



August 13, 2018

Submitted via electronic filing: <http://apps.fcc.gov/ecfs/>

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

RE: Reply Comments for the Public Notice Concerning the Consumer and Government Affairs Request for Input for the Report on Robocalling, CG Docket No. 17-59

Dear Ms. Dortch:

ACA International (ACA) respectfully submits these comments in response to the Public Notice concerning the Consumer and Government Affairs Request for Input for the Report on Robocalling.¹ ACA International is the leading trade association for credit and collection professionals representing approximately 3,000 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs more than 230,000 employees worldwide.

I. Background

The credit and collection industry is a highly regulated industry complying with applicable federal and state laws and regulations regarding debt collection, as well as ethical standards and guidelines established by ACA. ACA members contact consumers exclusively for non-telemarketing and legitimate business reasons to facilitate the recovery of payment for services that have already been rendered, goods that have already been received, or loans that have already been provided. The use of modern technology is critical for the ability to contact consumers in a timely and efficient matter. Often if a consumer is put on notice of a debt sooner and earlier in the collection process, their chances improve of resolving that matter favorably.

Despite that the credit and collection industry is already highly regulated, and despite that the industry is making informational calls not subject to the Do Not Call List, which is aimed at telemarketing communications, some of the industry's calls have been blocked or impeded by

¹ Consumer and Governmental Affairs Bureau (Bureau) solicits input for a staff report (Report) on robocalling, CG Docket No. 17-59 (June 20, 2018). (“Public Notice”)

technologies allegedly targeting “robocalls”. The Federal Communications Commission (FCC) and Federal Trade Commission (FTC) joint efforts in this area concerning “robocalls” have been laudable for the focus on bad actors making illegal calls. Additionally, we support efforts to compile a report on robocalling and the spirit of the November 2017 *Call Blocking Order*.² However, both the FTC and FCC must do a better job going forward differentiating between highly legal informational calls and illegal robocalls, and stop using one-size-fits-all rhetoric punishing all callers seeking to communicate with consumers. Sweeping all communications into the category of robocalls is misleading to consumers and unfairly lumps legal and consumer friendly communications in with illegal scam calls.

Service providers in the marketplace should not be permitted to use technologies that enable third parties to unilaterally determine what calls consumers should receive in place of federal laws and regulations that already govern communications with consumers. While illegal actors, by their very nature, are not concerned with laws governing communications, those operating legally such as those in the credit and collection industry already are following consumer protections laws such as the Fair Debt Collection Practices Act (FDCPA). Technologies including mobile applications and carrier services should not unfairly mislabel, erroneously block, or create fake busy signals for highly legal calls being made for business purposes. Moreover, even if they are accidentally doing so based on faulty analytics, there should be consequences for this harmful activity.

As the U.S. Department of Treasury recently acknowledged, “Debt collectors and debt buyers play an important role in minimizing losses in consumer credit markets, thereby allowing for increased availability of and lower priced credit to consumers.”³ Similarly, the Small Business Administration of Advocacy also recently highlighted the need for communication with consumers concerning the Telephone Consumer Protection Act stating, “In an environment where fifty to seventy percent of a business’ customers might only be reachable by mobile phone, it is important that the FCC move quickly to establish clear guidance to small business compliance without depriving customers of required or desired communications.”⁴ Furthermore, the Bureau of Consumer Financial Protection (BCFP) recently noted, “Consumers benefit from communications with consumer financial products providers in many contexts, including receiving offers of goods and services and notifications about their accounts.”⁵

Multiple regulatory agencies have recently recognized that there are significant benefits to consumers when they can communicate with credit and collection professionals, in the channels that the consumers prefer. Allowing service providers or carriers to inhibit communications, even unintentionally, ultimately harms consumers when they do not receive information that they

² Advanced Methods to Target and Eliminate Unlawful Robocalls, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9706, 9727 (2018) (Call Blocking Order).

³ U.S. Department of Treasury, *A Financial System That Creates Economic Opportunities Nonbank Financials, Fintech, and Innovation* (July 2018), available at <https://home.treasury.gov/sites/default/files/2018-07/A-Financial-System-that-Creates-Economic-Opportunities---Nonbank-Financi....pdf>.

⁴ Ex parte Notice of SBA Office of Advocacy, Consumer and Government Affairs Bureau Seeks Comment on Interpretation of the Telephone Consumer Protection Act in Light of the D.C. Circuit’s ACA International Decision, CG Docket Nos. 18-152, 02-278.

⁵ Comments of the Bureau of Consumer Financial Protection, In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act and CG Docket No. 02-278 Interpretations in Light of the D.C. Circuit’s CG Docket No. 18-152 ACA International Decision (June 13, 2018). (“BCFP Comment”)

need. This inability to be able to effectively communicate with consumers about the recovery of debt can result in increased price of credit, and can cause creditors to have to obtain judgments in court, when they could have instead worked out a payment plan that included consumer preferences and input. It is important that going forward, the FCC consider a regulatory regime and framework to enable callers to mitigate mislabeling or erroneous blocking. Additionally, there should be requirements for notifying callers about “fake” busy signals, so that they are aware and able to take appropriate actions to reestablish contact with consumers.

II. The FTC and FCC Must Do a Better Job Distinguishing between Legitimate and Illegal Callers

The FTC and FCC should clearly outline that legal debt collection calls should not be lumped in with “robocalls”. For example, in the Public Notice the FCC states, “Voice service providers and third parties have developed opt-in tools that enable consumers to identify and block illegal calls. What criteria do these providers use and what information do they provide to consumers about the selection of calls for consumers to block or label as illegal or unwanted?” The Public Notice provides no acknowledgement that current efforts are imperfect because highly legal calls are also being blocked and mislabeled. The FCC should also be seeking input on what providers and carriers are doing to ensure that legal calls are not being unfairly targeted. There must be additional clarification for calls that are simply “unwanted” but are not otherwise illegal. Those categories of call must be treated differently than illegal scam calls.

In the *Call Blocking Order*, the FCC adopted rules enabling voice service providers to block several categories of calls including calls from phone numbers on a Do-Not-Originate list; invalid numbers; unassigned numbers; numbers assigned to a provider but not in use; and valid numbers that the subscriber has placed on a Do-Not-Originate (DNO) list.⁶ However, since the *Call Blocking Order* and the FCC’s Omnibus 2015 TCPA Declaratory Ruling and Order (“2015 TCPA Order”)⁷ the number of legitimate calls being blocked particularly in the debt collection industry has multiplied. Accordingly, it is essential that the FCC address how a caller should be notified of a blocked call and steps a caller can take to immediately rectify when a legitimate call is erroneously blocked or labeled incorrectly as spam.

Verizon, for example, in its comments for the Public Notice outlined precautions it takes in this area for call labeling. It states,⁸

Verizon also educates calling parties about “best practices” and about the sorts of calling activities that can result in their calls being identified as spam, so that they have the opportunity to adjust their operations in order to avoid becoming caught up in Verizon’s or other parties’ blocking or labeling tools.

While we appreciate the steps being taken to mitigate the likelihood of legitimate calls being blocked, it seems problematic that each provider could be setting their own set of “best practices” or creating other arbitrary standards that differ across the telecommunications

⁶ Call Blocking Order, *supra* note 2.

⁷ Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Declaratory Ruling and Order, 30 FCC Rcd. 7961 (2015). (“2015 Order”)

⁸ Comments of Verizon Wireless on the Public Notice.

spectrum. This could be a slippery slope that leads to telecommunication providers being empowered to choose for consumers what calls they should and should not receive.⁹ These practices have already harmed those making debt collection calls; other disfavored groups or businesses could be next. We have seen similar efforts in the past during “Operation Choke Point” when banks were forced to pick winners and losers for having access to banking services. The Department of Justice (DOJ) eventually recognized the error of not providing due process to legal businesses in “Operation Chock Point”. In August 2017, the DOJ sent a letter to the House Judiciary Committee stating, “Law abiding businesses should not be targeted simply for operating in an industry that a particular administration might disfavor. Enforcement decisions should always be based on the facts and the applicable law.”¹⁰

Going forward there must clear cut protections in place for those making legal informational calls and consequences for those that are blocking, mislabeling, or otherwise impeding calls on a regular basis without any legal justification.

III. Call Blocking Technologies are Impeding Legal Informational Calls

ACA has stood in support of FTC efforts to thwart the growing number of unlawful robocalls through narrow and targeted technological solutions.¹¹ However, it is critical that as robocall processing tools are developed and implemented, these should not cause legitimate calls to be blocked, harming lawful business communications and depriving consumers of important, timely information.

A. Mislabeled Calls

In 2017, ACA members became increasingly alarmed as they began to discover drops in right-party contacts coupled with discoveries that their legitimate business calls were being labeled as “suspected scam,” “scam likely,” or some other label that implied the call was not from a legitimate caller.¹² In recent months, ACA members have continued to report that legitimate calls that they are making are being mislabeled by third party providers. Not only does this impede legitimate business communications but it also prompts misguided complaints when callers believe they are dealing with a bad actor. Time and resources both of government agencies and collection agencies, then must be spent resolving illegitimate complaints. This mislabeling can also make a consumer reticent to communicate with the caller, even though it is in their best interest to learn about and resolve an outstanding account, if it appears they are speaking with a scammer. Given the critical importance of effective two-way communication to the debt collection process, this has become a serious issue that threatens the fundamental ability of debt collectors to communicate with consumers to share important account information and resolve outstanding debt.

⁹ See e.g., FCC Reaches \$40 Million Settlement with T-Mobile on Rural Calling, available at <https://www.fcc.gov/document/fcc-reaches-40-million-settlement-t-mobile-rural-calling>. (April 16, 2018).

¹⁰ Letter to House Judiciary Committee from DOJ, available at https://judiciary.house.gov/wp-content/uploads/2017/08/081617_Operation-Chokepoint.pdf (August 16, 2017).

¹¹ Comments of ACA International, Advanced Methods to Target and Eliminate Unlawful Robocalls, Report and Order and Further Notice of Proposed Rulemaking (January 23, 2018).

¹² ACA recently became aware of a call labeling which identified the call as “Extortion”

ACA members provided the following feedback about the negative impact blocking legitimate calls can have for consumers:

- “The consumers as well as our agency have been impacted. Some have shared they wished they had taken the call but honestly thought it was spam. As a result, the account went unresolved which did not help the consumer.”
- [as a result of the inability to reach consumers] “There are at least 18 who won't know about their debt until it hits their credit file.”
- “This has had a considerable impact on our ability to establish trust with the consumers so we can assist them with their debt.”
- “Consumers are less likely to answer their phone, they think that our business is not legitimate, and has caused complaints to regulators and our clients.”
- “Consumers are then not resolving their accounts which continue to potentially impact them negatively.”
- “This issue has impacted communication with consumers. However, it is also impacting our employment efforts. We are showing up as scam/spam when we call applicants that have sent in resumes responding to our employment ads. We have seen a major decline in our call backs.”
- “It prevents our office from properly assisting a consumer to find a solution to resolve an account regardless the method (dispute, payment arrangements, suggestions, or payment in full).”

B. Fake Busy Signals

Currently, industry members continue to also report that many carriers will provide a busy signal to the call originator when they block a legitimate call. Often the consumer does not even know a call attempt was made. It is inherently deceptive for a carrier to return a signal that a called number is busy when in fact the call has been blocked by the carrier. As the FCC has previously stated, it is a deceptive or misleading practice 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. If a legitimate caller receives a busy signal, typically the caller will make repeated attempts in an effort to make live contact, wasting time and resources. As Noble Systems points out in their comments on the Public Notice, “Providing an audio intercept (similar to those audio announcements informing the caller that the called number is not in service) is within the capability of every service provider. This capability could be used to inform the caller that the call has been blocked, and the intercept message could inform the caller how to access the carrier’s mitigation procedures, e.g., by verbally indicating a URL or telephone number.”¹³ We agree that this is an important point that should be considered. This would allow callers to at least have the opportunity to make changes and investigate why a number has been blocked. It would ultimately reduce the drain on network resources and most importantly provide a better opportunity for consumers to receive information they need.

¹³ Comments of Noble Systems Corporation on the Public Notice.

C. Erroneously Blocked calls

When calls are erroneously blocked, there must be more responsibility placed on providers to be able to identify this mistake and alert callers to it sooner. Again, we agree with the comments outlined by Noble System that stated, “Many carriers have yet to identify a URL, telephone number, or other contact for receiving mitigation requests. There are no standards yet defined for how this information is to be provided, nor a timeframe for when a response should be provided to an inquiry. For many call originators, which may use hundreds of different CPNs and periodically alter the CPN for different calling campaigns, attempting to manually inquire on a per-number basis and wait several business days for a response to an inquiry is simply unworkable.” As the FCC and FTC consider longer term solutions to the problem of illegal robocalls such as SHAKEN/STIR, they should immediately address current problems that erroneously blocked calls are causing. As part of this they should require carriers or other third parties to take appropriate steps to immediately address mistakes and have protocols for doing so.

D. Scammers are Evading Many Call Blocking Technologies

Lastly, we would like to reiterate that the worst actors and many illegal robocallers have found ways around call blocking technologies and continue to plague consumers with scam and other fraudulent calls. Thus, the main focus of the FTC and FCC should be on narrowly targeting these illegal actors through enforcement actions and appropriately tailored technological solutions.

IV. Conflict with FDCPA

Call labeling and blocking technologies targeting highly legal debt collection activities also pose a risk of disclosing the existence of debts to third parties, which could potentially invoke FDCPA related concerns.¹⁴ Certain technologies have been reported to flash “debt collector” or identify a collection agency, even lighting up in different colors drawing attention to the call when a debt collection call comes in on a cell phone. Yet, the FDCPA does not allow disclosure of debts to third parties. The debt collection industry is already subject to voluminous, often frivolous, litigation in this area and unknown threats such as labeling that is beyond a credit and collection professionals control is very concerning. A different, but just as pressing concern is when in the case of collection agencies, no name or identification is provided during labeling, making it less likely for a consumer to trust or answer the unknown call.

The FCC should work with the BCFP to consider whether these types of alerts raise privacy concerns, if debt collections calls need to be treated differently because of their unique requirements, and encourage carriers and providers to work with the industry to properly label calls. While debt collectors have no control over these alerts, it is problematic that they could be unfairly blamed, face reputational harm with their customers, or lose the trust of consumers. The FCC must work closely with the BCFP, who is currently developing debt collection rules to ensure that the credit and collection industry is on the same level playing fields as other industries when it comes to call blocking and labeling.

¹⁴ 15 U.S. Code § 1692c (b).

V. Conclusion

As highlighted, multiple regulatory agencies have recently recognized there are significant benefits to consumers when they can communicate with credit and collection professionals through the channels that the consumers prefer. Allowing service providers or carriers to inhibit communications, even unintentionally, ultimately harms consumers when they do not receive information that they need. Without an effective collection process, the economic viability of businesses and, by extension, the American economy and credit system in general is threatened. When the cost of recovering debt unnecessarily rises, creditors are overly cautious about extending loans, and lower income consumers and those with thin credit files are harmed most. Recovering rightfully-owed consumer debt enables organizations to survive, helps prevent job losses, keeps credit, goods, and services available, and reduces the need for tax increases to cover governmental budget shortfalls.

Accordingly, it is pertinent that the FTC and FCC consider the harm outlined that certain call blocking and labeling technologies are causing for highly legal and regulated debt collection calls and the consumers they serve. We urge both agencies to take steps to mitigate this harm, and additionally to refrain from the rhetoric of sweeping highly legal debt collection calls into the same category of calls as those being made by illegal robocallers and scammers.

Thank you for your attention to these important matters. Please feel free to contact me with questions.

Sincerely,

A handwritten signature in black ink that reads "Leah Dempsey". The signature is written in a cursive, flowing style.

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