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Federal Communications Commission

Submitted Electronically

Re: 17-59 and 17-97

To the Commissioners:

I apologize for the tardiness of this comment letter. Only today did I become aware of these dockets.

Robocalling and the resulting violations of the Telecommunications Privacy Act are, as demonstrated by the release, serious problems.

My personal experience is that about 99% of the calls to my land line and about half of the calls to my mobile phone violate the Act. The associated phone numbers are all on the Do Not Call List and have been for many years.

**Positive Caller ID**

You are correctly identified that lack of positive identification of the caller as a major hindrance to enforceability of the Act. I don’t know the details of the SHAKEN/STIR solution. However, if your experts believe that it will result in positive identification of the source of all calls, then I fully support it. Note, please, that “all calls” must include calls made from VOIP sources and offshore sources. If the solution does not cover those call sources, then you are filling one crack in the dam while leaving other identifiable cracks untreated, and the calls will continue to flow through the remaining cracks.

Said differently, half a solution is truly a half-assed solution.

Regarding completing this process by the end of 2019, I believe that there should be automatic, predefined financial sanctions (fines) for ALL “major” telephone service providers for failing to meet the deadline. The fines should be mandatory and large enough to ensure compliance. For a start, I think a fine of $10 million per day of non-compliance would strong motivate “major” telephone service providers to prioritize completion of this by year end.

That leaves open the question of getting other (non-major) telephone service providers to comply. There should be a deadline for their compliance, and the same fines should be in effect if they fail to comply by that deadline.

This is nothing like a huge, mandatory fine for failing to meet a define result by a defined deadline to motivate corporate executives to prioritize meeting the deadline.

**Sanctions Against TCPA Violations**

With call recipients and the government unable to identify the true source of calls which violate TCPA, strong enforcement has often been out of reach. With SHAKEN/STIR, this should end.

I propose an automated, online TCPA violation complaint system which would aggregate data of the companies against which complaints are filed. Each complainant would be required to attest (online) to the facts of the complaint filed.

When complaints reach a certain level (number of complaints and number of complainants), a presumption of violation would be made, and the alleged violator would be sent a Notice of Fine. The size of the fine would be determined by formula based on the number of complaints and the number of complainants. The amount of the fine would grow significantly as the number of complaints and the number of complainants grows.

The recipient of a Notice of Fine would be entitled to a hearing. As part of the hearing request, the company would be required to submit a complete list of all telephone numbers it had in use as well as the telephone numbers, dates, and times of every call made from each telephone number. They would be required to submit data which might prove their violation. Failure to provide all such information would be a criminal act.

If, after the hearing is held, if the violation is upheld, the penalty for insisting on a hearing would double. There should be a cost to trying to “beat the rap.” Doubling the fine to cover the cost of the hearing would discourage companies from requesting a frivolous hearing.

Additionally, violations over an extended period – say, two years, for example – would be aggregated to determine the amount of the fine. An example best illustrates this.

Let’s us say, for this example, that the following table is established for fines:

|  |  |
| --- | --- |
| **NUMBER OF VIOLATIVE CALLS** | **FINE PER VIOLATIVE CALL** |
| 1-1,000 | $100 |
| 1,001 – 10,000 | $200 |
| 10,001-100,000 | $500 |
| 100,001 or more | $1,000 |

Assume that fines are aggregated for a two year period with computations made semi-annually.

Assume that a company is the subject of a complaint regarding 950 calls during January-June 2020. The fine would be $95,000.

Assume that the same company is the subject of a company regarding another 5,000 calls for during July-December 2020. That is a total of 5,950 violations during the two-year period. The aggregate fine would be 5,950 times $200 per call or $1,918,000 of which $95,000 had already been collected. Therefore, the amount due would be $1,823,000.

Assume that the same company is the subject of a company regarding another 10,000 calls for during January-June 2021. That is a total of 5,950 violations during the two-year period. The aggregate fine would be 15,950 times $500 per call or $7,975,000 of which $1,823,000 had already been collected. Therefore, the amount due would be $6,143,000.

As you can see, repeat offenders are subject to having the cost of prior violations be revised upward because they establish themselves as scofflaws.

A serious offender would be bankrupt by this sort of approach which, in my opinion, is a good result. People who repeatedly violate the law should be put out of business.

**Summary**

I am a businessman. I am pro-business. I am also pro-privacy. I see no conflict.

If the Commission intends to dramatically end violation of robocalling regulations and enforce TCPA, it needs to take bold action to compel decision makers whose businesses are currently ignoring the law to become compliant.

If these businesses are not viable if they must operate within the law, then they should go out of business either by (1) being unable to continue to operate outside the law or (2) by being fined out of existence.

Furthermore, the management of companies violating the law will create a huge personal liability if they bankrupt their company. Surely their shareholders will sue them if they behave outside the law.

For all these reasons, I encourage you to:

* Create hard deadlines for all originators to provide positive called ID data for all calls originated by their network and adopt significant fines for failure to comply with that deadline. If a later deadline is required for smaller providers, so be it. There needs to be 100% compliance by all network users.
* Assure that VOIP-originated and offshore calls either have positive caller ID or arrive showing that the source is “Offshore” or “Internet.” This gives those receiving the calls fair warning.
* Adopt a consumer-based, automated complaint and default fine system (like the one described above or serving the same purpose) which will provide consumers with the ability to penalize those who violate the law and has severe, adverse financial effects of violators.

Very truly yours,

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