

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	CG Docket No. 17-59
Advanced Methods to Target and	)	
Eliminate Unlawful Robocalls	)	DA 18-638
	)	

**Comment of Professional Association for Customer Engagement**

**Filed July 20, 2018**

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## **I. Introduction**

The Professional Association for Customer Engagement (“PACE”)<sup>1</sup> submits this Comment in response to the Public Notice<sup>2</sup> issued by the Federal Communications Commission (“Commission”) seeking comment on the progress made by industry, government, and consumers in combatting illegal robocalls, and the remaining challenges.<sup>3</sup> PACE respectfully submits that despite ongoing progress by industry in formulating best practices and bringing call blocking technologies to market, illegal robocalls remain a significant concern for consumers and industry alike. PACE encourages the Commission to continue (i) engaging with industry organizations, such as the Communication Protection Coalition, that seek to implement best practices for reducing illegal robocalls while also preserving legal communications, and (ii) promoting implementation of the SHAKEN/STIR framework because SHAKEN/STIR remains the most viable long-term solution for reducing the volume of illegal robocalls reaching consumers. At the same time, PACE calls on industry and the Commission to ensure that the telephone network remains available to legal callers and that legal callers are provided an opportunity to challenge erroneous blocking/labeling.

## **II. Illegal Robocalls Continue to Plague America**

There is universal agreement among consumers, call originators, consumer advocates, telecommunication providers, and regulatory authorities that illegal calls must be eliminated. However, despite concerted efforts to eradicate them, illegal calls continue to plague Americans. By one estimate, approximately 4.1 billion robocalls were placed in the United States in June 2018—many of which were scams and other forms of illegal calls.<sup>4</sup> Just in the past three months, the Commission issued a record \$120 million forfeiture against a prolific illegal robocaller<sup>5</sup> and the Federal Trade Commission (“FTC”) filed a Complaint against individuals and companies that placed or facilitated billions of illegal calls.<sup>6</sup> It is clear that even broad enforcement of the Telephone Consumer Protection Act (“TCPA”) has not stemmed the ever-increasing flow of illegal calls. Why?

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<sup>1</sup> PACE is the only non-profit trade organization dedicated exclusively to the advancement of companies that use a multi-channel contact center approach to engage their customers, both business-to-business and business-to-consumer. These channels include telephone, email, chat, social media, web, and text. Our membership is made up of Fortune 500 companies, contact centers, BPOs, economic development organizations and technology suppliers that enable companies to contact or enhance contact with their customers.

<sup>2</sup> Public Notice: Consumer and Governmental Affairs Bureau Seeks Input for Report on Robocalling, FCC, CG Docket No. 17-59, DA 18-638 (June 20, 2018).

<sup>3</sup> *Id.* at 1.

<sup>4</sup> YouMail Robocall Index, *June 2018 Nationwide Robocall Data*, <https://robocallindex.com> (last visited July 9, 2018).

<sup>5</sup> Forfeiture Order, *In the Matter of Adrian Abramovich, et al.*, File No.: EB-TCD-15-00020488, FCC 18-58 (May 10, 2018).

<sup>6</sup> Complaint, *FTC v. Christiano, et al.*, Case No. SA CV 18-0936 (C.D. Cal. May 31, 2018) (available at [https://www.ftc.gov/system/files/documents/cases/netdotsolutions\\_complaint.pdf?utm\\_source=govdelivery](https://www.ftc.gov/system/files/documents/cases/netdotsolutions_complaint.pdf?utm_source=govdelivery)).

Simply stated, bad actors are not concerned about TCPA liability because they use technology to hide from law enforcement and plaintiffs' attorneys. Individuals originating calls with the intent to defraud (as defined in the Truth in Caller ID Act)<sup>7</sup> are often located in foreign countries and use voice over internet protocol ("VoIP") technology to place high volumes of calls that "spoof" a telephone number or calling party name to trick consumers. VoIP technology makes tracing the call originator difficult, allowing unscrupulous actors to evade authorities.<sup>8</sup> Spoofing is also used by unscrupulous telemarketers to hide their true identity as they avoid complying with state and federal do-not-call lists and registration requirements.

At the same time, legal actors continue to experience reduced contact rates likely due to blocked and erroneously labeled calls. PACE members experience the effects of call blocking every day, including, for some members, 20%-30% reductions in call answer rates. Many members are also noticing a sudden and dramatic increase in calls returning a busy signal — a condition nearly eliminated when calling mobile phones due to the provision of voicemail. Simply stated, because of scam and fraudulent calls, and mis-calibrated methods to halt them, consumers are not answering legal and legitimate calls resulting in cancelled projects and layoffs.<sup>9</sup>

### **III. What is Industry Doing?**

One of the ways legitimate actors are coming together to fight the scourge of illegal calls is through the PACE-led Communication Protection Coalition ("CPC"). The CPC connects stakeholders across the entire telecommunications ecosystem, including, sellers, contact centers, technology developers, carriers, analytic companies, consumer groups, and non-profits. CPC efforts yielded significant progress in the past year toward an open and trustworthy telecommunications ecosystem that works for callers and call recipients alike. CPC members have agreed on the need to continue improving the accuracy of call blocking/labeling algorithms to reduce and, in the future, effectively eliminate erroneous blocking/labeling. Carrier and call analytics participants have put in place, or are working to put in place, processes for facilitating communication between a caller whose calls have been erroneously blocked/labeled and the blocking carrier or analytic provider. Through the CPC, representatives from all corners of the telecommunications ecosystem listen to the concerns and ideas of stakeholders and seek to find solutions and best practices.

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<sup>7</sup> 47 U.S.C. § 227(e)(1) ("It shall be unlawful for any person within the United States, in connection with any telecommunications service or IP-enabled voice service, to cause any caller identification service to knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value . . .").

<sup>8</sup> See Bikram Bandy, *Your Top 5 Questions About Unwanted Calls and the National Do Not Call Registry*, FTC (Mar. 8, 2015), <https://www.consumer.ftc.gov/blog/2015/03/your-top-5-questions-about-unwanted-calls-and-national-do-not-call-registry>

<sup>9</sup> According to the Bureau of Labor Statistics over 189,000 people are employed in the telemarketing industry. BUREAU OF LABOR STATISTICS: Occupational Employment and Wages, May 2017, 41-9041 Telemarketers, <https://www.bls.gov/oes/current/oes419041.htm>.

As part of CPC's ongoing best practice development, a CPC working group is evaluating ways to use a self-regulatory organization ("SRO") to establish caller legitimacy. The SRO would validate a caller's identity and telephone numbers it is authorized to transmit in caller ID. Additionally, the SRO would require that the caller adhere to industry best practices, including compliance with the TCPA, Telemarketing Sales Rule ("TSR"), and analogous state laws. Information regarding callers who earn SRO accreditation would be provided to carriers and analytics providers for incorporation into blocking/labeling algorithms to prevent erroneous blocking/labeling. The CPC working group will continue evaluating this idea over the next few months.

PACE applauds the interest shown by the Commission in the CPC's efforts to develop best practices for preventing illegal communications while permitting legal and wanted communications. Stakeholder-led collaborations like the CPC offer one of the best opportunities for long-term solutions to the illegal call problem and PACE encourages the Commission to continue using them as a vehicle for engaging with stakeholders.

#### **IV. Erroneous Call Blocking Mitigation**

##### **A. Inquiry Mechanism**

Notwithstanding the CPC and other stakeholder efforts to implement best practices, PACE remains concerned about the lack of real-time blocking notification for callers and a formal mechanism to inquire about and request modification of a number's blocking status that serves callers and call recipients alike.<sup>10</sup> For callers, the mechanism should scale to allow inquiry and modification for everything from a single number to hundreds of numbers at a time. Carriers could offer a web-based portal to manually inquire about a handful of numbers and an automated interface optimized for high-volume inquiries.<sup>11</sup> For call recipients seeking to verify the blocked status of number, a web-based portal with manual inquiry would likely be sufficient. Carriers should not implement a maximum time frame in which a caller or called party may inquire about and request modification of call blocking.

When a carrier receives a request to remove blocking, it should respond promptly. In the case of requests from call recipients, the carrier should use an automated system to immediately remove the block for calls to the call recipient from the blocked number. When the request comes from a caller, the carrier should acknowledge the request immediately, and once the

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<sup>10</sup> PACE acknowledges that, under current call blocking algorithms, blocking is a dynamic process that may result in only temporary blocking of a number. Carriers should not deny a request for modification simply because the blocking status has already changed by the time the request is filed. Rather, carriers should treat the request as a modification of future blocking behavior. Additionally, carriers must continue to protect the confidentiality of customer proprietary network information ("CPNI") at all phases of inquiry and response. Carriers may implement CPNI protection best practices, such as, verifying the identity of a purported call recipient before providing the call recipient with information about calls they received.

<sup>11</sup> All inquiry and call blocking modification mechanisms should be free of charge but may require registration as a means of verifying the identity of the requester.

carrier has the information needed to act upon it, should provide a response.<sup>12</sup> Such required information may include evidence of number ownership/assignment, authorization to use the number and proof of the identity of the requester. Carriers may permit callers to pre-register their information so that their requests may be expedited. Carriers should act upon a caller's request within one business day of receiving all requested information.

The Commission should develop a new complaint process, or modify an existing one, to allow for speedy resolution of complaints regarding denials of, or slow response to, caller and call originator requests for blocking modification. When evaluating call blocking complaints, the Commission should place the burden on the carrier to prove, by clear and convincing evidence, that the calls being blocked are illegal or the caller is not authorized to request blocking status modification because the caller does not have authorization to originate calls using that number. If the carrier does not alter the blocking status, the carrier should provide a reason why it cannot do so. If the carrier is unable to meet its burden, the Commission should order the requested blocking modification. Due to the severe impact prolonged proceedings could have on the caller, complaints should be resolved within seven business days from filing and the carrier should be required to prove its case based only upon evidence already in its possession at the time the complaint is filed.

In order to make a request for blocking modification, a caller must know that their calls are being blocked. Currently, callers learn of blocking circumstantially through decreased call answer rates and increased busy signals. The Commission should require more direct methods of notification. For example, the Commission could require use of a new signaling cause code specifically for calls blocked by carriers. Using a busy signal, a common practice, misinforms the caller, actually leads to more calls as dialers attempt to call again and arguably constitutes an unjust and unreasonable practice in violation of the Communications Act.<sup>13</sup> The Commission may also consider an intercept message to accompany the signaling cause code.<sup>14</sup> By informing callers that their calls are being blocked, carriers will allow faster caller response thereby reducing the impact of erroneous call blocking.

Likewise, call recipients must be informed when calls to them are blocked. For mobile phone users, carriers could provide an optional push notification or free SMS message alerting the call recipient of the number blocked and providing instructions to remove the block. For

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<sup>12</sup> Acting upon a request means either approving or denying it and implementing any resulting change (e.g. unblocking the number).

<sup>13</sup> See, e.g., Declaratory Ruling, *In the Matter of Developing a Unified Inter-carrier Compensation Regime; Establishing Just and Reasonable Rates for Local Exchange Carriers*, CC Docket No. 01-92, WC Docket No. 07-135, DA 12-154 (Feb. 6, 2012) at ¶ 13 ("The Commission has found that practices by common carriers that deceive or mislead customers are unjust and unreasonable practices under section 201(b). It is a deceptive or misleading practice, and therefore unjust and unreasonable under section 201(b), to inform a caller that a number is not reachable or is out of service when the number is, in fact, reachable and in service.") ("2012 Ruling").

<sup>14</sup> An intercept message may be particularly useful for low-volume callers and individuals (including victims of spoofing) who would not have the equipment needed to process a signaling cause code. Carriers would need to educate their customers on the meaning of and how to respond to the new message.

landline or VoIP users without such alert capability, carriers could provide information about blocked calls on the monthly statement and/or online through their account portal. Carriers should work with consumer groups to determine an appropriate frequency of call block notifications (for example, an immediate SMS alert for each blocked call may lead to too many alerts but a daily or weekly alert may be appropriate).

Additionally, a lack of accurate real-time notification harms consumers who depend on important and/or time-sensitive calls that carriers erroneously block. For example, if a pharmacy that makes prescription reminder calls has their calls blocked and does not know for some time, consumers who rely on those calls to remind them to refill important medications may forget and experience potentially harmful delays in refilling their medication. Likewise, a consumer who receives real-time credit card fraud alerts could be denied the ability to react swiftly to a threat if the initial call from her financial institution is blocked and the caller does not receive a real-time blocking notification that indicates it should work with the carrier to remove the block. In other words, both callers and called parties are harmed by the lack of real-time accurate information.<sup>15</sup>

Carriers should also work with industry groups to identify the types of call blocking appropriate at each stage of a call: origination, transit and termination. Realistically, terminating carriers will be in the best position to alert callers and call recipients when calls are blocked and respond to requests for blocking modification; however, carriers standing at other points in the call chain may have a role to play in keeping the network clear of illegal calls. The following table highlights the blocking roles carriers should play at various points:

<b>Carrier Type</b>	<b>Invalid, Unallocated or Unassigned Number Blocking</b>	<b>Algorithmic Blocking</b>	<b>Subscriber-Requested Blocking of Specific Numbers</b>
Originating	Permissible	Not Permissible	Not Permissible
Transit	Permissible	Not Permissible	Not Permissible
Terminating	Permissible	Permissible	Permissible

The reasons why transit and originating carriers cannot perform algorithmic blocking is for the same reason why they cannot block subscriber specified numbers – the subscriber needs to define, in their service profile, which numbers to block or not, and the service profile is maintained by the terminating carrier, not any transit or originating carrier.

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<sup>15</sup> Some may argue that the pharmacy and financial institutions in these examples could simply try other means of communication such as an email or text message. While that may be true for consumers tethered to their smartphones, such alternate communications would not be effective for landline-dependent consumers without readily available access to the internet who tend to be elderly, economically disadvantaged, and/or live in rural areas.

**B. Potential for Abuse & Long-Term Solutions**

In its November 2017 Report and Order, the Commission also expressed concern that a mechanism to mitigate erroneous call blocking by carriers could be abused by illegal callers.<sup>16</sup> Potential for abuse does not justify withholding important protections from callers and called parties. Carriers may mitigate the potential for abuse by adjusting the treatment of a number in the blocking algorithm rather than “whitelisting” the number. For example, the carrier may set a higher call volume threshold for triggering blocking in order to account for authorized use of the number. Additionally, a carrier may more stringently block calls originating from numbers for which a request to release call blocking was denied. Call blocking algorithms will need to dynamically account for illegal callers’ circumvention attempts which may result in erroneous re-blocking of previously unblocked numbers. The Commission, carriers, callers and called parties will need to work together to continually refine call blocking best practices.

Although at least one industry-participant is concerned that carriers informing callers about their numbers being blocked will assist bad actors, the benefits of blocking notification outweigh the potential drawbacks.<sup>17</sup> First, informing callers of the true reason their call did not connect is the law. As the Commission stated in 2012, “[i]t is a deceptive or misleading practice, and therefore unjust and unreasonable under section 201(b), to inform a caller that a number is not reachable or is out of service when the number is, in fact, reachable and in service.”<sup>18</sup> Second, legal and legitimate callers may suffer significant economic losses from the time it takes them to discover their calls are being blocked and mitigate the harm. Third, false busy signals actually result in more calls to consumers as dialing systems often retry such numbers. Fourth, illegal neighbor spoofing and illegal spoofing in general are the means by which bad actors hide their identity, and alerting these bad actors to their calls being blocked is unlikely to materially increase spoofing rates as the bad actors already dynamically rotate numbers. Consequently, although a signaling cause code and/or intercept message may theoretically speed up bad actors’ rates of number changes, such risk is far outweighed by the benefit of accurate call information to legal and legitimate callers.

**V. How Government can Help**

In addition to continuing its engagement with stakeholder groups seeking industry-based solutions, the Commission should also encourage swift completion and implementation of the

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<sup>16</sup> Report and Order and Further Notice of Proposed Rulemaking, *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, FCC 17-151 (Nov. 17, 2017) at ¶ 58 (“How can we mitigate the risk that makers of illegal robocalls will exploit such a process?”).

<sup>17</sup> Ex Parte Notice of First Orion Corp., *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59 (Dec. 20, 2017).

<sup>18</sup> 2012 Ruling at ¶ 13.

SHAKEN/STIR protocols.<sup>19</sup> SHAKEN/STIR will provide a long-term solution to caller authentication allowing consumers to make more informed choices about the calls they accept and improving law enforcement's ability to identify bad actors. PACE members continue to engage with the protocols' developers to improve SHAKEN/STIR and work through challenges posed by the complexity of today's calling ecosystem (for example, how to fully authenticate calls when the carrier that assigned the transmitted phone number differs from the carrier that placed the call on the network). As these conversations continue, PACE encourages the Commission to work with stakeholders from across the entire telecommunications ecosystem in establishing the SHAKEN/STIR Governance Authority.<sup>20</sup>

Putting in place systems to accurately identify and block/label illegal calls will greatly help consumers, but it is only one piece of the puzzle. When a bad actor is identified, the Commission should exercise its enforcement powers to hold that caller accountable. The Commission should work with industry to trace back calls and terminate service, with due process, to callers consistently violating the law. PACE is aware of anecdotal evidence of carriers that terminate service to callers whose telephone numbers repeatedly appear in complaint databases without justification.<sup>21</sup> PACE members are prepared to assist the Commission in holding illegal callers accountable.

## VI. Conclusion

Further progress is needed toward eliminating illegal calls while ensuring legal communications are protected. PACE encourages the Commission to continue (i) engaging with

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<sup>19</sup> Secure Telephony Identity Revisited and Signature-based Handling of Asserted Information using Tokens. See FTC, Robocall Strike Force Report, 5 (Oct. 26, 2016) (available at <https://transition.fcc.gov/cgb/Robocall-Strike-Force-Final-Report.pdf>).

<sup>20</sup> PACE and others are concerned that the Governance Authority – which is currently contemplated to have only carrier board members – lacks the diversity of perspectives needed for success. See, e.g., Henning Schulzrinne, *Minority Report on Selection of Governance Authority and Timely Deployment of SHAKEN/STIR*, 24, [http://www.nanc-chair.org/docs/mtg\\_docs/May\\_18\\_Call\\_Authentication\\_Trust\\_Anchor\\_NANC\\_Final\\_Report.pdf](http://www.nanc-chair.org/docs/mtg_docs/May_18_Call_Authentication_Trust_Anchor_NANC_Final_Report.pdf) (“In the future, entities other than carriers, such as large enterprises, may want to or need to sign calls, as they may be using multiple VoIP carriers and place, with the permission of the customer currently holding the number, outbound calls on behalf of that customer. For example, outbound call centers and notification and alerting services may use the number of the airline, school district or doctor’s office they are placing calls on behalf of. Unfortunately, all of the proposed board members have a potential conflict of interest, as they may prefer to offer such services themselves. *Thus, the STI-GA should include a representative reflecting the interest of large telephony users.*” (emphasis in original)). PACE is willing to serve as the voice of telephony users as part of the Governance Authority and in other fora.

<sup>21</sup> Callers may encounter consumer complaints for legal calls. Consumers often do not understand the intricacies of the TCPA and do not call regulations and may file complaints for calls that they erroneously believe are non-compliant. All levels of enforcement, carrier and government alike, must take into consideration that legal callers may experience significant volumes of complaints simply due to consumers misunderstanding complex regulatory requirements. Additionally, the Commission and other governmental agencies such as the FTC and the Bureau of Consumer Financial Protection (“BCFP”) should use existing authority under other consumer privacy protection frameworks such as the TSR and the Fair Debt Collection Practices Act (“FDCPA”) to define and halt abusive calling practices that lead to consumer complaints related to calls that are otherwise legal under the TCPA.



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industry organizations, such as the Communication Protection Coalition, that seek to implement best practices for reducing illegal robocalls while also preserving legal communications, and (ii) promoting implementation of the SHAKEN/STIR framework because SHAKEN/STIR remains the most viable long-term solution for reducing the volume of illegal robocalls reaching consumers. At the same time, PACE calls on industry and the Commission to ensure that the telephone network remains available for callers engaging in legal calling practices. Without immediate and sustained action to preserve legal communications, tens of thousands of jobs are at risk.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michele Shuster". The signature is fluid and cursive, with the first name "Michele" written in a larger, more prominent script than the last name "Shuster".

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