

**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

**REPLY COMMENTS OF SIRIUS XM RADIO INC.**

James C. Falvey, Esq.  
Robert J. Gastner, Esq.  
Eckert Seamans Cherin & Mellott, LLC  
1717 Pennsylvania Avenue, N.W.  
12<sup>th</sup> Floor  
Washington, DC 20006  
(202) 659-6655  
jfalvey@eckertseamans.com  
Counsel for SiriusXM Radio Inc.

James S. Blitz, Esq.  
V.P., Regulatory Counsel  
Sirius XM Radio Inc.  
1500 Eckington Place, NE  
Washington, DC 20002  
(202) 380-1383  
james.blitz@siriusxm.com

August 20, 2018

## Table of Contents

	Page
I. INTRODUCTION AND SUMMARY.....	1
II. THE COMMISSION MUST CONSIDER THE EXTENT OF OVERBLOCKING AS IT COLLECTS AND ANALYZES DATA.....	3
A. Statistics on Blocked Calls Generally Do Not Account for Overblocking of Legitimate Calls.....	3
B. FCC and FTC Complaint Data May Do More Harm Than Good and Highlight the Arbitrary Nature of Today’s Call Blocking Systems.....	6
III. THE COMMISSION SHOULD ENSURE THAT BLOCKING TOOLS PROVIDE ADEQUATE AND UNIFORM DISCLOSURES OF CALLS TO BE BLOCKED.....	7
A. The Commission Should Require Uniform Consumer Disclosures.....	8
B. Information Exchanged Between Call Originators and Blocking/Labeling Providers Must be Uniform and Used Solely for Standardized Purposes....	10
C. A Better Approach Would be to Allow Consumers to Opt Into the Specific Categories of Calls They Intend to Block.....	11
IV. THE COMMISSION SHOULD ENSURE THAT CATEGORIES ARE UNIFORMLY DEFINED AND THAT THE COMMISSION CONTINUES TO SUPPORT THE DELIVERY OF SOLICITED AND OTHER LEGAL PHONE CALLS.....	12
V. THE COMMISSION SHOULD IMPLEMENT UNIFORM CALL INTERCEPT MESSAGES, MANDATORY INQUIRY MECHANISMS, RESPONSE TIMEFRAMES, AND OTHER RECOMMENDATIONS RAISED BY THE COMMENTING PARTIES.....	14
A. Call Intercept Messaging is a Critical Missing Component.....	14
B. Mandatory Inquiry and Mitigation Mechanisms.....	16
C. Best Practices and SRO Label.....	17
D. Know-your-Customer and Other Originating Carrier Solutions.....	17
E. The AT&T Safe Harbor Proposal.....	18

VI. IN ORDER TO ESTABLISH UNIFORMITY, THE COMMISSION SHOULD ASSERT JURISDICTION OVER ALL CALL BLOCKING AND LABELING PROVIDERS, INCLUDING THIRD PARTY APP PROVIDERS..... 19

VII. CONCLUSION..... 20

**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

**REPLY COMMENTS OF SIRIUS XM RADIO INC.**

Sirius XM Radio Inc. (“SiriusXM”) hereby submits these reply comments on issues raised in the Consumer and Governmental Affairs Bureau’s June 20, 2018 Public Notice<sup>1</sup> with respect to the blocking and labeling of robocalls. SiriusXM urges the Commission to take near-term action to ensure that the legal calls of legitimate companies are not inadvertently caught up in efforts to address illegal and fraudulent robocalling.

**I. INTRODUCTION AND SUMMARY**

SiriusXM commends the Bureau and the Commission for their efforts to reduce the volume of illegal robocalls by permitting blocking by carriers of certain calls.<sup>2</sup> Illegal robocalls remain a significant problem, impacting not only the consumers receiving such calls, but also legitimate callers, like school systems, pharmacies, telemarketers, and emergency responders.

---

<sup>1</sup> *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls, Consumer and Governmental Affairs Bureau Seeks Input for Report on Robocalling*, DA 18-638, CG Docket No. 17-59 (rel. June 20, 2018) (the “Public Notice”).

<sup>2</sup> SiriusXM is the world's largest radio company measured by revenue with over 33.5 million subscribers. SiriusXM’s satellite radio service is available in vehicles from every major automaker and on smartphones and other connected devices as well as online at [siriusxm.com](http://siriusxm.com). Similar to other legitimate businesses, SiriusXM makes telephone calls to its customers, often as follow-up calls to ongoing customers or to customers who buy a trial subscription with their purchase of a new or used vehicle.

Illegal, unwanted, and harassing calls also undermine the integrity and reliability of the telephone network in general, to the detriment of all.

SiriusXM continues to work with all segments of the telephone calling industry to combat illegal robocalling and to halt the widespread blocking and mislabeling of legitimate calls. The company is in contact with providers, other originating callers, and app providers to seek consensus solutions. However, significant progress remains to be made, including the urgent need for clear-cut rules to protect legitimate calls from being blocked and mislabeled.

The Commission’s longstanding rules and policies have always favored call completion to safeguard the utility of our nationwide communications networks for calling and called parties alike, affirming that “precedent does not permit unreasonable call blocking.”<sup>3</sup> The *2017 Call Blocking Order* did not authorize indiscriminate blocking by voice service providers but rather authorized blocking only of three clearly defined categories of *illegal* robocalls.<sup>4</sup> When it authorized such limited blocking, the Commission stated “a provider that blocks calls that do not fall within the scope of these rules may be liable for violating the Commission’s call completion rules.”<sup>5</sup> The Commission should ensure that its actions to combat illegal robocalls narrowly target illegal and/or fraudulent calls and do not undermine its longstanding and necessary call completion policies by allowing the blocking of legitimate calls.

The initial comments filed in response to the Public Notice indicate a wide variety of approaches from voice service and data analytics providers as to how calls are and should be

---

<sup>3</sup> *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, Declaratory Ruling and Order, 22 FCC Rcd 11629, 11629 (rel. June 28, 2007).

<sup>4</sup> *See In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, Report and Order and Further Notice of Proposed Rulemaking, FCC 17-151, CG Docket No. 17-59, 32 F.C.C. Rcd. 9706, 9710-11, ¶¶ 10-13 (rel. Nov. 17, 2017) (“*2017 Call Blocking Order*”).

<sup>5</sup> *Id.*, ¶ 9.

categorized, blocked, and labeled. In order to support its policy of call completion, the Commission should make it clear whether, and if so, how voice and app service providers may label and block calls, and how this information is presented to consumers. By requiring such uniformity, the Commission will provide much needed order to the calling ecosystem to the benefit of all affected parties.

The Commission should move swiftly to implement the protections for legitimate callers discussed further below, including requiring call intercept messages, mandatory inquiry mechanisms, uniform and well-defined categories of calls, category blocking only by consumer opt-in, protections for solicited and other legal phone calls, and approved or trusted caller lists or similar mechanisms to ensure call completion by legitimate callers. The Commission should affirm that it has jurisdiction over call blocking and labeling app providers to ensure its continued control over the public switched networks and enforce its call completion policies.

## **II. THE COMMISSION MUST CONSIDER THE EXTENT OF OVERBLOCKING AS IT COLLECTS AND ANALYZES DATA**

### **A. Statistics on Blocked Calls Generally Do Not Account for Overblocking of Legitimate Calls**

Much of the data the Bureau received from telephone carriers and app providers responding to the Public Notice focuses only on the number of total calls blocked, as opposed to the number of illegal calls blocked. Mere tallies of the number of calls blocked are not useful. In addition to the illegal calls that warrant blocking, millions of legitimate calls are also being unjustifiably blocked.<sup>6</sup>

---

<sup>6</sup> See, e.g., ACA Int'l Reply Comments at 3 (since the 2015 and 2017 Call Blocking Orders, “the number of legitimate calls being blocked particularly in the debt collection industry has multiplied.”); *id.* at 4 (“In 2017, ACA members became increasingly alarmed as they began to discover drops in

Even efforts made by Verizon to segregate the number of illegal robocalls from legitimate business marketing calls fail to take into account the nature or purpose of the calls and rely on nonstandard, undefined terms like “spam,” “spam robocalls,” “strong spam warnings,” and “milder spam calls.”<sup>7</sup> The lack of uniformity makes it almost impossible to define the scope of the problem of illegal and fraudulent calling and to ensure that legitimate calls don’t get blocked.

Other commenters paint with a still broader brush. For example, AT&T claims to have blocked more than 223 million fraudulent calls and labeled more than 274 million spam calls through one of its several blocking services. AT&T Comments at 3. Yet AT&T’s numbers suffer from the same ambiguities. It’s not clear from AT&T’s comments whether this figure carves out actual instances of fraud, and it’s equally unclear what constitutes “spam” (a term the Commission reserves only for email and text messages<sup>8</sup>), and whether the 274 million number includes legitimate calls, calls requested by the called party, government-sponsored calling, and so on. AT&T also claims it has “established procedures designed to ensure no legitimate traffic is impacted by its illegal robocall blocking program.” AT&T Comments at 11. While we hope this is the case, AT&T has also established a variety of other blocking programs that deliberately impede legitimate calling. *See, e.g.*, AT&T

---

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.”); *id.* at 4 (“In recent months, ACA members have continued to report that legitimate calls that they are making are being mislabeled by third party providers.”).

<sup>7</sup> Verizon Comments at 5-6 (estimating 3.7 to 4 billion “spam robocalls” per month, but “that is a conservative approach that may understate the scope of the problem because it takes into account only calls that trigger strong spam warnings, but not milder spam calls.”).

<sup>8</sup> *See* FCC website at <https://transition.fcc.gov/cgb/consumerfacts/canspam.pdf> (last visited August 20, 2018).

Comments at 8. While AT&T has unmatched resources to block illegal and fraudulent calls, absent more precise Commission requirements, it will likely continue to also block high volumes of legitimate calls every day.

First Orion claims, without any support, that “the number of calls First Orion has identified as false positives . . . is a very small fraction of 1 percent.” First Orion Comments at 7. However, large numbers of legitimate calls are routinely blocked by First Orion and its voice provider partners, as well as many others across the industry. If First Orion is relying on self-reporting by blocked callers, the lack of any call intercept signaling or messaging, as well as the increasing prevalence of inaccurate false signaling (PACE Comments at 3), makes it impossible for call originators to know when their calls are being blocked by First Orion or its voice service provider partners. It may well be that the incidence of false positives is actually much higher, but that First Orion is unable to identify accurately the percentage of false positives without effective intercept messaging.

The statistic cited by First Orion, even if accurate, is not relevant to businesses that market their services by phone. If the 1% of total calls identified by First Orion also represents a 20% or 30% reduction in call answer rates, as reported by PACE (PACE Comments at 3), then from the call originators’ perspective, false positives represent a much larger problem than First Orion’s data would suggest. The Commission cannot impose meaningful measures to prevent call blocking unless and until it defines uniform, industry-standard terms and requires blocked-call signaling and/or call intercept messaging, to effectively enforce its policies promoting call completion.



**B. FCC and FTC Complaint Data May Do More Harm Than Good and Highlight the Arbitrary Nature of Today's Call Blocking Systems**

CTIA accurately noted that the Commission's complaint data is not useful because most complaints have not been resolved or litigated.<sup>9</sup> CTIA also highlights problems with the FTC's database explaining that it is:

also crowd-sourced and the information collected suffers from similar shortcomings: inconsistent, multiple or mistaken submissions, such as were a protected category of call may be tagged as an illegal robocall. The FTC complaint form lists several categories of calls that are in fact legally permissible.

*Id.* at 13.

Despite the limited value of this data, companies providing the blocking apps used by major wireless carriers nonetheless say they rely on it.<sup>10</sup> First Orion's comments in fact buttress CTIA's and SiriusXM's conclusion that these databases provide unreliable information. First Orion feeds 30% of the annual complaints provided into the FTC database. First Orion Comments at 3. But First Orion doesn't report illegal or fraudulent calls, they report "unwanted calls" that certain mobile subscribers decided they didn't like on any given day. Absent any uniform definition of an "unwanted" call, one person's "unwanted" call could be another's desired pharmacy callback.<sup>11</sup> Moreover, the fact that someone has

---

<sup>9</sup> CTIA Comments at 12 ("the Commission should not rely on this data as a benchmark for evaluating the effectiveness of FCC and industry efforts"). *See also* CTIA at 13 ("For all these reasons, Data Center data should not be used as the basis of FCC analysis of progress on illegal robocalling.").

<sup>10</sup> *See, e.g.*, First Orion Comments at 3 ("First Orion accesses the complete FTC file as well as the FCC scam-related database. We use the data as a component of our research and validation processes for identifying fraudulent calls. We support continued release of this information.").

<sup>11</sup> *See also* First Orion Comments at 4 (discussing First Orion's sourcing of data from customer complaints "on a website, through an app, or via other means are a valuable source of information about nuisance . . . calls.").

complained to the Commission regarding a call does not mean that the complaint has even been investigated, let alone adjudicated to verify its validity. For example, a complaint that someone has called the same number repeatedly may not take into account the fact that the called party provided their phone number to the calling party with the request or expectation that they would receive such calls.

On this point, we agree with CTIA. This FCC and FTC data, although collected and disseminated with the best of intentions, is fundamentally flawed and arbitrary and, as such, should not be relied upon for any regulatory decision-making purposes. To the extent either agency makes this complaint data available, it should be limited to complaints that have been litigated or thoroughly investigated and found to be valid. The haphazard sourcing of data from these unreliable databases may be part of the reason that widespread overblocking continues and demonstrates the need for the Commission to impose uniformity on blocking and labeling activities. The Commission and the FTC should therefore cease making the raw data from these federal databases available for public use.

### **III. THE COMMISSION SHOULD ENSURE THAT BLOCKING TOOLS PROVIDE ADEQUATE AND UNIFORM DISCLOSURES OF CALLS TO BE BLOCKED**

Current filtering tools are not accurate and harm legitimate callers because there are too many false positives, resulting in legitimate calls being mistaken for illegal or fraudulent calls and blocked or mislabeled. One reason is the lack of uniformity in how various categories of calls are defined and a lack of consensus as to what types of calls should be blocked. The Commission should offer clear direction on these issues as well as on the disclosures that must be made to consumers before calls to them can be blocked.

## **A. The Commission Should Require Uniform Consumer Disclosures**

The Public Notice focuses necessary attention on the tools made available by voice service providers and third party app providers that enable consumers to identify and block illegal and/or fraudulent calls. The providers of those tools—both voice service providers and third party app providers alike—must be clear and transparent about the assumptions and targeting capabilities of their products, given the impact those products have on legally mandated call completion across the national communications networks. Call blocking applications are both over- and under-inclusive as the Commission indicated in these excerpts from its *2015 Robocall Order*:

- USTelecom, for example, states that, while “the Commission’s precedent establishes an affirmative right for ‘individual end users’ to choose to ‘block incoming calls from unwanted callers,’” phone companies grapple with relying on call mitigation technologies that may be overly-inclusive or -exclusive and attempt to ensure that they do not “inadvertently block, choke, reduce or restrict legitimate traffic in the network.”<sup>12</sup>
- CTIA likewise is concerned about privacy and the blocking of non-robocallers by the blocking technologies currently available.<sup>13</sup>
- AT&T also expresses concerns regarding the inadvertent blocking of non-robocallers, and asks that the Commission not require carriers to implement consumer-directed or consumer-managed call blocking services.<sup>14</sup>

Recognizing a customer’s right to choose to block certain calls, the Commission said such blocking would be permissible only with adequate disclosure by the carrier offering the

---

<sup>12</sup> *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd 7961, 8033, ¶ 159 (2015) (“*2015 Robocall Order*”) (citations omitted).

<sup>13</sup> *Id.* (citations omitted).

<sup>14</sup> *Id.* (citations omitted).

service or coordinating with an app provider of the likelihood of overblocking. As the Commission explained:

Regardless of how a blocking technology obtains the individual phone numbers within these categories, a consumer may choose to subscribe to a blocking service ***as long as the carrier offering the service or coordinating with the technology provider adequately discloses to the consumer the risks of inadvertent blocking.***<sup>15</sup>

At a minimum, the Commission should adopt rules ensuring that voice service and third party app providers must provide consumers with adequate disclosures that wanted, solicited, and other legal calls are likely to be blocked and the Commission should allow voice service providers to coordinate or contract with only those app providers that give consumers such disclosures. With blocking occurring of critical calls from pharmacies, schools, and public safety officials, voice and app service providers must provide standardized disclosures if these and other necessary and wanted calls are likely to be blocked when call blocking apps are deployed.

The comments reflect widely varying approaches to consumer disclosures and very little uniformity. Leaving adequate disclosures to the whims of each blocking provider is not an option especially when, according to CTIA, over 550 blocking provider options are available. CTIA Comments at 10. It would be unacceptable to allow multiple, arbitrary approaches to critical consumer disclosures such as these. Accordingly, the Commission should establish uniform consumer disclosures that are required of all voice service and app providers.

---

<sup>15</sup> 2015 Robocall Order, ¶ 157 (emphasis added). See also *id.*, ¶ 160 (“As long as the carrier offering its own product or coordinating with another product provider offers adequate disclosures, such as that the technology may inadvertently block wanted calls, consumers have the right to choose the technology—whether it is offered by a carrier, VoIP provider, or third party as part of a carrier service.”).

**B. Information Exchanged Between Call Originators and Blocking/Labeling Providers Must Be Uniform and Used Solely for Standardized Purposes**

Several commenters misleadingly suggest that information is flowing freely between businesses that are call originators and blocking/labeling companies. For example, Verizon claims that its website:

permits calling parties to simply tell us about their operations (such as the numbers they use and the nature of their calling campaigns), even if they are not aware of any issues with our labeling or blocking, so that the third-party vendor that analyzes traffic for Verizon's blocking/labeling tools can take that information into account.<sup>16</sup>

Call originators, however, cannot freely and easily share information with blocking/labeling companies until there is a standardized, uniform process to share such information that includes a clear understanding of how that information will be used. SiriusXM works directly with carriers to try to resolve blocking issues and is an active participant in industry meetings. But until a holistic solution is developed, including uniform limitations on how such information can be utilized, the Commission should not be led to believe that such information is being widely shared. If calls are to be characterized to consumers, there must be a clear, mutual understanding of how this will be implemented once the relevant information is assimilated into blocking databases. And similar to the Commission's Customer Proprietary Network Information ("CPNI") protections,<sup>17</sup> the Commission must establish limits on how call originator information can be used.

Absent such a uniform, holistic solution, many businesses are not in a position to share their information. Originating callers will not know how their information is being used and,

---

<sup>16</sup> Verizon Comments at 3. *See also* First Orion Comments at 7 ("legitimate call originators have a way to report and rectify false positives with our solutions.")

<sup>17</sup> 47 C.F.R. §§ 64.2001 - 64.2011 (2018).

absent further Commission actions, such information could be used to enrich a database that will continue to be used to block and mislabel the originating callers' calls. Accordingly, the Commission has a critical role to play in establishing a system that works not only for carriers and app providers, but also for businesses originating calls.

**C. A Better Approach Would be to Allow Consumers to Opt Into the Specific Categories of Calls They Intend to Block**

If the Commission allows any type of call labeling or categorization, it should require use of a system whereby consumers opt into specific categories of calls they intend to block. This approach balances consumers' desire to control calls they receive with the right of call originators to use the public switched networks to have their legal calls completed. The first category would be a baseline group of illegal and fraudulent calls that could be blocked by all providers. This would include the three categories of calls the Commission allowed to be blocked in the *2017 Blocking Order*, as well as actual fraudulent or illegal scams of which the carriers are aware. No other calls could legally be blocked, however, without an informed, express opt-in by the called party.

Consumers could then opt to block particular numbers or additional categories of calls they would like blocked or labeled (*e.g.*, block unsolicited calls but allow pharmacy/health care, school/government calls, solicited calls, calls based on prior business relationship, public safety calls, etc.). AT&T says it currently offers a service along these lines.<sup>18</sup> As detailed below, in order to protect pre-existing consumer choices, the Commission must ensure that

---

<sup>18</sup> AT&T Comments at 3 (“AT&T Call Protect Plus users also have the option to identify entire categories of calls (*e.g.*, political or survey calls) to block or send to voicemail . . .”).

solicited calls and calls based on a prior business relationship are designated in a discrete category.

**IV. THE COMMISSION SHOULD ENSURE THAT CATEGORIES ARE UNIFORMLY DEFINED AND THAT THE COMMISSION CONTINUES TO SUPPORT THE DELIVERY OF SOLICITED AND OTHER LEGAL PHONE CALLS**

SiriusXM does not support the categorization of calls, and blocking and/or labeling based on categories. Such categories invariably create false positives, clog up the free transmission of information across the public switched networks, and mislead consumers as to the nature and content of the calls being blocked and labeled. But if there are to be such categories, they should not be randomly determined by each of the hundreds of app providers that currently block and label calls.

Consumers are not protected when calls are randomly categorized by multiple providers because those consumers have no idea from one app to another what constitutes “unwanted calls,” “nuisance calls,” “spam calls,” “scam calls,” “solicited calls,” or whatever other label happens to be placed on the calls they receive. Currently, call blocking companies make up their own categories as they see fit with no standardization and no more than vague definitions provided to consumers.<sup>19</sup> Terms like “nuisance,” “spam,” “scam,” and “unwanted,” are commonplace, but definitions of such terms are imprecise if they even exist. If call labeling is to be allowed, the Commission should standardize call categories and

---

<sup>19</sup> See, e.g., First Orion Comments at 5 (“Our call identification solutions . . . identify suspected fraudulent calls as “Scam Likely,” and potentially unwanted, abusive, or illegal calls as “Nuisance Likely,” “Telemarketer,” “Survey,” or other categories as appropriate . . . .”); AT&T Comments at 2-3 (AT&T “labels calls from numbers identified with other suspect or potentially unwanted sources, including telemarketers, suspected spam, and other categories of calls.”).

require uniform, transparent definitions, including a category for calls that are solicited or based on a prior business relationship.

Importantly, the Commission has previously supported “features that will allow consumers to ensure that calls that are solicited . . . are not blocked . . .” *2015 Robocall Order*, ¶ 161. The Commission has also previously expressed a preference for features “that will allow customers to check what calls have been blocked and easily report and correct blocking errors.”<sup>20</sup>

Yet for the most part, providers have not rolled out such features and instead offer only broad-brush applications that block and mislabel solicited and other legal calls along with fraudulent and illegal calls. In order to move the industry in the direction it intended in 2015, the Commission should ensure that calls solicited by consumers and calls based on a prior business relationship are preserved as calls that cannot be blocked, or labeled in a way to suggest to consumers that they should be blocked. The Commission should also require that in any instance where the consumer has provided contact numbers to a calling party, the blocking and labeling of such calls is prohibited.

Solicited calls and all legal calls should never be lumped in with illegal and fraudulent scams calls. In addition, to the extent the consumer has a relationship with the calling party in such circumstances, the consumer can individually address any issues it might have with such calls. Where consumers have affirmatively provided their phone number, consumers and businesses should be able to rely on their expectation that those relationships will not be disrupted, and that calls from businesses to which they have given their numbers will not be blocked. AT&T goes so far as to claim that “many consumers do not want to take calls when telemarketers” have pre-existing relationships with the consumer. AT&T Comments at 8.

---

<sup>20</sup> *2015 Robocall Order*, ¶ 161.



However, AT&T should not blindly make that judgment for consumers; rather, the consumer should make such decisions themselves, and only on a transparent and informed basis.

The Commission committed to protect solicited calls in 2015 and it should follow through on that commitment. Voice and app providers should not be allowed to substitute their judgment for consumers with overbroad categories. There must be a simple, streamlined mechanism for businesses asserting such a relationship to provide information to carriers and other potential blocking providers about numbers originating such calls, with the assurance that those calls will be identified and recognized as a separate category of calls that will not be blocked, unless the consumer specifically withdraws his or her consent as to that category. Some information of this type may be flowing on an *ad hoc* basis today, but Commission oversight is needed to establish uniformity and ensure that solicited and other legal calls will be routinely completed without interruption.

**V. THE COMMISSION SHOULD IMPLEMENT UNIFORM CALL INTERCEPT MESSAGES, MANDATORY INQUIRY MECHANISMS, RESPONSE TIMEFRAMES, AND OTHER RECOMMENDATIONS RAISED BY THE COMMENTING PARTIES**

**A. Call Intercept Messaging is a Critical Missing Component**

SiriusXM agrees with those commenters that highlight the urgent issue of false messages being generated across the PSTN. SiriusXM and others have previously raised this issue in the context of false disconnect messages.<sup>21</sup> Noble Systems correctly explains that providing “a fake busy signal is misleading, and does not accurately inform the caller of the

---

<sup>21</sup> See, e.g., Letter from James C. Falvey to Marlene, Counsel to Sirius XM, Inc., to Marlene H. Dortch, FCC Secretary, CG Docket No. 17-59, at 6 (June 7, 2018) (“*SiriusXM June 7 Ex Parte*”). See also Letter from James C. Falvey, counsel to RESA, to Marlene H. Dortch, FCC Secretary, CG Docket No. 17-59, at 4 (June 21, 2018) (“*RESA June 21 Ex Parte*”).

status of the call.” Noble Systems at 4. In addition, PACE has recognized that many of its “members are also noticing a sudden and dramatic increase in calls returning a busy signal . . . .” PACE Comments at 3. And ACA Int’l recently noted that “industry members continue to report that many carriers will provide a busy signal to the call originator when they block a legitimate call.” ACA Int’l Reply Comments at 5.<sup>22</sup>

The Commission should reiterate that such false messages and signaling is illegal. It should also mandate the use of call intercept messages in order to: a) eliminate the false and misleading messages currently routinely transmitted today; and b) provide an accurate and informative return message that will allow call originators to provide necessary feedback to blocking and labeling providers. *See also SiriusXM June 7 Ex Parte* at 6. SiriusXM supports the adoption of such an automatic feedback mechanism, advocated in one form or another by a variety of commenters.<sup>23</sup>

An intercept message could return a provider code and URL or phone number, or the provider code could be linked to such information on a uniform industry or Commission-supervised website. AT&T says it already offers a product that screens calls such that a caller receives “an intercept message and is required either to press a key or to record his/her name before the call will be put through to the customer.” AT&T Comments at 4. Yourmail, a

---

<sup>22</sup> ACA International’s reply comments also highlight another concern repeatedly raised by SiriusXM, namely that calls are transmitted but “no name or identification is provided during labeling, making it less likely for a consumer to trust or answer the unknown call.” ACA Int’l Reply Comments at 6. As SiriusXM has advocated, the Commission should require that Caller ID is the first moniker to appear on every call, whether wireline or wireless. *See, e.g.,* Reply Comments of Sirius XM Radio Inc., CG Docket No. 17-59, at 8 (Feb. 22, 2018).

<sup>23</sup> *See, e.g.,* Noble Systems Comments at 4 (“Providing a unique signaling cause code or audio intercept message to the call originator would inform the caller the call was blocked.”); Noble Systems at 5 (“Providing an audio intercept . . . is within the capability of every service provider.”); PACE Comments at 5 (urging the Commission to adopt an intercept message and signaling cause code instead of a busy signal); ACA Reply Comments at 3 (“it is essential that the FCC address how a caller should be notified of a blocked call . . . .”).

much smaller provider, has also demonstrated the ability to send false disconnect messages back to originating callers.<sup>24</sup> Sending these false messages constitutes a violation of the Commission's Rules.<sup>25</sup> Yourmail's actions confirms Noble Systems' comment that adopting an audio intercept or some other adequate form of feedback mechanism is well within the technical capabilities of providers. Noble Systems Comments at 5.

## **B. Mandatory Inquiry and Mitigation Mechanisms**

SiriusXM supports the comments of PACE and Noble Systems urging the Commission to adopt uniform, scalable inquiry mechanisms and timeframes.<sup>26</sup> As Noble Systems states: "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." Noble Systems Comments at 6. This is consistent with SiriusXM's experience that even major carriers do not have phone numbers dedicated to this purpose (*SiriusXM June 7 Ex Parte* at 5), or if they do, they haven't publicized those numbers.

One step in the right direction is by AT&T, which provides contact information to PACE members and a link on its website. AT&T Comments at 8. However, one carrier

---

<sup>24</sup> See <https://www.youmail.com/home/more-features> (last visited August 20, 2018) (touting a Call Blocking service that will "play an out of service message to unwanted callers, telemarketers, and spammers so they stop calling").

<sup>25</sup> False messaging violates 47 C.F.R. § 201(b). See, e.g., *In the Matter of Developing a Unified Intercarrier Compensation Regime; Establishing Just and Reasonable Rates for Local Exchange Carriers*, Declaratory Ruling, CC Docket No. 01-92, 27 F.C.C. Rcd. 1351, 1355-56, at ¶ 13 (Feb. 6, 2012) ("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.").

<sup>26</sup> See also Comments of Sirius XM Radio Inc., CG Docket No. 17-59, at 7 (Jan. 23, 2018).

providing information to a limited subset of association members is hardly a comprehensive solution. There should be uniform, standardized requirements for any provider that engages in call blocking to establish inquiry and mitigation mechanisms, including a mandatory response time for all inquiries.

**C. Best Practices and SRO Label**

SiriusXM supports efforts to encourage reasonable best practices by call originators (AT&T Comments at 8), provided the carriers work closely with call originators to develop uniform and consensus practices to bring an end to overblocking and mislabeling. However, before endeavoring to develop any such consensus practices with call originators, the carriers should focus on adopting their own uniform best practices with reference to this issue.

Carriers and other voice service providers should first implement near-term call intercept messages and the other solutions detailed herein, solutions requiring action by voice and app providers alike.

Creating a Self-Regulatory Organization (“SRO”) label to be applied to companies that follow the law has significant potential. If such a label were established, SRO-accredited calls would need to be consistently completed and not labeled by voice or app providers, with mechanisms for enforcement in the event such calls are blocked or labeled. Again, this is an encouraging initiative, but it should complement and not substitute for the other necessary steps the Commission must take to preserve its longstanding policy of ensuring call completion.

**D. Know-Your-Customer and Other Originating Carrier Solutions**

Verizon’s know-your-customer approach (Verizon Comments at 9-12) also has the potential to be a useful tool, but it places undue enforcement powers in the hands of the

largest carriers. Call originators already face illegal impediments to lawful call completion on the terminating end. If a new level of screening is to be implemented on the originating end, it must be carefully implemented and accurately targeted solely at illegal robocallers.

Verizon acknowledges that the score it develops through this approach is “more consistent with (but is not necessarily indicative of) patterns known to be associated with illegal robocalling.” Verizon Comments at 10. Therein lies the problem. While a few of the larger carriers like Verizon may have the resources for further fine-tuning to target only illegal calling, there is no reason to expect that all voice service and app providers will get this right. In addition, there is no reason to believe that even the larger carriers will adopt uniform standards.<sup>27</sup> Carriers are free to establish guidelines for how they treat their customers, but guidelines should be consistent with their common carrier obligations and should be targeted at illegal and fraudulent calling. In any event, the prospect of guidelines should not substitute for additional Commission action to protect legitimate callers.

#### **E. The AT&T Safe Harbor Proposal**

AT&T admits that it deploys tools allowing customers to block legitimate calls, asserting that legitimate telemarketing calls can be blocked even when customers have asked the caller to call them. Now AT&T requests even broader blocking powers through a special “safe harbor” exception. AT&T Comments at 13-14.

Before the Commission considers affording AT&T this type of relief—through a safe harbor or otherwise—it must first implement protections for legitimate callers, such as call intercept messages, mandatory inquiry mechanisms, uniform categories, category blocking only by consumer opt-in, protections for solicited and other legal phone calls, and white lists

---

<sup>27</sup> See ACA Int’l Reply Comments at 3 (“it seems problematic that each provider could be setting their own set of ‘best practices’ or creating other arbitrary standards . . .”).

or similar trusted caller mechanisms to ensure call completion by legitimate callers. AT&T's safe harbor proposal is geared towards the largest carriers, will lead to more overblocking of legitimate calls, and is not an industry-wide solution.

**VI. IN ORDER TO ESTABLISH UNIFORMITY, THE COMMISSION SHOULD ASSERT JURISDICTION OVER ALL CALL BLOCKING AND LABELING PROVIDERS, INCLUDING THIRD PARTY APP PROVIDERS**

The Commission should clearly establish that it has jurisdiction over app providers that block or label telecommunications services. For example, if an intercept message indicates that a telecommunications services call was blocked or labeled by a third party app provider, the Commission will need to have inquiry and mitigation mechanisms in place for such providers. Absent such requirements, voice service providers will have an incentive and opportunity to pass the buck for overblocking and mislabeling downstream to these providers.

Parties have previously identified a number of means by which such jurisdiction can be established. The Commission could determine that such providers are providing telecommunications services by, for example, routing phone calls; it could require registration of third party app providers as it has with intermediate carriers; or it could prohibit voice providers from contracting or coordinating with any app provider that does not abide by Commission rules and requirements.<sup>28</sup> In a similar approach dating back to 2015, the Commission applied disclosure requirements directly on the carrier involved, repeatedly

---

<sup>28</sup> SiriusXM as well as other parties have previously detailed various means by which the Commission could assert such jurisdiction. *SiriusXM June 7 Ex Parte* at 3, n. 4; Reply Comments of Sirius XM Radio Inc., CG Docket No. 17-59, at 5 (Feb. 22, 2018); Comments of the Retail Energy Suppliers Association, FCC, CG Docket No. 17-59, at 5-7 (Jan. 23, 2018); Comments of Colonial Penn Life Insurance Company, FCC, CG Docket No. 17-59, n. 6 (Jan. 23, 2018); Letter from James C. Falvey, Counsel to Colonial Penn Life Insurance Company, to Marlene H. Dortch, FCC, CG Docket No. 17-59, at 3 (Sep. 21, 2017).

referring to the requirements on the carrier “coordinating with” third party app providers.<sup>29</sup> Imposing such requirements on voice service providers is another possible approach, although applying rules directly to app providers would appear to be a more effective and comprehensive means of ensuring that any future Commission directives are universally and uniformly applied, even to standalone app providers that do not partner with voice service providers. The Commission could also consider adopting an FCC seal of approval for those apps that abide by Commission rules. Based on this and previous filings, commenters have offered a variety of mechanisms by which the Commission could assert jurisdiction to ensure that it maintains sufficient control to implement policies ensuring call completion over the public switched networks.

## VII. CONCLUSION

SiriusXM supports the Commission’s efforts to curb illegal and fraudulent calling. However, the comments filed in this proceeding make clear that there is currently a daunting lack of transparency and uniformity in call blocking and labeling practices. The current environment has led to widespread blocking of legitimate calls and mislabeling of calls with randomly defined labels. The Commission should move swiftly to implement protections for legitimate callers as discussed herein, including call intercept messages, mandatory inquiry mechanisms, uniform call categories, call category blocking only by consumer opt-in,

---

<sup>29</sup> *2015 Robocall Order*, ¶ 157 (“Regardless of how a blocking technology obtains the individual phone numbers within these categories, a consumer may choose to subscribe to a blocking service as long as the carrier offering the service *or coordinating with the technology provider* adequately discloses to the consumer the risks of inadvertent blocking.”) (emphasis added). *See also id.*, ¶ 160 (“As long as the carrier offering its own product *or coordinating with another product provider* offers adequate disclosures, such as that the technology may inadvertently block wanted calls, consumers have the right to choose the technology—whether it is offered by a carrier, VoIP provider, or third party as part of a carrier service.”) (emphasis added).

protections for solicited and other legal phone calls, and approved or trusted caller lists or similar mechanisms to ensure call completion by legitimate callers.

Respectfully Submitted,

/s/ James C. Falvey

James C. Falvey, Esq.  
Robert J. Gastner, Esq.  
Eckert Seamans Cherin & Mellott, LLC  
1717 Pennsylvania Avenue, N.W.  
12<sup>th</sup> Floor  
Washington, DC 20006  
(202) 659-6655  
jfalvey@eckertseamans.com  
*Counsel for Sirius XM Radio Inc.*

James S. Blitz, Esq.  
V.P., Regulatory Counsel  
Sirius XM Radio Inc.  
1500 Eckington Place, NE  
Washington, DC 20002  
(202) 380-1383  
james.blitz@siriusxm.com

August 20, 2018