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Ms. Marlene H. Dortch

Secretary

Federal Communications Commission

Comments on FOURTH FURTHER NOTICE OF PROPOSED RULEMAKING, re: CG Docket No. 17-59

The Insights Association (IA)¹ maintains our serious concerns that many phone calls and texts to consumers for the purposes of bona fide marketing research are being improperly blocked or labeled as spam by voice service providers and call blocking and labeling service providers. We only expect this problem to be exacerbated by the safe harbor to voice service providers for erroneously blocked calls. Measuring the problem is extremely difficult, moreover, because service providers do not notify legitimate callers that their calls are being blocked nor how their calls are being labeled.

In the recent Fourth Further Notice of Proposed Rulemaking, the Federal Communications Commission (FCC) asked about “establishing a process for a calling party adversely affected by caller ID authentication information to verify the authenticity of their calls. What might this process look like? In general, blocking will be done by the terminating voice service provider, but caller ID authentication information is primarily provided by the originating voice service provider that attests to the call. Given this, should the caller contact the terminating voice service provider, the originating voice service provider, or some other entity?” Further, the FCC asked what “further steps” the agency could “take to ensure that both consumers and callers are provided with transparency and effective redress options?”

IA cares most that there be a consistent (and consistently-observed) process for notification, verification and redress, in order to start getting to some form of transparency in the telephone ecosystem.

Accountability for blocking and labeling is rare in the current telephone ecosystem; there are so many parties involved between a call being placed and a call being received (or not received) that it is all but impossible for legitimate callers to find out if a call or text has been blocked or mislabeled and, if so, what entity is responsible and why. Only then could such a caller potentially seek redress, *if* such redress is even available from the responsible entity. It is up to the FCC to pin down that accountability so that

¹ The Insights Association is the leading nonprofit association representing the marketing research and data analytics industry. Our members are the world's leading producers of intelligence, analytics and insights defining the needs, attitudes and behaviors of consumers, organizations and their employees, students and citizens. With that essential understanding, leaders can make intelligent decisions and deploy strategies and tactics to build trust, inspire innovation, realize the full potential of individuals and teams, and successfully create and promote products, services and ideas.

someone is accountable in the chain instead of providers being able to point fingers at each other and avoid dealing with any complaints.

The safe harbor offered by the FCC for blocking is tied to the implementation of “reasonable analytics.” As we mentioned in comments to the FCC last summer on the agency’s Draft Declaratory Ruling and Third Further Notice of Proposed Rulemaking,² the factors underlying those analytics are not much related to a call being illegal (such as a caller placing calls to numbers on the national DNC Registry, even though it is only illegal for telemarketers in certain circumstances to place such calls, and research is exempt). The constant reference to “unwanted calls” doesn’t help, since the only calls the FCC is certain a consumer might consider “wanted” would be those from the caller’s address book. By design, that would kill the random sample survey in the United States.

The 2019 TRACED Act requires “transparency and effective redress options for both” consumers and callers. While it is sensible for consumers to be told when calls/texts are not reaching them, transparency to the consumer is of limited value, partially just because it may just become an advertisement for the voice service provider or call blocking/labeling provider on how supposedly great they are for preventing a large number of supposedly “unwanted” calls to bother consumers, regardless of legality, origin, relationship or content. It also would be unlikely to include the context required for the consumer to be able to even judge if such calls/texts were ones that he or she might have desired to receive.

The real transparency needed in the telephone ecosystem is on the side of the caller. Right now, marketing research phone calls are being sent into a black box and it is hard to discern what happens inside.

“Some commenters have asked the Commission to require voice service providers to provide timely notification to callers when calls are blocked,” according to the FCC, and we agree with that necessity. A “concrete timeline” for notification to legitimate callers about their calls being blocked or labeled should be required by the FCC, even if it is not immediate, and notification shouldn’t be predicated on some kind of registration scheme or on callers requesting notification, since there are so many providers in the ecosystem. The trick will be a standard method of notification via a code and/or intercept message, even if there would be a difference depending on whether the network is a traditional telecommunications network or if it is IP-based. Such messages/codes need to be specific to the problem, not just a busy signal or disconnect – they need to actually inform callers that a call was blocked or labeled as spam.

Beyond that point-of-blocking notification, voice service providers and call blocking/labeling service providers should give callers advance notification that their originating phone numbers have already been determined to be deserving of blocking, even if a phone call from that number has yet to be blocked. That way, legitimate callers can start the redress process before harm is truly done to them. A legitimate caller needs to know in advance if calls it places will be blocked and/or mislabeled as spam so that it can quickly work with the provider to rectify the situation.

² Insights Association Ex Parte Letter, CG Docket No. 17-59, WC Docket No. 17-97. June 5, 2009.
<https://ecfsapi.fcc.gov/file/10605044489506/IA%20comments%20to%20FCC%20on%20call%20blocking%20labeling%20declaratory%20ruling%206-5-19.pdf>

Again, the safe harbor for mislabeling and blocking calls from legitimate callers must hinge on prompt (and advance) notification to callers, and a reasonable and swift process for caller redress in which callers can provide certain information to prove their legitimacy. IA is less worried about the timeframe in which a voice service provider *responds* to a redress request than in the timeframe in which the provider *must resolve* the complaint via a standard resolution process.

IA recognizes that consumers need help against scam calls and caller ID spoofing, but legitimate calls are already being blacklisted en masse, leading to marketing research calls being blocked or mislabeled as spam, with consumers and voters being deprived of their opportunity to confidentially share their concerns on policy issues, elections, products and services that can improve everyone's quality of life. Combining call blocking and labeling with the ongoing Telephone Consumer Protection Act (TCPA) restrictions, which made legitimate calls to cell phones problematic without class actions from serial plaintiffs but resulting in little success combating scam callers, has lowered telephone survey response rates to an average of five percent, according to the Pew Research Center. Citizens often ask why they never get called for a survey; overreaching and misdirected attempts to protect them from almost any calls help explain why they're getting scammed instead of surveyed. Legitimate callers are getting blocked and punished while scam artists squeak through.

The Insights Association looks forward to working with the FCC in pursuit of consumer protection and a saner telephone ecosystem for both callers and call recipients.

Sincerely,

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