

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Advanced Methods to Target and Eliminate) CG Docket No. 17-59
Unlawful Robocalls)

COMMENTS OF ACA INTERNATIONAL

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EXECUTIVE SUMMARY

In order to deal with the growing problem of illegal robocalls, the Federal Communications Commission (“Commission”) has begun a rulemaking proceeding to allow voice service providers the ability to block certain categories of calls that are likely to be fraudulent based on objective, bright-line criteria. Given that illegal robocallers, many of whom operate overseas, have no intention of complying with the law or the Commission’s rules, developing ways to thwart the efforts of these bad actors technologically makes sense. However, while the *Notice of Proposed Rulemaking* (“NPRM”) appears to strike an appropriate balance between combating illegal robocallers, protecting consumers, and preserving the flow of important informational calls from legitimate businesses to consumers, ACA International (“ACA”) is concerned with the related *Notice of Inquiry* (“NOI”) which explores the possibility of a framework in which legitimate business calls containing important information could be mistakenly blocked by voice service providers.

While ACA strongly supports efforts to combat illegal robocalls, the mistaken blocking of legal calls, including time sensitive and account related calls, would deprive consumers of important information and harm the operations of legitimate businesses. As a result, in these comments, ACA urges the Commission to move forward on the measures in the NPRM while refraining from considering the much more complicated issues raised in the NOI. Specifically, ACA argues that: (1) there are several logistical challenges and risks involved with giving voice service providers discretion to determine whether or not a call is in fact unlawful; (2) the negative impact of mistaken blocking is heightened in the debt collection context where consumers are often not aware they have an outstanding debt until they are contacted by a debt collector; (3) while the NPRM seems to appropriately target criminal robocallers, the NOI would substantially burden all legitimate businesses who communicate with consumers using modern calling technology; and (4) outside of

the bright-line categories of calls identified in the NPRM, individual consumers – as opposed to voice service providers – are better situated to decide which calls should be blocked and already have the authority to do so.

Finally, ACA also shares considerations from its members related to the questions in the NOI dealing with the blocking of lawful calls by voice service providers.

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ACA International (“ACA”) respectfully submits these comments in response to the *Notice of Proposed Rulemaking* (“NPRM”) and *Notice of Inquiry* (“NOI”) released by the Federal Communications Commission (“Commission”) in the above-referenced docket.¹ In the NPRM, the Commission seeks comment on proposed rules to codify guidance that voice service providers may block spoofed calls when the subscriber of the spoofed number requests it, as well as to permit providers to block calls from certain categories of spoofed numbers in which the Commission sees no legitimate, lawful purpose for spoofing. These include invalid numbers, valid numbers that are not allocated, and valid numbers that are allocated but not assigned. In the NOI, the Commission seeks comment on actions that may be taken in the future to allow voice service providers to block additional calls, including establishment of objective standards to indicate that a call is likely to be fraudulent or illegal, creation of a safe harbor for voice service providers, and creation of safeguards to minimize blocking of lawful calls.

¹ *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Notice of Proposed Rulemaking and Notice of Inquiry, CG Docket No. 17-59, FCC 17-24 (rel. March 23, 2017), 82 Fed. Reg. 22625 (May 17, 2017)(“NPRM/NOI”).

ACA applauds the Commission's efforts in the NPRM to seek a technological solution to curb the growing number of unlawful robocalls which are not just annoying, but also expose consumers to tremendous potential harm. ACA is concerned, however, with the Commission's NOI which, although well meaning, explores the possibility of a framework in which legitimate business calls containing important information could be mistakenly blocked by voice service providers, an outcome that is harmful both to consumers and legitimate businesses.

In these comments, ACA respectfully urges the Commission to move forward with the more bright-line approach to call blocking in the NPRM and refrain from moving forward with any future rules based on provider discretion that could result in legitimate calls being blocked. ACA asserts that allowing voice service providers to block the categories of calls identified in the NPRM appears to strike an appropriate balance between combating illegal robocalls, protecting consumers, and preserving the flow of important informational calls from legitimate businesses to consumers. Conversely, by potentially expanding the categories of calls that providers could block beyond the NPRM, ACA argues that the NOI would create significant logistical challenges and expose consumers and businesses to substantial harm through the potential mistaken blocking of legitimate calls. Finally, ACA shares considerations from its members related to the questions in the NOI dealing with the blocking of lawful calls by voice service providers, a source of significant concern for ACA members related to any future call blocking measures.

I. BACKGROUND ON ACA INTERNATIONAL

ACA is an international trade organization of credit and collection professionals that provide a wide variety of accounts receivable management services. With offices in Washington, D.C. and Minneapolis, Minnesota, ACA represents approximately 3,500 members ranging from third-party debt collectors, debt purchasers, attorneys, credit grantors, and vendor affiliates who employ more than 230,000 employees worldwide.

ACA members are governed by myriad federal, state, and local laws and regulations regarding debt collection.² Indeed, the accounts receivable management industry is unique if only because it is one of the few industries in which Congress enacted a specific statute, the Fair Debt Collection Practices Act (“FDCPA”), governing all manner of communications with consumers when recovering payments.³

ACA members include the smallest of businesses that operate within a limited geographic range of a single state, and the largest of publicly held, multinational corporations that operate in every state. The majority of debt collection companies, however, are small businesses with nearly 70 percent maintaining fewer than 20 employees.⁴

ACA members contact consumers exclusively for *non-telemarketing purposes*. The calls do not involve advertising or soliciting the sale of products or services. The purpose of these telephone calls is strictly to facilitate communication with consumers to investigate disputes, assist in the recovery of payment for services rendered, goods that have been received, or loans that have been given, and to explain to the consumer the options available for repayment. The calls made by

² For example, the collection activity of ACA members is governed by the Federal Trade Commission Act, 15 U.S.C. § 45 *et seq.*; the Fair Debt Collection Practices Act (“FDCPA”), *codified at* 15 U.S.C. § 1692 *et seq.*; the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (as amended by the Fair and Accurate Credit Transactions Act); the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 *et seq.*; the Fair Credit and Charge Card Disclosure Act, 15 U.S.C. § 1637(c), Pub. L. No. 100-583, 102 Stat. 2960; the Federal Bankruptcy Code, Title 11 of the U.S.C., Pub. L. No. 95-598, 92 Stat. 2549; and numerous other federal, state, and local laws. *See, e.g.*, Illinois Collection Agency Act, 225 ILCS 425 *et seq.*; California Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788 *et seq.*; Florida Fair Consumer Credit Practices Act, Fla. Stat. Ann. § 559.55 *et seq.*; West Virginia Collection Agency Act of 1973, W. Va. Code Ann. § 47-16-1 *et seq.*

³ The FDCPA defines “communications” subject to the statute broadly to include “the conveying of information regarding a debt directly or indirectly to any person through any medium.” 15 U.S.C. §1692a(2).

⁴ Josh Adams, Ph.D., *Small Businesses in the Collection Industry: An Overview of Organization Size and Employment*, ACA International White Paper (August 2016) available at <http://www.acainternational.org/files.aspx?p=/images/40363/aca-wp-smallbusiness.pdf>.

collection professionals are informational in nature and are never made randomly or sequentially. Debt collectors make individualized, targeted contacts for a very particular purpose.

To effectively assist consumers in repaying their debts, it is essential that debt collectors have the ability to communicate with consumers using the method that is most likely to reach those consumers, including on their wireless telephones. If contact with consumers is unnecessarily impeded, debt collectors lose the ability to share critical information that can help struggling consumers avoid negative consequences, such as adverse information being placed on a credit report, litigation, and wage garnishment. Put simply, consumers are best served when debt collectors can engage with them through constructive dialogue.

II. COMMENTS ON THE NPRM AND NOI

A. **Granting Voice Service Providers Authority to Block the Specific Categories of Calls in the NPRM Appears to Strike an Appropriate Balance to Combat Illegal Robocalls that Harm Consumers and Legitimate Businesses**

Communications technology has come a long way from the basic rotary dials, clunky mobile telephones, and expensive long-distance calling of the past. Communication is easier and cheaper than ever before which has had enormous beneficial impacts, including keeping families connected and providing consumers with important, timely information. Unfortunately, however, this ease and low cost has opened up an avenue for unscrupulous actors to use modern communications technology as a weapon against consumers. From false promises of winning a prize to ominous threats, consumers are subject to a barrage of unlawful “robocalls” that do not just invade their privacy, but also expose them to substantial harm. Those who make these unlawful calls, many of which come from overseas,⁵ have no intention of following the law whatever it is; their entire function is to scam consumers.

⁵ See NPRM/NOI, ¶ 6.

Given this, technological solutions, like those identified by the Commission in the NPRM, are key to combatting robocall scammers whose very existence is predicated on harming consumers. By focusing specifically on the types of numbers that fall under a verifiable category and that a legitimate caller would have no reason to spoof, the NPRM gives voice service providers an important option to block the categories of calls that are most likely to be unlawful. At the same time, given the narrow and objective nature of the types of calls that providers can block under the NPRM, the proposed rules focus on stopping “actual bad actors from making calls to scam and defraud consumers,”⁶ instead of casting a wide net that would risk sweeping in calls made by legitimate businesses. As such, the NPRM appears to strike an appropriate balance between protecting consumers, ensuring access to information from legitimate callers, and providing clear parameters to voice service providers for the types of calls that can be blocked.⁷

In addition, by adopting a framework that could likely thwart the high volume of scam robocalls, legitimate businesses that rely on modern communication methods to communicate with consumers could also stand to benefit. Scam robocalls are unquestionably, as Chairman Pai puts it, a “scourge.”⁸ As a result, it is unsurprising that consumers complain vociferously about them and that the Commission is making their elimination a priority.

The problem, however, is that in the robocall discourse, scam calls and legitimate calls have both been lumped into the same category under the Commission’s broad interpretation of a “robocall” as any call made to a wireless number using an automated telephone dialing system or a

⁶ NPRM/NOI, Statement of Commissioner Michael O’Rielly.

⁷ While ACA supports the principles in the NPRM, ACA is not commenting on the feasibility of implementation of the proposed rules by voice service providers.

⁸ NPRM/NOI, Statement of Chairman Ajit Pai.

prerecorded voice.⁹ Using this loaded word – which clearly has a negative connotation and brings to mind unwanted, random, and illegitimate calls – to sweep normal, expected, and desired communications into the same bucket as telemarketing and scam calls is misleading and has impeded much-needed communication reform, especially under the Telephone Consumer Protection Act (“TCPA”).

While ACA continues to urge the Commission to narrow its interpretation of a robocall to exclude informational calls made using modern calling equipment, at a minimum, limiting the sheer number of illegal robocalls through the measures identified in the NPRM will hopefully have a positive impact on the current rhetoric that has stood in the way of common-sense TCPA reforms that legitimate businesses have been desperately seeking.

B. It is Imperative that the Commission Does Not Adopt Any Future Call Blocking Rules that Could Result in Providers Mistakenly Blocking Legitimate Calls Containing Important Financial Information

As the Commission rightly acknowledges, in developing solutions to combat illegal robocalls, it “must balance competing policy considerations—some favoring blocking and others disfavoring blocking—to arrive at an effective solution that maximizes consumer protection and network reliability.”¹⁰ The NPRM appears to have struck an appropriate balance by focusing provider blocking authority on specific categories of calls that would be highly unlikely to be used by legitimate businesses and that are objectively verifiable. The NOI, however, raises “harder questions” that, as Commissioner O’Rielly pointed out, present a challenge in “finding the right criteria to capture illegal robocalls without also blocking lawful calls, if at all possible.”¹¹

⁹ See, e.g., Federal Communications Commission, “FAQs on Robocalls,” Consumer Guide, available at <https://transition.fcc.gov/cgb/consumerfacts/robocalls.pdf>

¹⁰ NPRM/NOI, ¶ 33.

¹¹ NPRM/NOI, Statement of Commissioner Michael O’Rielly.

Although ACA strongly supports efforts to combat illegal robocalls, implementation of the NOI's ideas could have significant negative impacts on legal calls, including the mistaken blocking of lawful calls that could deprive consumers of important information and harm the operations of legitimate businesses. As a result, ACA urges the Commission to move forward on the measures in the NPRM and refrain from considering the much more complicated issues raised in the NOI.

First, in ACA's view, there are several logistical challenges and risks involved with giving voice service providers discretion to determine whether or not a call is in fact unlawful. In instances when a provider gets it right, the benefit is clear; however, in cases where a provider gets it wrong, there could be devastating consequences. How would a caller know a valid call has actually been blocked? What happens if a caller does somehow know, but unblocking is not immediate and the caller has important time-sensitive information to share? Although the Commission is seeking to minimize the number of mistakenly blocked calls, once provider discretion to determine what may be a lawful call or not is introduced, there will simply be too much inherent risk for legitimate calls being blocked to counterbalance the potential consumer benefit of broader call blocking authority for providers.

Second, the negative impact of mistaken blocking is heightened in the debt collection context where consumers are often not aware they have an outstanding debt until they are contacted by a debt collector. In these instances, if a lawful debt collection call is mistakenly blocked, consumers would have no way of knowing that they are being deprived of important information to resolve their account. And given the potential high call volume of legitimate debt collectors, it is foreseeable that such calls could be blocked if providers were granted further call blocking discretion as envisioned by the NOI. Thus, despite the good intentions of the NOI to protect consumers, implementation of its ideas could unintentionally result in consumers being exposed to substantial, long-term financial harm through the loss of normal, expected, and desired account information.

While this risk seems appropriately contained in the NPRM proposals, ACA is very concerned about the potential for a large number of debt collection calls being mistakenly blocked under the NOI's preliminary ideas.

Third, while the NPRM seems to appropriately target criminal robocallers, the NOI would undoubtedly burden all legitimate businesses that communicate with consumers using modern calling technology. What this means is that on top of all of the compliance obstacles caused by the TCPA, under the NOI, legitimate businesses would be forced to spend additional time and resources: (1) trying to ensure voice service providers are not mistakenly blocking their calls; and (2) trying to ensure that any mistakenly blocked numbers are unblocked by voice service providers as soon as possible. In the latter case, what would happen in instances where all of the numbers of a particular business are blocked, such as in a small debt collection firm? Would the business have to shut down all outbound calling operations until it can prove to a provider that the calls are legitimate? Doing so could essentially destroy a business's operations.

Not only would the ideas put forth in the NOI add substantial compliance costs on legitimate businesses, but it would do so without any assurance that consumers will be better protected. And in cases where legitimate calls are mistakenly blocked, consumers could actually be worse off as a result of provider-initiated call blocking. These negative impacts and high compliance costs stand in direct contrast to the heavy focus on reducing regulatory burdens espoused by President Trump, including in Executive Order 13777 which asks agency heads to identify regulations that are "unnecessary" or "impose costs that exceed benefits" for repeal, replacement, or modification.¹²

¹² See Executive Order 13777, Enforcing the Regulatory Reform Agenda, February 24, 2017, *available at* <https://www.whitehouse.gov/the-press-office/2017/02/24/presidential-executive-order-enforcing-regulatory-reform-agenda>.

Finally, outside of the categories of calls identified in the NPRM, individual consumers – as opposed to voice service providers – are better situated to decide which calls should be blocked and already have the authority to block such calls. Given this, and the growing number of options for consumers to utilize call blocking tools, the Commission should not deprive consumers of this choice by allowing providers to make blocking decisions for them as described in the NOI.

C. Considerations Related to the Mistaken Blocking of Legitimate Business Calls from ACA International Members

Although ACA strongly recommends that the Commission focus on finalizing call blocking rules based solely on those identified in the NPRM and refrain from moving forward with the ideas espoused in the NOI as described above, ACA offers the following input based on feedback from its members. These considerations are specifically focused on questions in the NOI that deal with the issue of providers incorrectly judging a legitimate business call to be unlawful and mistakenly blocking it.

1. Feedback Related to the Establishment of a “White List”

The implementation and maintenance of a “white list” as described by the NOI raises several logistical issues. Here is some feedback about the establishment of a potential white list given by ACA members:

- “If a white list is created, it will be necessary to make sure calls are not being blocked, that provider lists are accurate and that there is a mechanism to correct issues, all of which will require the industry to monitor, audit, address or correct.”
- “A white list will be burdensome and/or time consuming, especially for large companies that have thousands of numbers or even small businesses without a lot of staff.”
- “A white list would be another burden on business and is not needed.”
- “The biggest concern is ‘rogue’ companies obtaining white list phone numbers (or simply spoofing them) to circumvent the protections offered.”

- “Gaining access to a white list of numbers by a bad seed would be detrimental to the legitimate businesses who own those phone numbers.”

2. Feedback Related to a Notification Process for Improperly Blocked Calls

Developing a potential notification process for improperly blocked calls is also fraught with challenges and raises many questions. ACA members are especially concerned with making sure they will be clearly notified of any blocked calls and ensuring there is a quick process for the unblocking of legitimate calls. Some specific comments about a notification process include:

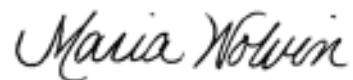
- “Somehow, we need to be notified if/when any of our legitimate business numbers are being blocked. Without that information, we will never know and will continue to call using that number. There has to be some kind of notification that we are blocked, which numbers are blocked, and a reason for the block.”
- “The challenge with allowing providers and/or subscribers to block calls is that it would be very difficult for a caller to know they have been blocked unless we receive some information to notify that this blocking is on.”
- “Businesses that rely/depend on outbound calling would be forced to shut down their business if a lawful call was blocked any longer than 24 hours. Taking too long could also be detrimental to the consumer if the call was from an emergency provider. There has to be a mechanism for these calls to be unblocked very quickly.”
- “Something uniform seems most fair for the legitimate callers. Otherwise this could be a nightmare if each provider wants something differently.”
- “Consistency is key.”
- “If one provider unblocks, all should have that information.”

III. CONCLUSION

Illegal robocalls harm consumers and serve no legitimate purpose. As a result, ACA supports the Commission’s decision to approach the growing number of unlawful robocalls through narrow and targeted technological solutions like those proposed in the NPRM. However, as these comments make clear, although well intentioned, the ideas put forth by the Commission in the NOI are logistically challenging to implement and fraught with substantial risk of causing harm

to consumers (through the mistaken blocking of important informational calls) and harm to legitimate businesses (through the need to expend significant resources to ensure their legitimate calls are not being mistakenly blocked by providers). For these reasons, ACA respectfully urges the Commission to move forward with the NPRM while refraining from expanding the categories of calls that voice service providers can block as contemplated by the NOI.

Respectfully submitted,



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