Draft Declaratory Ruling* is consistent with the *2017 Call Blocking Order* regarding these distinctions.
- (3) **Emergency Calls:** The Commission should clarify its statement in the *Draft Declaratory Ruling* that blocking should not “interfere with our country’s emergency communications systems.”<sup>7</sup> Specifically, the Commission should either clearly define which calls may be part of the emergency communications system or ensure voice service providers have flexibility to determine which calls are validly part of the emergency communications system based upon reasonable analytics.<sup>8</sup>

Further, CTIA and USTelecom encouraged the Commission to adopt a robust, broad safe harbor, which is necessary to realize the consumer benefits of the permissive unwanted call blocking capabilities that the *Draft Declaratory Ruling* would authorize. The record is clear that a broad safe harbor is necessary to encourage aggressive unwanted call blocking actions to protect consumers, protect voice service providers from liability for inadvertently blocking legal calls, and give industry the flexibility and incentives to continuously innovate.<sup>9</sup> A robust

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<sup>7</sup> *Id.* ¶ 35.

<sup>8</sup> *See id.* ¶¶ 33-34.

<sup>9</sup> *See, e.g.,* Comments of AT&T, CG Docket No. 17-59, at 11 (Sept. 24, 2018) (“Service providers need the protection of a safe harbor to ensure continued innovation and experimentation to combat illegal robocalls.”); Reply Comments of CTIA, CG Docket No. 17-59, at 5 & n.14 (October 9, 2018) (explaining that there is “a clear need for safe harbors to encourage aggressive call blocking to protect consumers,” including “a safe harbor for carriers that offer *optional* (either opt-in or opt-out) call labeling and

safe harbor should provide that where a voice service provider engages in good-faith call blocking pursuant to the *Declaratory Ruling*, the voice service provider is not liable for any call that is not completed as a result. Such a “good faith” safe harbor by its nature would not extend to actors that engage in anticompetitive behavior. Further, the Commission should make clear that no complaint, cause of action, or enforcement proceeding shall be maintained under federal law against any provider that blocks a call under a good-faith and reasonable belief that such blocking is permissible under FCC rules, such as by using reasonable analytics methods, including those described in paragraph 34 of the *Draft Declaratory Ruling*.

Finally, CTIA and USTelecom discussed that voice service providers will continue to deploy a variety of tools to try to stay ahead of bad actors whose tactics continue to evolve. While consumer-facing call blocking tools are important, the *Draft Declaratory Ruling* correctly recognizes that voice service providers continue to take a multi-pronged approach to combatting unwanted robocalls in recognition of the fact that consumer-facing call blocking tools are not a panacea and that there is no silver bullet to stopping unwanted robocalls.<sup>10</sup> For these reasons, CTIA and USTelecom encouraged the FCC to measure success not just by reduced volume of unwanted robocalls, but also by other metrics, including the availability of tools that facilitate consumer choice and control over what types of calls reach them.

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blocking services, or that partner with third-party providers of such services for the benefit of their customers”); Comments of ITTA—The Voice of America’s Broadband Providers, CG Docket No. 17-59, at 4 (Sept. 24, 2018) (“ITTA urges that, as long as the provider is acting in good faith within the contours of the rules the Commission adopts, it should be immune from any Commission enforcement liability for legitimate calls blocked or illegal calls that are not blocked. So long as the provider complies with the guidelines the Commission sets forth to protect legitimate callers, a provider should not be subject to any enforcement liability where a legitimate call ends up being blocked accidentally or, conversely, where an illegitimate caller mistakenly ends up on the white list.”); Comments of Transaction Network Services, CG Docket No. 17-59, at 3 (Sept. 24, 2018) (“However, some operators seek more clarity on safe harbor provisions before implementing more aggressive blocking practices. Apart from this comment, TNS defers to our carrier partners with respect to any questions about whether and which additional steps may be appropriate before service providers consider blocking a call.”); Comments of The USTelecom Association, CG Docket No. 17-59, at 4 (Sept. 24, 2018) (“The Commission should adopt a safe harbor to provide certainty to voice providers that choose to institute blocking measures consistent with the rules adopted in this proceeding.”).

<sup>10</sup> *Draft Declaratory Ruling* ¶ 2.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed in ECFS and provided to the Commission participants. Please do not hesitate to contact the undersigned with any questions.

Sincerely,

/s/ Matthew Gerst

Matthew Gerst  
Vice President, Regulatory Affairs  
CTIA

/s/ Farhan Chughtai

Farhan Chughtai  
Director, Policy & Advocacy  
USTelecom

CC: Will Adams  
Jerusha Burnett  
Travis Litman  
Zenji Nakazawa  
Arielle Roth

## Appendix A

### May 28<sup>th</sup> Meeting with Office of Chairman Ajit Pai

Zenji Nakazawa, FCC, Office of Chairman Ajit Pai  
Jerusha Burnett, FCC, Consumer & Governmental Affairs Bureau  
Matthew Gerst, CTIA  
Farhan Chughtai, USTelecom  
Linda Vandeloop, AT&T  
Keith Buell, Sprint  
Indra Chalk, T-Mobile  
Grant Spellmeyer, USCellular\*  
Chris Oatway, Verizon

### May 30<sup>th</sup> Meeting with Office of Commissioner Michael O’Rielly

Arielle Roth, FCC, Office of Commissioner Michael O’Rielly  
Matthew Gerst, CTIA  
Farhan Chughtai, USTelecom  
Frank Simone, AT&T  
Jeb Benedict, CenturyLink  
Diana Eisner, Frontier  
Keith Buell, Sprint  
Indra Chalk, T-Mobile  
Chris Oatway, Verizon

### May 30<sup>th</sup> Meeting with Office of Commissioner Brendan Carr

Will Adams, FCC, Office of Commissioner Brendan Carr  
Matthew Gerst, CTIA  
Farhan Chughtai, USTelecom  
Jeb Benedict, CenturyLink  
Diana Eisner, Frontier  
Keith Buell, Sprint  
Cathy Massey, T-Mobile  
Chris Oatway, Verizon

May 30<sup>th</sup> Meeting with Office of Commissioner Jessica Rosenworcel

Travis Litman, FCC, Office of Commissioner Jessica Rosenworcel

Matthew Gerst, CTIA

Farhan Chughtai, USTelecom

Jeb Benedict, CenturyLink

Diana Eisner, Frontier

Keith Buell, Sprint

Cathy Massey, T-Mobile

Chris Oatway, Verizon

\*Participated via conference bridge