

**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

COMMENTS OF TELE-TOWN HALL, LLC

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Dated: July 5, 2017

COMMENTS OF TELE-TOWN HALL, LLC

Tele-Town Hall, LLC® (“Tele-Town”) respectfully submits these comments in response to the Federal Communications Commission’s Notice of Proposed Rulemaking (“NPRM”) and Notice of Inquiry (“NOI”) in the above-captioned proceeding.

I. INTRODUCTION AND SUMMARY

Tele-Town is the creator and leading provider of telephone town hall events that allow elected officials, non-profit organizations, school districts and others to reach their intended audience. At the outset, Tele-Town expresses its support for the Commission’s efforts in this proceeding to block illegal and fraudulent calls, and believes the proposals contained in the NPRM are narrowly tailored solutions that should not block legitimate callers.

As detailed more fully below, however, Tele-Town is concerned that proposals under consideration in the NOI may lead to carrier gatekeeper activity that would serve as a prior restraint on entirely lawful communications desired by consumers. In fact, Tele-Town’s service is frequently used by members of Congress and other officials to convey information and coordinate efforts during states of emergency. Thus, as the Commission attempts to balance the criteria that would allow providers to capture illegal robocalls, Tele-Town respectfully submits that the Commission should allow legitimate service providers and callers to “white list” their telephone numbers. Critically, calls from such numbers should then be considered presumptively legitimate and not subject to unilateral blocking by carriers.

II. TELE-TOWN’S PLATFORM SERVICES AND CALLED-PARTY PROTECTION MEASURES

Tele-Town Halls are unique events that allow government officials, elected officeholders, political candidates, non-profit groups and others to engage their constituents and stakeholders by means of live and interactive telephonic town-hall events. How the events work in practice is

that the Tele-Town platform user will designate the specific telephone numbers that the user wishes to contact, and will record one or more voice prompts that provide initial disclosures, as well as instructions to the call recipient regarding the specifics of that event – such as how to ask the speaker questions or respond to polling questions posed during the event. The platform user will then initiate his or her event at the time of the user’s choosing, and the Tele-Town system will then further transmit the user’s individual calls to the recipients selected by the user to downstream carriers.

Importantly, however, as a default setting a Tele-Town user’s calls will be scrubbed against the most up-to-date wireless number database so that only landline telephone numbers will be ultimately called by the user. Tele-Town provides this scrubbing service at no charge to the user. Only if the Tele-Town user certifies that he has the consent necessary to contact wireless numbers in the user’s contact list, and turns off the default scrubbing setting, will wireless numbers be contacted. When the called party answers the telephone call, he can either stay on the line and participate in the informational Tele-Town event, or press a designated number to be automatically disconnected and taken off the user’s contact list, thus ensuring that the called party never receives a subsequent call from that user while utilizing Tele-Town’s service.

As another default feature, and although Tele-Town is not the maker or initiator of any call transmitted through the Tele-Town platform,¹ the Caller ID information associated with the

¹ In its *2015 TCPA Order*, the Commission held that a platform provider “does not make or initiate a call when [its customer] merely uses [the software platform]” to initiate messages that the customer controls. *Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 30 FCC Rcd. 7961, ¶ 25 (2015) (“*2015 TCPA Order*”); see also *Rinky Dink, Inc. v. Elec. Merch. Sys.*, Civ. No. 13-1347-JCC, 2015 WL 778065 (W.D. Wash. Feb. 24, 2015) (holding that communications platform operator could not be liable under the TCPA, and holding further that only message *initiation* is actionable under the TCPA, not message *transmission*).

user's call will display Tele-Town's name and a Tele-Town telephone number so that the intended recipient can call back and automatically determine which Tele-Town user contacted that individual. If the called party desires, the person can also use this telephone number to be placed on Tele-Town's global do-not-call list, which would prevent any Tele-Town user from contacting that telephone number in the future. Tele-Town has been providing this call-blocking feature for years to make it easier for call recipients to opt out of receiving any additional calls from Tele-Town users.

Tele-Town events thus share little in common with a robocall, as that term is commonly understood. Instead, Tele-Town events are more akin to a group call initiated by a single user, given that these are live events where the speaker and call recipients are bridged together, with only minimal prerecorded voice prompts that are used strictly for onboarding and orientation purposes. Nevertheless, given the high-volume, outbound dialing characteristics associated with a typical Tele-Town event, Tele-Town is concerned that any imprecise metrics under consideration in the NOI could result in unilateral blocking by the carriers.² As noted at the

² Indeed, the Commission's reference to "checking customer complaint sites" is especially troubling. NOI, ¶ 30. Tele-Town itself was just recently and improperly named in a Telephone Consumer Protection Act ("TCPA") putative class action suit. The facts of the case were that the plaintiff's own union – which unequivocally had the plaintiff's prior express consent based on his union membership enrollment form – had used Tele-Town's platform to call the plaintiff and other members of his local to have a Tele-Town event with one of his senators to discuss matters of interest to the union. Leaving aside that Tele-Town itself should never have been named in the suit, the call initiated by the plaintiff's union was clearly lawful and Tele-Town was able to quickly negotiate a dismissal of the case. The point here, however, is that if attorneys who are required under Federal Rule of Civil Procedure 11 to conduct an objectively reasonable investigation into both the facts and the law before filing a complaint – on pain of personal liability – are still filing frivolous TCPA cases that they don't properly investigate, the Commission should not be putting much – if any – weight into unverified consumer complaint sites. *See, e.g.*, <https://www.facebook.com/pg/FCC/reviews/>. An allegation is not evidence, and service providers should be entitled to due process – specifically the ability to challenge anonymous complaints with actual evidence before a carrier can unilaterally begin blocking calls.

outset, this would be particularly problematic as it relates to Tele-Town users, who are most often engaging in highly protected political speech, but also frequently use Tele-Town’s services to provide safety alerts and coordinate response efforts during emergencies.

For example, during wildfires, floods, and other natural disasters, members of Congress, state and local government officials and first responders will use Tele-Town’s service to quickly contact residents in the danger zone to provide them critical safety information and address their questions. The consequences of a “false positive” – where a carrier could unilaterally begin blocking Tele-Town users’ calls **without notice** – in these situations could be catastrophic. Thus, it is incredibly important that the Commission not paint with too broad of brush in this proceeding because an emergency message cannot be “unblocked.”

III. THE COMMISSION SHOULD ADOPT PROTECTIONS FOR LEGITIMATE PLATFORM PROVIDERS THAT WOULD MAKE THEIR USERS’ TRAFFIC PRESUMPTIVELY VALID

One of the key objectives of the Communications Act is “to make available, so far as possible, to all the people of the United States ... a rapid, efficient, Nation-wide and world-wide wire and radio communications services with adequate facilities.”³ “The blocking of telephone calls is antithetical to this fundamental goal.”⁴ Because of this, the Commission has consistently taken action to require all communications providers (carriers and non-carriers alike) to route

³ 47 U.S.C. § 151 *et seq.*; *see also* 47 U.S.C. § 254(b)(1)-(7) (directing the Commission to adopt policies that preserve and advance universal access to reliable and affordable telecommunications and information services).

⁴ *Policies and Rules Concerning Operator Service Providers; Amendment of Policies and Rules Concerning Operator Service Providers and Aggregators; Petition for Declaratory Ruling of Securus Technologies, Inc.*, CC Docket Nos. 90-313 and 94-158 and WC Docket No. 09-144, Declaratory Ruling and Order, 28 FCC Rcd. 13913, 13916 ¶ 8 (2013).

calls appropriately and to prevent all forms of unlawful call blocking. Without a general ban on call blocking, “callers might never be assured that their calls would go through.”⁵

Indeed, as noted in the NPRM, the Commission recently confirmed that “nothing in the Communications Act or our rules or orders prohibits carriers or VoIP providers from implementing call-blocking that can help *consumers who choose* to use such technology” to stop unwanted calls.⁶ That is, to date, the decision as to whether to block a call was the sole prerogative of the consumer, and not the carriers’: “there appears to be no legal dispute in the record that the Communications Act or Commission rules do not limit consumers’ right to block calls, **as long as the consumer makes the choice to do so.**”⁷ As the Commission considers whether to significantly depart from its prior precedent and allow carriers to unilaterally block calls based on certain criteria, the Commission thus should bear in mind a few fundamental points.

Most importantly, the Commission appears to be misapprehending the ability of callers – or their underlying platform providers – to readily ascertain that their calls are in fact being blocked by one or more carriers. NOI, ¶ 39. As is the case with unilateral blocking of text messages by wireless carriers, there is no guarantee that notice of a decision by a particular carrier to begin call blocking will be transmitted, contemporaneously or otherwise, back to a platform operator like Tele-Town. Moreover, there are a lot of variables why a certain number of call recipients may not join a particular Tele-Town event. It is therefore not reasonable for the Commission to assume that callers or platform providers will be able to infer from available data

⁵ *Access Charge Reform*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 9923, 9932-99, ¶ 24 (2001).

⁶ *2015 TCPA Declaratory Ruling*, ¶ 152.

⁷ *Id.* ¶ 156 (emphasis added).

that one or more carriers have in fact begun blocking traffic from one particular caller or even from an entire platform.

As a result, Tele-Town respectfully submits that the Commission potentially has the “burden of proof” structurally backwards under the current proposal, especially given the information asymmetry between the blocking carrier and blocked caller. *Id.* ¶¶ 38-39.⁸ That is, Tele-Town and other legitimate service providers should not be forced to first divine that their users’ calls are in fact being blocked, and then prove to the blocking carrier(s) that “the calls are legitimate.” *Id.* ¶ 39. Particularly where the blocking carriers themselves offer competing products and services,⁹ the economic incentive of carriers to block first, and ask questions later, would be too great not to be potentially abused. And given that Tele-Town events are *live* events, the decision by one or more carriers to unilaterally block would result in irreparable damage.¹⁰ Simply put, you cannot unblock a call in these situations, and the Commission should not trust that Coasian bargaining will carry the day as between blocking carriers and legitimate callers that are attempting to complete time-sensitive calls. This is acutely the case when Tele-Town platform users are attempting to reach people in emergency situations.

Accordingly, Tele-Town urges the Commission to adopt a “white list” approach that would enable legitimate platform operators to easily validate that their numbers are being used for legitimate calls. Importantly, once such telephone numbers are validated in this manner, carriers should not be able to unilaterally decide to block calls from these numbers and then

⁸ It is not clear whether the “white list” proposed in Paragraph 38 could be trumped unilaterally by a carrier that could nevertheless begin blocking and require the caller to demand the carrier to immediately stop blocking, as proposed in Paragraph 39.

⁹ See, e.g., Verizon’s conferencing services, <https://e-meetings.verizonbusiness.com/global/en/index.php>, and AT&T’s conferencing services, <https://www.business.att.com/enterprise/Family/collaboration/conferencing/>.

¹⁰ In contrast, *if* an unlawful call actually went through, the caller would still be subject to the TCPA’s penalties of at least \$500 per message.

require the caller to “prove” that the traffic is legitimate.

IV. THE COMMISSION SHOULD TREAD CAREFULLY WITH RESPECT TO POLITICAL SPEECH

Tele-Town reiterates that it supports the Commission’s efforts to eliminate unlawful robocalls. But as the Commission is well aware, while a political call to a wireless telephone can be unlawful in certain circumstances, the same call to a landline telephone would be perfectly lawful. Further, a member of Congress or a federal agency contacting either a landline or wireless number for official government business would not be subject to the TCPA based on federal immunity, regardless of the technology used to place the call. Tele-Town therefore simply wishes to introduce a word of caution in this proceeding that the content of calls – as well as who the caller is – will be undeniably relevant in determining whether a call is in fact “unlawful.”¹¹ Accordingly, the Commission must avoid any final rules in this proceeding that would have the effect of deputizing private parties¹² to institute prior restraints on political speech. Such a situation would only serve to unconstitutionally chill free speech.

The United States Supreme Court has previously declared that political speech is at the very heart of the protections afforded by the First Amendment:

Although First Amendment protections are not confined to the exposition of ideas, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs, of course including discussions of candidates. This no more than reflects our profound national commitment to the principle that debate on public issues should be ***uninhibited, robust, and wide-open***. In a republic where the

¹¹ Indeed, an emergency call would not require any consent under the TCPA to a wireless number.

¹² Private entities that act in concert with state actors may be sued for Section 1983 actions based on allegations that the joint activity caused a violation of a constitutional right. *See Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922, 936, 102 S.Ct. 2744, 73 L.Ed.2d 482 (1982); *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 152, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970); *Hammons v. Norfolk Southern Corp.*, 156 F.3d 701, 705–08 (6th Cir.1998) (holding that a *Bivens* action may be brought against a private, non-individual corporation).

people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential, for the identities of those who are elected will inevitably shape the course that we follow as a nation.

Buckley v. Valeo, 424 U.S. 1, 14-15 (1976) (brackets, ellipses, quotation marks and internal citations omitted, emphasis added). Given that, “it can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office.” *Id.* at 15.

Prior restraints are the most egregious First Amendment violations and the most difficult regulation to sustain. *See Henerey v. City of St. Charles School Dist.*, 200 F.3d 1128, 1134 (8th Cir. 1999) (citing *Near v. Minnesota*, 283 U.S. 697, 713-20 (1931)). In fact, eliminating prior restraints was a leading purpose of the First Amendment. *Carroll v. President and Comm’rs of Princess Anne*, 393 U. S. 175, 181 n.5 (1968) (citing *Lovell v. City of Griffin*, 303 U.S. 444, 451-52 (1938)). Any prior restraint bears “a heavy presumption against its constitutional validity,” *Vance v. Universal Amusement Co.*, 445 U.S. 308, 317 (1980), and is “subject to the highest degree of scrutiny.” *Henerey*, 200 F.3d at 1134 (citing *Near*, 283 U.S. at 713-20).

Thus, as the Commission considers whether to adopt specific procedures to which service providers and callers may need to adhere, it should refuse to consider any type of procedure that would require pre-approval of scripts or messages for political calls. Courts that have reviewed such regulations routinely find such prior restraints unconstitutional. *See Telco Commc’ns, Inc. v. Carbaugh*, 885 F.2d 1225, 1233 (4th Cir. 1989); *see also Telco Commc’ns, Inc. v. Barry*, 731 F. Supp. 670, 683 (D. N.J. 1990). In *Carbaugh*, the Fourth Circuit ruled that a requirement to provide a state agency with information concerning a proposed charitable solicitation was unconstitutional. “Although the Commonwealth [of Virginia] has a legitimate interest in preventing fraud and misrepresentation, there is a thin line between reviewing a script for

misrepresentations and reviewing it for content.” *Carbaugh*, 885 F.2d at 1233. The court in *Barry* struck down a similar regulation, holding that “bureaucratic review of solicitation scripts is ... rife with the potential for abuse” and “[s]imply requiring solicitors to file copies of the text of any oral solicitation does not ensure that the text will be followed.” *Barry*, 731 F. Supp. at 683 (citation omitted).

At bottom, Tele-Town events are heavily geared toward political actors and the free exchange of ideas. Accordingly, Tele-Town urges the Commission to give due consideration to these Constitutional issues as it develops potential regulations based on the feedback it receives in this docket. Any prior restraints on political calls should be rejected by the Commission.

CONCLUSION

For all the foregoing reasons, Tele-Town respectfully requests that the Commission not permit carriers to unilaterally block “white listed” platform providers and their users, and not condone unconstitutional prior restraints on political speech.

Dated: July 5, 2017

Respectfully submitted,

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