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May 31, 2019

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

**Re: CG Docket No. 17-59, *Advanced Methods to Target & Eliminate Unlawful Robocalls*;
WC Docket No. 17-97, *Call Authentication Trust Anchor***

Dear Ms. Dortch:

On Thursday, May 30, 2019, I spoke by telephone with Michael Scurato, Acting Legal Advisor for Media and Consumer Protection to Commissioner Starks; and separately with Travis Litman, Chief of Staff and Senior Legal Advisor to Commissioner Rosenworcel. This *ex parte* notification, summarizing an oral presentation made on the day the Sunshine notice is released, is timely filed pursuant to Section 1.1206(b)(2)(iv) of the Commission's rules.

In both conversations I began by expressing Free Press's full agreement with the intent, and general agreement with the approach, outlined in the draft Declaratory Ruling in the above-captioned dockets. Illegal "robocalls" are widely and rightly considered a scourge by people across the country and by lawmakers across the political spectrum, as evidenced by recent congressional oversight hearings. Giving telephone users more tools to block and eliminate these kinds of calls is exactly the right idea. They are so often not just a nuisance, but a vector for all sorts of predatory scams and unlawful activity – calls that are illegal not merely because they are spoofed and deceptive (as they purport to originate from unassigned, unallocated, or invalid numbers), but because of the illegal conduct perpetrated by those who attempt to defraud the calls' targets.¹

Yet, with admittedly limited engagement in this proceeding and no record filings in these dockets by Free Press to this point, I drew to both offices attention several filings made within the past week by parties that likewise applaud the Commission's goals but question the Draft Declaratory Ruling's legal basis and practical impacts. Without counseling delay or departure from the Commission's trajectory due to these concerns, I cited and briefly discussed with the commissioners' respective advisors:

¹ See, e.g., *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor*, CG Docket No. 17-59, WC Docket No. 17-97, Declaratory Ruling and Third Further Notice of Proposed Rulemaking, FCC-CIRC 1906-01, ¶ 13 (draft rel. May 16, 2019) ("Draft Declaratory Ruling") ("One of the best-known scams, involving Caller ID spoofing of Internal Revenue Service (IRS) telephone numbers and the impersonation of IRS employees, has resulted in 14,700 victims collectively losing more than \$72 million since October 2013, despite concerted efforts by the Commission and the IRS to warn consumers."); see also *id.* ¶ 12 ("And illegal calls are often vehicles for consumer fraud and identity theft.").

- (1) A letter from Public Knowledge explaining the likelihood of false positives in blocking by carriers, suggesting a more robust process for addressing such mistakes, and highlighting the potential for unintended or even purposeful anti-competitive results if incumbents' analytics unreasonably discriminate against competitive or over-the-top services.²
- (2) A letter from INCOMPAS proposing additional order language to ensure that "analytics for call blocking programs [are] applied in a non-discriminatory, competitively neutral manner with a transparent process for prospectively correcting blocking of wanted calls" because "SHAKEN/STIR solutions are not yet generally available . . . to the marketplace, and it remains to be seen whether the framework can be implemented in a uniform manner so that calls receive similar treatment across the industry."³
- (3) A letter from PRA Group, Inc. ("PRA"), a debt collection agency that – in my layperson's view on this topic – takes part in an industry itself putatively lawful yet predatory and disproportionately harmful to persons impacted by systemic biases in the credit and financial sectors. While expressing no support for the business of such entities or their use of auto-dialers to conduct it, I noted PRA's critiques of the Draft Declaratory Ruling's legal and practical claims. Per PRA, the draft appears to cite no express statutory authority for authorizing carriers' call-blocking by default in the absence of explicit customer consent and action. It blurs the distinction between illegal calls and calls that are lawful but merely unwanted (in the carrier's determination of what users want). And it opens the door to mislabeling in ways that could lead to widespread blocking of legitimate communications.⁴

Free Press believes people always deserve more information about their service, and more power to choose what they send and receive over it. Yet the Commission also should not hesitate to ban harmful practices when it can, on sound legal footing and policy bases. If the Commission merely empowers carriers to make choices on behalf of their customers instead, without providing complete information or ensuring sufficient accountability for such decisions, then even if the framework is a net positive it may lead to the wrong outcomes more often than it needs to.

Respectfully Submitted,

/s/ Matthew F. Wood

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² Letter from John Bergmayer, Senior Counsel, Public Knowledge, to Hon. Ajit Pai, Chairman, Federal Communications Commission, CG Docket No. 17-59, WC Docket No. 17-97 (filed May 29, 2019).

³ Letter from Christopher L. Shipley, Attorney and Policy Advisor, INCOMPAS, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, CG Docket No. 17-59, WC Docket No. 17-97 (filed May 30, 2019).

⁴ Letter from Yaron Dori *et al.*, Counsel to PRA Group, Inc. to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, CG Docket No. 17-59, WC Docket No. 17-97 (filed May 29, 2019).