

May 31, 2019

*Via ECFS*

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Room TW-A325  
Washington, DC 20554

**Re: Notice of *Ex Parte* Presentation  
CG Docket Nos. 02-278, 17-59, 18-152; WC Docket No. 17-97**

Dear Ms. Dortch:

On May 29, 2019, the following individuals met with Zenji Nakazawa, Public Safety and Consumer Protection Advisor for Chairman Ajit Pai: Jonathan Thessin with the American Bankers Association; Mark W. Brennan of Hogan Lovells US LLP, on behalf of the American Association of Healthcare Administrative Management; Mahlet Makonnen with the National Association of Federally-Insured Credit Unions; Leah Dempsey with ACA International; Celia Winslow with the American Financial Services Association; Elizabeth Kersey with PRA Group; Michael Pryor of Brownstein, Hyatt, Farber and Schreck and Robert Flock, on behalf of the Credit Union National Association; Stephen Congdon with the Consumer Bankers Association; and Hanna Pitz with the Mortgage Bankers Association (collectively, the Associations).

During the meeting, the Associations expressed support for the Commission's goal to reduce illegal automated calls. However, we expressed concern that the draft call-blocking Declaratory Ruling<sup>1</sup> currently scheduled for the Federal Communications Commission's (Commission) vote on June 6, 2019 could harm consumers by resulting in the erroneous blocking of lawful, and often urgent, calls affecting consumer health, safety, and financial well-being. These include alerts from a child's school (*e.g.*, regarding unplanned closures or emergencies); updates about electric utility outages; public safety notifications; healthcare and dosing reminders; data breach, fraud alert, and service disruption notifications; and urgent vehicle safety recall notifications.

In each of these instances, a company initiates a large volume of outbound calls from a number in a short period of time, which is one analytical factor used by voice service providers and third-party services to determine whether a call is labeled as "Potential Spam", "Suspected Spam", "Spam Number", "Nuisance Label", or "Debt Collector". Under the Declaratory Ruling as

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

drafted, calls that are mislabeled in this manner may be blocked.<sup>2</sup> The following examples demonstrate the likelihood that lawful, informational calls will be blocked by call-blocking algorithms—

- One large bank reported that it conducted a pilot project in which it tested the status with voice service providers of 29 of the bank’s phone numbers used to place collections-related calls. For each of the 29 numbers, at least one call-blocking program assigned a derogatory label to the number.
- A second large bank asked an external vendor to review how voice service providers label nine phone numbers that the bank uses to make calls. The vendor’s research revealed that eight of those nine phone numbers are labeled as “spam likely,” “suspected spam,” or “spam number” by at least one of the four largest providers, possibly because of the large volume of calls the bank places from each number.
- A third large bank provided to a vendor 10 phone numbers that the bank uses to place collections-related calls. The vendor determined that 7 of the 10 phone numbers were assigned a derogatory label such as “Potential Spam”, “Suspected Spam”, “Spam Number”, “Nuisance Label” or “Debt Collector” by at least one of the mobile apps deployed by the major wireless carriers.

The Associations also asserted that the draft Declaratory Ruling is contrary to the Communications Act and Commission precedent because the draft Declaratory Ruling would allow for call blocking on an opt-out basis. These arguments are described more fully in the *ex parte* letter submitted on May 28, 2019, on behalf of ABA and other industry trade associations.<sup>3</sup>

The Associations urged the Commission to seek comment on the proposals in the draft Declaratory Ruling by recasting the Declaratory Ruling as a Notice of Proposed Rulemaking (NPR). As part of that NPR, the Commission should clarify that blocking would apply only to the blocking of illegal—not “unwanted”—calls. In addition, the Commission should propose that there be sufficient notice of blocking to the caller and to the call recipient, such as through use of an intercept message when a call is blocked, and propose to provide a mechanism for prompt release of any erroneously blocked numbers.

Sincerely,



Jonathan Thessin  
Senior Counsel, Center for Regulatory Compliance

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<sup>2</sup> *Id.* ¶ 34 (observing that a “call-blocking program might block calls based on large bursts of calls in a short timeframe,” among other factors).

<sup>3</sup> See *Ex Parte* Letter from Mark W. Brennan, CG Docket No. 17-59, WC Docket No. 17-97 (filed May 28, 2019), <https://ecfsapi.fcc.gov/file/105291072428619/2019-05-27%20Coalition%20Ex%20Parte%20Notice%20%5BFINAL%5D.pdf>.