



July 24, 2019

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Third Further Notice of Proposed Rulemaking, Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59, WC Docket No. 17-97, 84 Fed. Reg. 29,478 (June 24, 2019)

Ms. Dortch,

The Consumer Bankers Association (CBA)¹ appreciates the opportunity to comment on the Federal Communication Commission's (Commission) Third Further Notice of Proposed Rulemaking on Advanced Methods to Target and Eliminate Unlawful Robocalls (Notice).² Financial institution regularly communicate with their customers. Limitations and blockades to customer communications can have significant impacts on the financial wellbeing of American consumers. CBA stands aligned with the Commission's intent to better protect consumers from harmful robocalls from bad actors and understands the need for effective call-blocking regimes to combat fraudulent and illegal activity. Our members comply with the TCPA every day and are similarly frustrated with the fraudulent and illegal actors that shirk the rules to put consumers' financial wellbeing in jeopardy.

CBA also supports the implementation of the SHAKEN/STIR framework as advocated for in the Notice and feels the validation of calls by voice service providers will do much to protect the financial safety and security of American consumers. However, we fear that until the SHAKEN/STIR framework is fully implemented, permitting voice service providers to block "unwanted"³ calls could lead to providers blocking of many of the vital communications consumers rely on from their financial institutions.

I. Voice Service Providers Should Not be Permitted to Block Calls Until SHAKEN/STIR Has Been Fully Implemented & Need Objective Criteria to Determine When a Call is "Unwanted"

¹ The Consumer Bankers Association is the trade association for today's leaders in retail banking – banking services geared towards consumers and small businesses. The nation's largest financial institutions, as well as many regional banks, are CBA corporate members, collectively holding two-thirds of the industry's total assets. CBA's mission is to preserve and promote the retail banking industry as it strives to fulfill the financial needs of the American consumer and small business.

² Third Further Notice of Proposed Rulemaking, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, WC Docket No. 17-97, 84 Fed. Reg. 29,478 (June 24, 2019) [hereinafter, *Notice*].

³ *Id.*

As the Commission has noted, many voice service providers have not yet implemented the SHAKEN/STIR framework,⁴ and the framework itself is still under review by industry stakeholders.⁵ As such, we urge the Commission to direct voice service providers not to block unauthenticated calls until the SHAKEN/STIR framework is fully operational and utilized by the providers.

Most importantly, upon implementation of the SHAKEN/STIR framework, the Commission should allow voice service providers to only block calls that have not been authenticated through the framework or those calls which the provider believes with a high degree of certainty to be placed with fraudulent or illegal intent. Given the subjective nature of allowing providers to define an “unwanted” call, the Commission should establish objective criteria for voice service providers to determine when to block a call the provider believes was placed with illegal or fraudulent intent. Without an objective definition of “unwanted” that accounts for those calls placed with fraudulent or illegal intent, many important and customer-necessary communications may be inadvertently blocked or tagged as “potential spam”.

Often, voice service providers may tag outbound calls as “potential spam” (or another similar moniker) when they are of short duration, or many calls come from one number in a short period of time. However, many of the vital communications financial institutions make to their customers fit this profile, such as fraud alerts or data breach notifications. Without objective criteria built to prevent these vital communications being inadvertently blocked as “unwanted”, American consumers will miss out on some of the most important calls financial institutions try to make to protect their customers.

II. The Commission’s Safe Harbor Should Not Apply Until SHAKEN/STIR is Implemented

The Commission also proposes establishing a safe harbor for voice service providers who incorrectly block or tag a legitimate call they believed to be “unwanted”. The SHAKEN/STIR framework is vital to authenticating calls not only protect consumers from bad actors, but also to ensure legitimate callers like CBA’s members are able to contact their customers. CBA advocates that the safe harbor should not apply to voice service providers until the SHAKEN/STIR framework is fully implemented. This would help ensure less legitimate calls are erroneously blocked or tagged as spam, and better protect the financial security of consumers.

⁴ News Release, Fed. Comm’n Comm’n, FCC Chairman Announces Another Step in Fight Against Spoofed Robocalls 2 (May 13, 2019), <https://docs.fcc.gov/public/attachments/DOC-357422A1.pdf> (noting that some Voice Service Providers need to “catch up” with implementation of the SHAKEN/STIR framework).

⁵ Press Release, ATIS, Mitigating Illegal Robocalling Advances with Secure Telephone Identity Governance Authority Board’s Selection of Iconectiv as Policy Administrator (May 30, 2019), <https://sites.atis.org/insights/mitigating-illegal-robocalling-advances-with-secure-telephone-identity-governance-authority-boards-selection-of-iconectiv-as-policy-administrator/>.

⁵ See Notice ¶ 53 (proposing that Voice Service Providers be permitted to block “only calls for which attestation information is available—the originating provider has implemented SHAKEN/STIR and each intermediate provider in the call path accurately passes authentication information to the terminating provider—and that fail authentication”).

As many of the communications financial institutions make are time-sensitive, we recommend the Commission require voice service providers notify the calling party and recipient and remove an erroneous block or spam designation within 24 hours of the incorrect blocking or tagging of legitimate calls. Further, voice service providers should notify the callers and recipients of erroneous blocks regardless of if it was imposed under the SHAKEN/STIR framework and remove the blocks at no cost to the caller. When notifying a caller of the incorrect blocking of a call, the voice service provider should establish a mean for callers to contact the provider to address the issue and avoid future mislabeling or blocking of calls.

III. The Commission Should Urge Voice Service Providers Not to Label Calls as “Debt Collector”

Unlike many of the “potential spam” calls tagged by voice service providers, debt-servicing and collection calls are lawful and beneficial to consumers. Establishing early and frequent communication with distressed borrowers often provides a better financial outcome for the consumer through services such as loan modifications, rate reductions, and fee waivers. The “debt collector” moniker may invoke suspicion from consumers used to seeing other call tags aimed at bad actors and deter the call recipient from picking up a legal and legitimate call, leaving them financially vulnerable. Further, labeling a call as “debt collector” greatly raises the potential for inadvertent third-party disclosure of a debt, which can quickly give rise to Federal Debt Collection Practices Act concerns. The Commission should work with the Consumer Financial Protection Bureau as the agency in charge on consumer debt-collection issues to determine how the special needs of debt collection calls should be addressed to best protect consumers’ right to privacy while protecting their financial security.

IV. The Commission Should Expand the Critical Calls List

CBA also appreciates the Commissions’ proposal of a “Critical Calls List” of numbers voice service providers may not block.⁶ Many of the communications CBA members make every day are vital to ensuring the financial safety and security of American consumers. We urge the Commission to expand the Critical Calls List to include numbers from which fraud alerts, low balance notifications, and data breach notifications are made. When a customer’s personal information is compromised or potential fraudulent activity is detected on their account, customers need to be notified immediately to prevent further financial harm. Additionally, ensuring customers who choose to receive alerts when their balance is running low will help them avoid overdrawing their accounts and keep them financially secure.

V. The Commission Should Conduct a Report on the Amount of Incorrectly Blocked and Mislabeled Calls

Finally, as the Commission notes the great potential for a massive increase in the adoption rates of call blocking technology due to the Notice,⁷ we recommend the Commission annually measure and report the number of calls voice service providers block incorrectly, including

⁶ *Id.* ¶ 63.

⁷ *Id.* ¶ 27.

reporting on erroneously blocked numbers under the SHAKEN/STIR framework. Providers should be able to track the number of incorrectly blocked and mislabeled calls, especially if they are required to notify callers and called parties about erroneous blocks. Reporting on these figures will give the Commission an additional tool in combating illegal and fraudulent robocalls by giving insight into the calls the SHAKEN/STIR framework catches and flags.

Conclusion

CBA once again supports the Commission's initiative to further combat fraudulent and illegal robocalls and supports the implementation of the SHAKEN/STIR framework to better protect the financial wellbeing of American consumers. To ensure consumers are properly protected however, the Bureau should not permit voice service providers to automatically block "unwanted" calls until this term is clearly defined, and the SHAKEN/STIR framework is implemented. Any safe harbor should not take effect until both initiatives are completed. Further, voice service providers should not label calls as "debt-collector" as it puts consumers' financial security and personal privacy at risk. The Commission should expand the "Critical Calls List" to protect consumers in the case of fraudulent activity, low balances, and data breaches, and should conduct reporting on the inadvertent blocking and labeling of legitimate calls to get better insight to combat illegal and fraudulent callers.

If you should have any additional questions on these issues or others, please don't hesitate to contact the undersigned directly at (202) 552-6381 or scongdon@consumerbankers.com.

Sincerely,

A handwritten signature in cursive script that reads "Stephen Congdon".

Stephen Congdon
Regulatory Counsel
Consumer Bankers Association