

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Advanced Methods to Target and Eliminate Unlawful Robocalls)	CG Docket No. 17-59
)	
Alarm Industry Communications Committee Petition for Clarification or Reconsideration)	
)	
American Dental Association Petition for Clarification or Reconsideration)	

**COMMENTS OF
THE AD HOC TELECOM USERS COMMITTEE**

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Summary

To eliminate illegal robocalls while preserving the Communications Act's requirement to complete all legal calls, the Commission should adopt minimally burdensome, common-sense obligations for carriers that block calls using reasonable analytics and caller ID authentication information. The Commission should require carriers to (1) alert callers immediately with a unique, real-time, per-call indication when their calls are blocked, and (2) remove blocks upon receipt of a report from a caller that the block was inappropriate. Until the Commission adopts these additional measures, it will not have implemented the TRACED Act's directive to ensure that robocall-blocking activities are implemented and executed with effective transparency and redress options.

In addition, the Commission's decision that blocking carriers must investigate and resolve blocking disputes within a "reasonable" period of time, without providing any objective standards to define what constitutes a reasonable period of time, fails to provide legitimate callers with any meaningful consideration that their complaints of incorrect blocking will receive prompt and adequate redress. Instead, the Commission should adopt a new default standard that if a caller reports to its carrier that its call was inappropriately blocked, the carrier must remove the block from that number immediately unless and until the carrier can verify, with evidence, that the block was appropriate.

Furthermore, the Commission should not permit carriers to sell services which purport to guarantee that their customers' calls will be transmitted without blocks or labels. This business practice of requiring payment of extra money to ensure safety from the entity that is, in fact, causing the harm constitutes a protection racket created and promoted by Commission action. That such a practice exists results directly from the regulatory structure adopted in this proceeding which permits and, indeed, encourages carriers to rely upon undefined and subjective "reasonable

analytics” as the sole basis for determining when to block suspected illegal robocalls. While Ad Hoc strongly objects to the use of “reasonable analytics” in general, if the Commission insists upon granting carriers such discretion, it should, at least, set minimal standards as to what constitutes “reasonable analytics,” as informed by an advisory group of industry members and subject to public comment and regular Commission review.

Until carriers can establish their ability to effectively differentiate between legitimate calls and illegal robocalls when blocking on a per-call basis, the Commission should not expand any safe harbor to cover network-level blocking. And, if the Commission sees fit to broaden blocking to the network level, it should establish an advisory working group of industry participants, including enterprise customers, to determine and define acceptable network-level blocking parameters.

Finally, the Commission should adopt its proposal requiring terminating carriers to provide a list of individually blocked calls that were placed to a particular number at the request of the subscriber at no additional charge. Such a list would be valuable to both consumers and callers, as it would grant consumers the ability to identify whether any anticipated or otherwise desired calls were inadvertently blocked and contact the caller so as not to miss out on an important communication.

Ad Hoc urges the Commission to take into account feedback from legitimate callers throughout the record and adopt the simple, necessary changes required to establish a fair and beneficial call blocking scheme.

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The Ad Hoc Telecom Users Committee (“Ad Hoc”) submits these comments in response to the Commission’s Further Notice of Proposed Rulemaking (“FNPRM”)¹ in the aforementioned proceeding.

BACKGROUND

Ad Hoc is a longstanding organization of corporate enterprise customers that individually and collectively purchase large quantities of wireline and wireless telecommunications and information services. Its membership includes companies from a wide variety of industries including manufacturing, financial services, shipping and logistics, and transportation. Ad Hoc neither admits as members nor accepts any funding from

¹*Advanced Methods to Target and Eliminate Unlawful Robocalls, Alarm Industry Communications Committee Petition for Clarification or Reconsideration, American Dental Association Petition for Clarification or Reconsideration*, CG Docket No. 17-59, Third Report and Order, Order on Reconsideration, and Fourth Further Notice of Proposed Rulemaking, FCC 20-96, (rel. July 17, 2020) (“*July 2020 Report and Order and FNPRM*,” “*July 2020 Report and Order*,” or “*FNPRM*”).

telecommunications carriers or manufacturers of telecommunications equipment.

Ad Hoc continues to support the Commission's efforts to curtail illegal robocalls, but we are deeply concerned by the Commission's actions in this proceeding which are making the cure for illegal robocalling worse than the underlying problem, an outcome the Commission surely does not intend and should not continue to promote. Following release of the November 2017 Report and Order and Further Notice of Proposed Rulemaking,² the Commission has repeatedly requested comment on several of the same issues that it explores in the current FNPRM, including whether and how it should (1) establish "potential mechanisms to ensure that erroneously blocked calls can be unblocked as quickly as possible and without undue harm to callers and consumers,"³ (2) adopt requirements for carriers to inform callers of blocking (e.g., via an intercept message),⁴ and (3) "measure the effectiveness of [the Commission's] robocalling efforts as well as those of industry."⁵ Since that time, legitimate

² *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Report and Order and Further Notice of Proposed Rulemaking, CG Docket No. 17-59, 32 FCC Rcd 9706 (2017) ("*2017 Order and FNPRM*").

³ 2017 Order and FNPRM at ¶57. *See also Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, *Call Authentication Trust Anchor*, WC Docket No. 17-97, Declaratory Ruling and Third Further Notice of Proposed Rulemaking, 34 FCC Rcd 4876 (2019) ("*June 2019 Ruling and FNPRM*") at ¶58; *see also* July 2020 Report and Order and FNPRM at ¶¶ 107-108.

⁴ 2017 Order and FNPRM at ¶57. *See also* June 2019 Ruling and FNPRM at ¶58:

"Are there any particular protections we should establish for a safe harbor to ensure that wanted calls are not blocked? We further seek comment on whether to require voice service providers seeking a safe harbor to provide a mechanism for identifying and remedying the blocking of wanted calls. Is such a mechanism necessary? Should we require voice service providers to send an intercept message to blocked callers or return a specific SIP or Integrated Services Digital Network User Part response code when calls are blocked? Are there other approaches that would be more appropriate?"

⁵ 2017 Order and FNPRM ¶59. *See also* June 2019 Ruling and FNPRM at ¶83:

"Should the Commission create a mechanism to provide information to consumers about the effectiveness of various voice service providers' robocall solutions? If so, how should "effectiveness" be defined? How would the Commission obtain the information needed to evaluate the effectiveness of the robocall solutions?"

See also Consumer and Governmental Affairs Bureau Seeks Input for Report on Call Blocking, Public Notice, CG Docket No. 17-59, WC Docket No. 17-97, 34 FCC Rcd 12470 (2019) ("*Dec. 2019 Public Notice*") at 12471:

"We seek data and other information on the effectiveness of call-blocking tools offered to consumers. What are the most appropriate metrics to measure the effectiveness of call-blocking tools, e.g., by fraction of illegal calls blocked? How effective are available tools at blocking illegal and unwanted calls? What tools, if any, send an intercept message for blocked calls? How do blocking tools define false positives?"

callers, including Ad Hoc members, have encountered a startling increase in carriers blocking legal calls, providing no notice to the originating caller that its calls have been blocked or that they will continue to be blocked on an ongoing basis. Without notice that their calls are blocked, legal callers have no reasonable way of knowing whether their calls are being blocked or completed, and so cannot know whether they need to pursue redress with the blocking carrier. Commenters have further informed the Commission that getting legitimate calls unblocked is extraordinarily difficult because on top of failing to provide clear (if any) notification of blocking, carriers either lack clear redress procedures for erroneous blocking or have outsourced their call blocking operations to third party entities who are not carriers (and therefore not readily subject to the Commission's regulations or jurisdiction).⁶

To date, the Commission has ignored legitimate callers' consistent feedback requesting reliable blocking notification and remediation methods. Instead, the Commission has dismissed legitimate callers' concerns with peculiar and nonsensical claims such as "[a]n intercept message could....be confusing to the calling party."⁷ In addition, the Commission has taken a wholly unbalanced and unfair approach by ignoring legitimate callers' profound interest in ensuring their calls are not improperly blocked, choosing instead to repeat and endorse

What is the rate of false positives? How do the tools remedy false positives? What is the rate of false negatives (illegal or unwanted calls that reach consumers)? What is the number of illegal robocalls transiting our phone system? How is that number determined?"

⁶ See, e.g., Consumer and Governmental Affairs Bureau, Federal Communications Commission, *Call Blocking Tools Now Substantially Available to Consumers: Report on Call Blocking*, CG Docket No. 17-59 (June 2020) ("*June 2020 Report on Call Blocking*") at ¶64. See also Comments of the Ad Hoc Telecom Users Committee on the Dec. 2019 Public Notice (filed Jan. 29, 2020) ("*Ad Hoc Jan. 2020 Comments*") at 5-6; Comments of the Alarm Industry Communications Committee on the June 2019 Ruling and FNPRM (filed July 24, 2019) at 3; Comments of ACA International on the Dec. 2019 Public Notice (filed Jan. 29, 2020) at 4-5; Comments of the American Bankers Association on the Dec. 2019 Public Notice (filed Jan. 29, 2020) at 3-4; Comments of Americollect on the Dec. 2019 Public Notice (filed Jan. 27, 2020) at 2; Comments of the National Association of Federally-Insured Credit Unions on the Dec. 2019 Public Notice (filed Jan. 29, 2020) at 3; Comments of the National Opinion Research Center on the Dec. 2019 Public Notice (filed Jan. 29, 2020) at 6-8; Comments of PRA Group, Inc. on the Dec. 2019 Public Notice (filed Jan. 29, 2020) at 3-4.

⁷ June 2020 Report on Call Blocking at ¶65.

unsupported carrier claims that the expense of notice and remediation procedures are unduly burdensome and the truly baffling assertion that the benefit to illegal callers of any notification method outweighs the significant economic losses to both legitimate callers and consenting call recipients.⁸

Ad Hoc reiterates its request that the Commission require carriers to (1) establish a consistent method to notify callers when a call is blocked, and (2) adopt specific and reasonable “redress” procedures for any third party who believes its number has been erroneously blocked.⁹ Ad Hoc members continue to experience a troubling increase in carriers’ blocking of member companies’ *legitimate* outbound calls, and report increasingly difficult, if not insurmountable hurdles in unblocking legitimate calls because carriers either lack redress procedures for erroneous blocking or have outsourced their call blocking operations to third party entities who are not carriers (and therefore not readily subject to the Commission’s regulations or jurisdiction).¹⁰ Adoption of minimally burdensome, common-sense notice and redress obligations narrowly tailored to address the legitimate concerns of legal callers commenting in this proceeding to date will ensure a balanced approach to addressing the serious problem of illegal robocalling, avoiding the obvious and simplistic solution of overzealous blocking that will interrupt the completion of important and legitimate calls.

⁸ See, e.g., July 2020 Report and Order and FNPRM at ¶159, citing to, among others, the Reply Comments of CTIA on the June 2019 Ruling and FNPRM (filed Aug. 23, 2019) at 7 (claiming, without providing any evidence or citations, that “requiring all providers to use uniform solutions will actually tip off bad actors that their methods are not working....[and] forcing providers to alter or rebuild their solutions will drain resources and increase the burden on those trying in earnest to fight illegal robocallers.”).

⁹ Ad Hoc Jan. 2020 Comments at 4-7; Reply Comments of the Ad Hoc Telecom Users Committee on the 2017 Order and FNPRM (filed Feb. 22, 2018) (“Ad Hoc 2018 Reply Comments”) at 3-7.

¹⁰ See, e.g., Ad Hoc Jan. 2020 Comments at 3-4, 6.

I. THE COMMISSION HAS FAILED TO IMPLEMENT THE TRACED ACT DIRECTIVE TO ENSURE THAT ROBOCALL-BLOCKING SERVICES ARE PROVIDED WITH EFFECTIVE TRANSPARENCY AND REDRESS OPTIONS.

Contrary to the Commission's conclusion, it has failed to adequately implement the TRACED Act's directive to ensure that carriers utilizing "reasonable analytics" to block suspected illegal robocalls provide customers with transparency and effective redress options.¹¹ The steps that the Commission takes in the July 2020 Report and Order are not only insufficient toward achieving this directive, but they create additional barriers for legitimate callers. Shockingly, the Commission has ignored and casually dismissed the explicit and detailed record evidence submitted by legitimate callers about the problems they have experienced with carriers' blocking practices by failing to adopt even modest, reasonable additional protections to prevent interference with their entirely lawful calling activity. Its conclusory statement that its rules effectively balance the interests of call blocking with legitimate callers' right to call completion, when its rules require no meaningful transparency or options for redress, is blatantly incorrect.¹² Through its action, the Commission has clearly communicated its view that the completion of legal calls, for which legitimate customers purchased the underlying telecommunications services on the longstanding and unassailable belief that their calls would receive the benefit of the Communications Act's

¹¹ FNPRM at ¶91 (citing to 47 U.S.C. § 227(j)(1)(A)-(B)), wherein the FCC seeks comment on its tentative conclusion that it has implemented the TRACED Act directive to take final "action to ensure that robocall-blocking services provided on an opt-out or opt-in basis are 'provided with transparency and effective redress options' for consumers and callers with no line-item charge for consumers or additional charge for callers" as far as it applies to protections for callers.

¹² FNPRM at ¶57:

"Recognizing that wanted calls can, and sometimes do, have traits similar to unwanted calls, the Call Blocking Declaratory Ruling and Further Notice sought comment on ways to protect callers from erroneous blocking. Callers commenting on this proceeding have expressed their frustration with the blocking of lawful calls and the difficulty of making themselves heard as they seek to contest whether voice service providers should be blocking their calls. As a result, many callers supported extensive protections. Other commenters, however, urged us to ensure that voice service providers had flexibility to determine which methods to use. We find that the requirements we adopt today strike an appropriate balance between the legitimate needs of both callers and voice service providers. We believe the criteria and associated safeguards we have established today in permitting call blocking will greatly reduce erroneous blocking." Internal citations omitted.

requirement obligating carriers to complete all lawful calls, is not of sufficient importance to require that carriers make the minimal additional effort needed to either put in place more appropriate analytics to differentiate legitimate calls from illegal robocalls or establish adequate blocking notification mechanisms.

While the Commission proffers that *consumers* can voluntarily choose to block calls without causing *carriers* to violate the aforementioned Communications Act standard,¹³ consumers should not be effectively forced to select the overblown blocking mechanisms the carriers have adopted which fail to provide even the purported beneficiaries of the blocking with adequate transparency.¹⁴

The Commission, however, has an obvious and more effective alternative. By adopting a few additional and simple requirements explained below, it will be well on its way toward achieving the TRACED Act's objectives and upholding the Communications Act's requirement for carriers to complete transmission of all lawful calls.

A. The Commission should adopt a ceiling that establishes a “reasonable” amount of time for carriers to resolve caller complaints about inappropriate blocking.

The Commission's decision that “[b]locking providers must investigate and resolve.... blocking disputes in a reasonable amount of time” where “‘reasonable’ may vary depending on the specific circumstances of the blocking and the resolution of the blocking dispute”¹⁵ is, in itself, unreasonable and inadequate. Such a standard, if one can even call it that, is impermissibly vague and gives the blocking carrier too much discretion about when and whether to address concerns and complaints by victims of inappropriate blocking. In fact, the amount of “reasonability” that

¹³ FNPRM at ¶56.

¹⁴ Hence, the Commission's questions in FNPRM Section V(G) (Blocked Calls Lists).

¹⁵ FNPRM at ¶55.

carriers are granted when it comes to blocking via the use of “reasonable analytics”—now with no obligation to resolve disputes until that carrier determines that a “reasonable” amount of time has passed—means that there is no incentive, let alone a mandate, for carriers to tailor their blocking mechanisms or adopt any dispute resolution processes to address caller complaints. If it is serious about granting callers rights of notice or redress when their legal calls have been blocked, the Commission should adopt a new default standard: if a caller reports to its carrier that its call was inappropriately blocked, the carrier must remove the block from that number unless and until the carrier can verify that the block was appropriate.

There are two key elements the Commission must consider in determining the appropriate timeframe within which carriers should resolve complaints regarding inappropriate blocking: (1) the caller must receive a signal notifying it when its call has been blocked so that it can begin the dispute process, if needed, and (2) the ability of the caller’s originating service provider to authenticate the caller as its customer. If the caller notifies its originating carrier that it has been inappropriately blocked, the time for that carrier to investigate and resolve the dispute should be minimal: simple verification that the caller is in fact the carrier’s customer and the number holder of record should be all the proof needed. If the blocking entity is a third-party analytics provider, resolution may take slightly longer, but should not materially change the timeframe required to complete the required analysis. The third-party analytics provider should remove the block when it receives notice from a U.S. carrier in good standing informing the analytics provider that the blocked number belongs to its customer. In either case, the complaint can be quickly resolved.

When considering the effect that blocked calls have on business operations—for both large enterprises and small businesses—the impact of any kind of extended block pending resolution by carriers free from any sort of temporal restraint is a matter of simple math. To be frank, time is

money. No callers (except perhaps scammers with systems to spoof legitimate callers' numbers) have an infinite number of telephone numbers, so limiting callers' abilities to conduct phone-based outreach means that harm in terms of lost sales or harmed reputation quickly adds up with each blocked call. Worse, consider the case of a financial institution attempting to call a customer to alert it of potential fraud on the customer's account but encountering an inappropriate block. Assuming that the caller can even discover that its call was blocked in the absence of any affirmative carrier notification obligations, each minute that passes before an inappropriate number block is resolved and released increases the risk of financial harm, perhaps significant, to both the caller and the customer.

Consider the alternative model promoted by the Commission: if the caller has to wait a "reasonable" amount of time (hours? days? weeks?) until the carrier reviews the dispute, time that might only be calculated during business hours and that might not start running until the carrier gets to the caller's place in line, the harm to the two parties, *both of whom wanted the call completed without interference in the first place*, will have grown drastically—unreasonably and unnecessarily so.

There is a clear and simple solution to this problem. The Commission should require carriers to (1) alert callers immediately with a distinct signal when their calls are blocked, and (2) remove blocks upon receipt of a report from a caller that the block was inappropriate. The Commission should further permit carriers to reimpose the block only after a reasonable and supported determination that the block was duly imposed. These modest and basic obligations will undoubtedly result in the development of more thoughtful and narrowly tailored blocking analytics and minimize the significant harm caused by incorrect blocking of lawful calls.

B. The FCC’s refusal to require voice service providers to notify callers when blocking calls dramatically increases the threat of significant harm to lawful callers and is unsupported by the record.

The Commission’s inexplicable choice not to require carriers to notify callers when they block calls ignores the TRACED Act’s explicit directive to ensure that carriers who block suspected illegal robocalls with “reasonable analytics” provide customers with any modicum of transparency. The decision to simply set aside consideration of the blocking notification issue with a *single paragraph*¹⁶ is particularly troubling given the number of commenters from previous proceedings who called out the need for real-time notification of blocked calls as a vital precondition for any blocked caller to be able to pursue meaningful redress.¹⁷

To reiterate what Ad Hoc and the “many commenters”¹⁸ made clear, the Commission

¹⁶ FNPRM at ¶59.

¹⁷ To which the Commission actually admits – see FNPRM at ¶59: “[M]any commenters, particularly those placing calls, supported extensive protections...” Emphasis added; internal citations omitted.

¹⁸ *Id.* While the Commission cites to five comments by way of example, Ad Hoc counted over 40. See, e.g., Comments of Professional Assoc. for Customer Engagement (“PACE”), Alorica Inc. on the 2017 Order and FNPRM (filed Jan. 23, 2018) at 5-6; Comments of Sirius XM Radio Inc. (“Sirius”) on the 2017 Order and FNPRM (filed Jan. 23, 2018) at 6-7; Comments of ACA International on the 2017 Order and FNPRM (filed Jan. 23, 2018) at 9-11; Comments of NTCA on the 2017 Order and FNPRM (filed Jan. 23, 2018) at 2-3; Comments of ZipDX on the 2017 Order and FNPRM (filed Jan. 22, 2018) at 3; Ad Hoc 2018 Reply Comments at 3-4; Reply Comments of PACE on the 2017 Order and FNPRM (filed Feb. 22, 2018) at 3-4; Reply Comments of Noble Systems Corporation (“Noble Systems”) on the 2017 Order and FNPRM (filed Feb. 20, 2018) at 4; Comments of AARP on the June 2019 Ruling and FNPRM (filed July 24, 2019) at 3, 8; Comments of ACA International on the June 2019 Ruling and FNPRM (filed July 24, 2019) at 11; Comments of the Alarm Industry Communications Committee (“AICC”) on the June 2019 Ruling and FNPRM (filed July 24, 2019) at 3; Comments of American Association of Healthcare Administrative Management (“AAHAM”) on the June 2019 Ruling and FNPRM (filed July 24, 2019) at 5-6; Comments of the Cloud Communications Alliance on the June 2019 Ruling and FNPRM (filed July 24, 2019) at 10; Comments of CUNA on the June 2019 Ruling and FNPRM (filed July 24, 2019) at 6; Comments of NTCA-The Rural Broadband Association (“NTCA”) on the June 2019 Ruling and FNPRM (filed July 24, 2019) at 14-15; Comments of PRA Group, Inc. on the June 2019 Ruling and FNPRM (filed July 24, 2019) at 3; Comments of PACE on the June 2019 Ruling and FNPRM (filed July 24, 2019) at 4; Comments of Securus Technologies, Inc. on the June 2019 Ruling and FNPRM (filed July 24, 2019) at 7; Comments of Sirius on the June 2019 Ruling and FNPRM (filed July 24, 2019) at 7; Comments of TCN Inc. on the June 2019 Ruling and FNPRM (filed July 24, 2019) at 2-3; Comments of Twilio Inc. on the June 2019 Ruling and FNPRM (filed July 24, 2019) at 9; Comments of WTA - Advocates for Rural Broadband on the June 2019 Ruling and FNPRM (filed July 24, 2019) at 7; Reply Comments of Noble Systems on the June 2019 Ruling and FNPRM (filed Aug. 23, 2019) at 3; Reply Comments of R1 RCM Inc. on the June 2019 Ruling and FNPRM (filed Aug. 23, 2019) at 2-3; Comments of ACA International on the Dec. 2019 Public Notice (filed Jan. 29, 2020) at 9; Ad Hoc Jan. 2020 Comments at 4-5; Comments of the American Bankers Association on the Dec. 2019 Public Notice (filed Jan. 29, 2020) at 5; Comments of the Consumer Bankers Association on the Dec. 2019 Public Notice (filed Jan. 29, 2020) at 2; Comments of Credit Union National Association (“CUNA”) on the Dec. 2019 Public Notice (filed Jan. 29, 2020) at

should require carriers to transmit a unique, real-time, per-call indication when calls are blocked so that callers can differentiate blocked calls from busy signals or declined calls and take steps to remediate erroneous blocks. Since the Commission granted carriers unfettered discretion to block calls using “reasonable analytics,” Ad Hoc members have suffered an increase in inappropriate blocking of their lawful and legitimate calls. As we have explained, discovering this blocking is no easy task: as only four blocking entities informed the Commission that they provide any type of notice to callers when blocking calls,¹⁹ legitimate callers must run their own internal testing to determine whether their outgoing calls are completed by the carriers. Ad Hoc members’ experience continues to reveal that callers are not receiving any clear notification if or when calls are blocked. Instead, callers hear standard ringing or busy signals or their calls are sent directly to voicemail, none of which inform the caller that they may need to pursue remedial action. Ad Hoc will repeat what it has previously stated for the Commission multiple times: transmission of a unique signaling code when calls are blocked is the most effective means of informing legitimate callers that they need to take action if they want their calls to be completed. Such an obligation would assist carriers in balancing their ability to limit illegal robocalls with their duty to complete legitimate calls.²⁰

2; Comments of Encore on the Dec. 2019 Public Notice (filed Jan. 29, 2020) at 7; Comments of National Association of Federally-Insured Credit Union on the Dec. 2019 Public Notice (filed Jan. 29, 2020) at 4; Comments of Noble Systems on the Dec. 2019 Public Notice (filed Jan. 29, 2020) at 10; Comments of PRA Group, Inc. on the Dec. 2019 Public Notice (filed Jan. 29, 2020) at 4; Comments of PACE on the Dec. 2019 Public Notice (filed Jan. 29, 2020) at 3-4; Reply Comments of ACA International on the Dec. 2019 Public Notice (filed Feb. 28, 2020) at 10; Reply Comments of AICC on the Dec. 2019 Public Notice (filed Feb. 28, 2020) at 1-2, 5; Reply Comments of the American Financial Services Association on the Dec. 2019 Public Notice (filed Feb. 27, 2020) at 3; Reply Comments of the Cloud Communications Alliance on the Dec. 2019 Public Notice (filed Feb. 28, 2020) at 6-7; Reply Comments of CUNA on the Dec. 2019 Public Notice (filed Feb. 28, 2020) at 7-8; Reply Comments of Noble Systems on the Dec. 2019 Public Notice (filed Feb. 27, 2020) at 3; Reply Comments of Sirius on the Dec. 2019 Public Notice (filed Feb. 28, 2020) at 6-7; Reply Comments of Twilio on the Dec. 2019 Public Notice (filed Feb. 28, 2020) at 8-9.

¹⁹ June 2020 Report on Call Blocking. Only AT&T (¶24), Cox (¶31), Verizon (¶37), and Nomorobo (¶48) indicated that they provide callers with notice when they block calls. Verizon’s position is unclear, however, as it also states that it sends certain callers directly to voicemail, so Ad Hoc cannot confirm whether callers also receive any kind of distinct notification.

²⁰ Ad Hoc 2018 Reply Comments at 3-4; Ad Hoc Jan. 2020 Comments at 4-5.

C. The Commission must take several further steps to ensure that carriers provide consumers and callers with transparency and effective redress options.²¹

In paragraph 92 of the FNPRM, the Commission asks what further steps it should take to ensure that consumers and callers are provided with transparency and effective redress options. The answers have already been presented to the Commission by legitimate callers that have participated in this proceeding. The Commission would do well not to disregard them.

1. The Commission should not permit carriers to leverage call blocking as an opportunity to sell additional services to legitimate callers before completing their lawful calls.

The Commission should not permit carriers to sell services to customers which purport to guarantee that their calls will be transmitted without blocks or labels. That such a service exists in and of itself shows that carriers are technically capable of certifying or registering calls as legitimately originating from the customer of record—i.e., they are not presumptively illegal.

Over the past year, two Ad Hoc members have been approached by carriers and third-party analytics providers selling additional services which they claim will override any blocking or labeling systems, thus guaranteeing that the call will be transmitted as dialed. Voice and analytics services providers are pitching these services (which have the simple effect of ensuring that a legal call is completed as dialed) for hefty fees on top of the underlying services which the customers already purchase from them—for, of course, hefty fees. There is a simple term for this business practice: protection racket—essentially, requiring payment of extra money to ensure safety from harm from the one that is, in fact, causing the harm. The Commission should not permit the establishment of protection rackets through adoption of the robocalling rules.

On top of the dubious ethics underlying such new service offerings necessary only as a result of the license to block granted by the Commission, it should be clear what type of protection

²¹ FNPRM at ¶92.

racket the Commission is effectively condoning. The carriers control the schemes governing which calls are blocked and which are transmitted, and they have no obligation to disclose the details underlying such determinations. They are now offering, for payment, services to circumvent such blocking and they alone are in possession of the information needed to determine the effectiveness of such services at passing through the standards they themselves establish. And as things stand (i.e., without any FCC or other advisory oversight over carriers' blocking practices) there is no feasible way to audit the numbers of inappropriately blocked calls or the success rate of the "additional" service, nor has the Commission decided to establish further mechanisms to evaluate the effectiveness of call blocking tools.²² But what is truly concerning is that carriers can apparently simply flip a switch for those customers who are willing to pay a premium. If this is true, it completely undercuts carrier claims that blocking analytics must be designed in a way that necessarily involve "the potential costs of blocking some legal calls in the process"²³ of combatting illegal robocalls. By advertising that they can somehow flag the numbers belonging to their customers in a way that would give those customers exactly what they had already contracted for—completion of their legal calls—the carriers are admitting that with a little bit more work they could create a truly effective blocking system. They just don't want to expend the necessary additional effort without first making a profit. And all of this—as absurd as it is—results directly from a regulatory structure adopted by the Commission having full knowledge of its shortcomings based upon information already entered into the record by commenters likely to suffer harm.

²² FNPRM at ¶60.

²³ FNPRM at ¶44.

2. The Commission should set a floor defining permissible reasonable analytics and should require carriers to disclose their chosen analytics for Commission review.

Ad Hoc reiterates its strong disagreement that carriers should be permitted to use undefined and subjective “reasonable analytics” as the basis for determining and justifying when to block suspected illegal robocalls. The Commission’s agreement “with the numerous comments supporting a safe harbor for blocking based on reasonable analytics”²⁴ specifically cites to the fact that it finds camaraderie only with the carriers, their trade associations, and the third party analytics providers,²⁵ all of which undoubtedly favor any decision granting them the greatest amount of flexibility paired with the least amount of oversight in designing blocking systems. Furthermore, the Commission’s claim that it is mitigating “the risk of erroneous blocking by limiting it to blocking done under a program using reasonable analytics to identify and prevent the blocking of wanted calls”²⁶ is logically confounding and the quintessential circular argument. If the Commission insists upon granting carriers the practically unlimited discretion permitted by “reasonable analytics,” the Commission should, at least, set a minimum standard as to what constitutes “reasonable analytics” to ensure fairness for legitimate callers now tasked with navigating the methodologies adopted by each carrier they use.

First, the Commission should establish a floor for the minimal acceptable analytics that carriers must use if they are engaged in blocking. This standard should be (A) informed by an advisory group of industry members, including enterprise customers, and (B) subject to public comment. Second, in order to grant carriers the flexibility to design their systems to combat illegal

²⁴ FNPRM at ¶26.

²⁵ See FNPRM at ¶26, fn. 72, signaling the Commission’s agreement with the comments of AT&T, CTIA, ITTA, NCTA, Neustar, Numeracle, Sprint, T-Mobile, TNS, USTelecom and Verizon.

²⁶ FNPRM at ¶47.

robocalls, the Commission may permit carriers to utilize additional “reasonable analytics” but should require that the carriers disclose those analytics to the Commission on a regular basis for review, subject to standards of confidentiality if warranted in each particular case. As it stands, the carriers have unfettered discretion over which calls are blocked and which are completed. Ad Hoc members’ recent experiences (as described above) reveal that the carriers are abusing that discretion, absent any checks or balances to ensure that they are employing “reasonable analytics” fairly and effectively.

3. The Commission should establish a process for expedited Commission review if carriers fail to resolve inadvertent blocking complaints within a specified time period.

Given the Commission’s position that carriers need only resolve claims of disputed blocking within an undefined “reasonable” period of time, the Commission must affirmatively establish itself as the ultimate arbiter for disputes related to call blocking. As Ad Hoc noted in prior comments, callers need the Commission to serve as a resource with consistent oversight processes:

“The Commission should establish a simple process that facilitates expedited Commission review of complaints regarding a carrier’s failure to unblock inadvertently blocked numbers within a reasonable amount of time. The current formal and informal Commission complaint processes.... impose burdensome and time consuming obligations to present information and arguments that are inappropriate for resolving a simple problem of inadvertent blocking.... [A]ny FCC-based challenge mechanism should be ‘quick, simple and straightforward for the calling party’....[and] ‘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’.... Finally, the Commission’s informal and formal complaint process should remain available if the number holder remains dissatisfied with the resolution of the number’s blocked status.”²⁷

The blocking ecosystem is new to all parties involved, so it is vital that the Commission provide a regulatory backstop in the event carriers engage in unreasonable blocking activity.

²⁷ Ad Hoc 2018 Reply Comments at 8. Internal citations omitted.

II. THE COMMISSION SHOULD NOT EXTEND THE SAFE HARBOR BASED ON REASONABLE ANALYTICS TO NETWORK-BASED BLOCKING.

Because carriers have yet to prove that they can or are freely willing to effectively differentiate between legitimate calls and illegal robocalls when blocking on a per-call basis,²⁸ it would be unreasonable for the Commission to expand any safe harbor to cover network-level blocking on the same grounds, even with additional human oversight and network monitoring.²⁹ Until the carriers and analytics service providers can (A) affirmatively establish that their systems are significantly more capable of distinguishing legal from illegal robocalls; (B) provide immediate notice to callers when calls are blocked; and (C) provide timely, meaningful redress to callers who have experienced inappropriate blocking, the Commission should not broaden any blocking permissions or safe harbor coverage. If, however, the Commission determines that it would be appropriate to permit blocking at the network level, it should first establish an advisory working group of industry participants, including enterprise customers, to determine and define acceptable network-level blocking parameters.

To be clear, Ad Hoc supports the development of reasonable blocking practices designed to block calls which are highly likely to be illegal, and Ad Hoc would also support blocking of such calls at the network level, but only if such measures are rolled out in the right way. Overblocking has proliferated since the Commission permitted carriers to begin reasonable-analytics-based blocking, and Ad Hoc (reasonably) fears that blocking will only increase if carriers are left to their own devices in determining how to block calls at the network level. The Commission should absolutely “require that voice service providers that

²⁸ See Section I(C)(1) Supra.

²⁹ FNPRM at ¶104.

block at the network level take additional more, specific steps to ensure that the calls [blocked] are highly likely to be illegal.”³⁰ What those specific steps should be, though, must not be left to the carriers’ discretion alone. The Commission should establish an advisory working group made up of various industry participants—including enterprise customers and other end users—to determine clear, appropriate metrics that should apply to carriers’ blocking practices both on a per-call basis and potentially at the network level. Such a group could better determine appropriate standards for flagging those calls considered highly likely to be illegal, which would create a more level playing field for those legitimate callers simply continuing their normal calling practices in attempts to reach their customers.

III. THE COMMISSION SHOULD EXPAND CALLER REDRESS OPTIONS BY ESTABLISHING EXPLICIT AND DETAILED REDRESS OBLIGATIONS APPLICABLE TO VOICE AND ANALYTICS SERVICES PROVIDERS WHO ENGAGE IN CALL BLOCKING.

Currently, it is unnecessarily difficult for legitimate callers to even find the appropriate contacts at carriers to pursue unblocking of their legal calls, let alone obtain redress for improperly blocked calls in a timely manner.³¹ Therefore, the Commission should expand the scope of necessary redress requirements in the event of inadvertent blocking and establish a more concrete timeline for redress options.³² As the Commission poses specific questions on this subject matter, Ad Hoc will respond to them in line:

³⁰ FNPRM at ¶105.

³¹ Standard internet searches for contacts or landing pages at the carriers only lead to resources for consumers to either impose blocks or to change their blocking settings. While the Commission’s published list of voice service providers and analytics companies’ contact information for reporting incorrectly identified calls from the *June 2020 Report on Call Blocking* at ¶66 provides relevant points of contact for false-positive blocking, this list does not readily turn up, and it is highly unlikely that any legitimate caller would think to search for such a report within the Commission’s catalog to find the necessary carrier contact for redress.

³² FNPRM at ¶107.

- A. **“[I]s immediate notification or notification within a set time period (for example, 24 hours) feasible? Should a caller be required to request such notification or register with a provider to ensure such notification occurs? Or should voice service providers be given flexibility to use SIP codes, ISUP codes, and intercept messages to notify callers? If so, is immediate notification necessary to provide transparency and effective redress?”³³**

Immediate notification of blocking with a consistent signal or message that is provided to all callers automatically (i.e., without registration or request) would provide the most effective starting point for legitimate callers to rectify carriers’ and analytics companies’ errors. In addition, it would assist those blocking entities in bettering the performance of their own analytics.

Ad Hoc is unaware of any evidence in the record indicating that immediate notification of blocking is not feasible. If carriers can transmit a busy signal, which immediately notifies the caller with a specific, consistent, easily recognizable tone that the call cannot be completed at that time, there is no reason why they cannot transmit a similar notification when blocking calls, which would have the same effect. To the extent carriers complain that (i) notification within limited timeframes is a technical issue, (ii) implementation of such notification standards would be unduly expensive, or (iii) such capabilities would require extensive changes to their networks, they should introduce evidence into the record regarding the technical limitations, estimated actual expenses to produce such a notice, and the specific network modifications required.

Immediate notification of blocking is beneficial for both legitimate callers and the end users they are attempting to reach, whereas notice provided 24 hours after the fact, while better than nothing, is not particularly useful. For many enterprise customers contacting their

³³ *Id.*

consumers, time is of the essence. If an enterprise customer caller receives immediate notice that its call has been blocked, it can attempt to alert the applicable consumer in some other way, particularly under circumstances requiring urgency. The Commission should not regulate (or fail to regulate) in the abstract. It is important to consider real-world scenarios when evaluating the impact of any type of extended notice period:

- If a financial institution cannot contact its customer to alert them of suspected fraudulent charges, the amount of financial harm to the end user literally accrues by the minute;
- If a shipping or logistics company cannot contact an end user to schedule a delivery, subsequent delivery delays risk ramifications spreading throughout various supply chains; and
- If a manufacturing company cannot contact customers to inform them that a product has been deemed defective or dangerous, end user health and safety are subject to risk due to needless delay.

In addition, significant harm to legitimate callers' reputations accrues the longer they are unable to connect with their customers, all through no fault of their own. Immediate notice, therefore, is vital for the ongoing economic well-being and safety of legitimate callers and their customers.

Callers should not be required to request immediate blocking notification or register with their providers in any way to ensure that such notification occurs—carriers should be required to provide consistent notifications whenever they block, regardless of the originating number. To the extent that the Commission determines registration is appropriate, callers should only be required to register with their chosen service provider, and such registration should be free of charge and only required one time.

Finally, Ad Hoc does not care how providers notify callers—via SIP code, ISUP code, or intercept message—so long as a consistent notification is adopted for all carriers and is sent out immediately upon blocking the outbound call. No matter what voice service provider a caller is using, the caller should be able to immediately recognize when its outbound call is blocked.

B. Should the Commission “requir[e] voice service providers to respond to disputes about erroneous call blocking within a set time period (such as 24 hours or a week)[?] What is the appropriate amount of time? What steps could a voice service provider take to communicate with the party that raised the dispute to ensure that these disputes are being handled as quickly as possible? What steps could a caller take to ensure prompt resolution of call-blocking concerns?”³⁴

Carriers should respond to claims disputing the validity of blocking promptly following receipt of the complaint. As discussed in greater detail in Section I(A), supra, if a caller reports to a carrier that its call has been inappropriately blocked, the default assumption should be that the block was incorrectly applied. Upon receipt of a false-positive complaint, if the carrier can validate that the caller is its customer of record for the applicable number, it should remove the block for that number unless and until the blocking carrier can verify that the block was appropriate. If the caller cannot authenticate itself as the carrier’s customer of record, the carrier has reasonable grounds to retain the block. From the point of verification, carriers may investigate further if they suspect illegal calling activity, but they should respond to disputes within a maximum of 24 hours if further information is required or if the carrier subsequently determines that the block was appropriate. Imposing these standards would incentivize carriers to be more careful in establishing their analytics screens.

Voice service providers should take the following steps to communicate with the caller regarding the dispute:

- (1) Immediately, or within a significantly limited time period, provide written acknowledgement(s) of:
 - a. Receipt of the dispute for the applicable number, documenting the time the complaint was received and contents of the dispute claim; and

³⁴ FNPRM at ¶108.

- b. The carrier's removal of the block based on confirmation that the complainant is the verified number holder, if perhaps subject to further investigation.
- (2) Pending the carrier's investigation of the events that led to imposition of the block, the carrier must request in writing any information that it does not have readily available which might be necessary to fully resolve the issue. Specifically, the carrier must ensure that it is communicating with an authenticated individual authorized to disclose relevant information regarding and make any changes for the number holder.
 - (3) Within 24 hours, a written acknowledgement either confirming that the block was inadvertent and will not be re-imposed or indicating that the block will be re-imposed due to the underlying circumstances.

As voice service providers appear to be using online mechanisms for dispute reporting, gathering relevant contact information to communicate with the callers should not be an issue.

Callers should take the following steps to ensure prompt dispute resolution of inadvertent blocking:

- (1) Submit disputes via the carriers' recognized dispute channels;
- (2) Document and provide all information relevant to the caller's blocking experience—e.g., whether the caller heard an indication announcing the block or discovered the block through internal testing, whether the number has been blocked before and, if so, when and whether the caller previously pursued blocking resolution; and
- (3) Ensure that authorized individuals are informed of the context in which the call was made (and blocked) and are available for further discussion with carriers over the 24-hour period following submission of the dispute.

IV. THE COMMISSION SHOULD REQUIRE TERMINATING VOICE SERVICE PROVIDERS TO PROVIDE A LIST OF INDIVIDUALLY BLOCKED CALLS TO SUBSCRIBERS.

The Commission should adopt its proposal requiring terminating voice service providers to provide a list of individually blocked calls that were placed to a particular number at the request of the subscriber at no additional charge.³⁵ This list should include calls blocked with and without consumer consent where calls blocked without consent specifically includes those calls blocked on the basis of “reasonable analytics” including caller ID authentication information. Such a list would be valuable to both consumers and callers, particularly until the Commission requires carriers to transmit notice to callers when they block calls. With the ability to review a list of blocked calls, subscribers will be able to identify whether any anticipated or otherwise desired calls were caught in overly broad blocking nets and can—first, and most importantly—contact the caller so as not to miss out on an important communication, and secondly inform their carrier that they are inadvertently blocking too many calls. This is all not to mention that the list of blocked incoming calls is the subscriber’s call detail information—information worthy of such heightened protection that carriers may only disclose it under specific, limited circumstances to authenticated customers.³⁶ There is no logical reason against disclosure of this information to customers, especially as but for the blocking, the customers would readily have access to the list of such calls simply by looking at their call logs.

³⁵ FNPRM at ¶111.

³⁶ 47 C.F.R. §64.2010(b). Ad Hoc is cognizant of the fact that disclosure of call detail information to customers would require revisions to 47 C.F.R. §64.2010, but those revisions would likely be limited to authentication for online access to such call detail information.

CONCLUSION

Scores of legal callers have presented the Commission with consistent feedback regarding simple, necessary changes required to establish a call blocking scheme that punishes illegal robocallers while still subjecting carriers to the Communications Act's requirement to complete all lawful calls. We urge the Commission to adopt reforms that incorporate legitimate callers' requests for reliable blocking notification and remediation methods.

Respectfully submitted,



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