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September 21, 2017

Notice of Ex Parte

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

Re: *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*,
CG Docket No. 17-59

Dear Ms. Dortch:

On September 19, 2013, Alexis Berg, Betty Hewes-Eddinger, and Kelly Heindl of the Colonial Penn Life Insurance Company (“CPL”) and the undersigned met with Mark Stone, Kurt Schroeder, Micah Caldwell, Richard Smith, and Jerusha Burnett of the Consumer and Government Affairs Bureau to discuss the Commission’s request for comment on the best way to ensure that legitimate callers are white listed so that their legal call attempts are not blocked by carriers, VoIP providers, or call blocking service providers. *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, Notice of Proposed Rulemaking and Notice of Inquiry, CG Docket No. 17-59, ¶¶ 37-40 (rel. Mar. 23, 2017) (“*Robocall NPRM*”).

CPL emphasized the need to ensure that legitimate calls by companies like CPL are not blocked by carriers, VoIP providers, or call blocking service providers, particularly in light of the Commission’s longstanding policy of prohibiting call blocking. As detailed in the attached presentation, CPL is an affiliate of a multi-billion dollar financial services holding company and markets its life insurance products solely to prospective customers who have responded to an ad for a CPL product and voluntarily provided their phone number to CPL. CPL is only calling those that have affirmatively expressed an interest in CPL products and provided a phone number. In addition, CPL is not using an autodialer or artificial or prerecorded voice to make calls.¹

¹ See 47 C.F.R. § 64.1200.

CPL's calls are legal calls pursuant to the standard recommended by the Strike Force Report that the Commission tentatively concluded should apply. *See Robocall NPRM*, ¶ 13. CPL's outbound calling does not violate the Telephone Consumer Protection Act of 1991 ("TCPA"), its implementing regulations, the Telemarketing Sales Rule, the Truth in Caller ID Act, nor are the calls made for the purpose of defrauding customers. *Id.* Yet CPL's calls are routinely "blacklisted" (and then blocked or marked as robocalls or spam in the caller ID) by robocall blocking service providers.

There is a remarkable lack of transparency in the decision to block certain calls. One provider indicated to CPL that calls were blocked based on the consensus of "the user community." Although calls are routinely "blacklisted" by carriers and blocking service providers, there is no record, accountability, or data for a company like CPL to understand why a number is blacklisted, not to mention any opportunity to review or refute that decision.

CPL appreciates the fact that the Commission has requested comment on the means by which originating call numbers can be required to be "white listed" such that legitimate calls will no longer be blocked. However, the Commission should also establish some guidelines to ensure that numbers are not blacklisted in the first instance, providing guidance and direction to what is currently a standardless and recordless decision made by a few small call blocking providers. Yet while these small software companies make these decisions, they assume the power to undermine the marketing plans of many large businesses nationwide. The nature of the process deems certain calling parties guilty until proven innocent. The Commission should reverse that presumption by stepping in, as it has said it intends to do, to curb the power of these companies to blacklist numbers arbitrarily.

The Commission has for decades enforced a strong policy against the blocking of calls in order to ensure that calls complete, regardless of carrier disputes, technological incompatibilities, or other obstacles. The Commission has previously established "a strong policy against allowing voice service providers to block calls" and has allowed call blocking only in "rare and limited circumstances." *Robocall NPRM*, ¶ 9. The Commission has a "longstanding general prohibition on call blocking" because it has the "potential to downgrade the reliability of the nation's communications network" and "harms consumers." *Id.* *See also 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) ("precedent does not permit unreasonable call blocking.") As such, the Commission's *Robocall NPRM* is focused solely on allowing the blocking of illegal robocalls, and only under a limited set of circumstances. *See Robocall NPRM*, ¶¶ 10-13. As the Commission continues to address the issue of *unwanted* robocalling, CPL urges the Commission to not unduly impede calls like CPL's that have been *invited by the called party* (and are not even autodialed in the first instance).

The Commission's rules to date have largely been focused on carriers and VoIP service providers. It is critical that, at least on the issue of white listing, the Commission also assert

jurisdiction over the call blocking service providers themselves. For a company like CPL, it would be impossible to approach every ILEC, cable provider, VoIP provider, and CLEC in the country to address the fact that its numbers are blacklisted. To the extent that these carriers rely on blocking service providers like Nomorobo, Hiya, and Truecaller, it would be too easy for carriers to defer blacklisting complaints and issues to their non-carrier partners as the source of the problem.² But this would leave the Commission without any means to address the problem of overzealous call blocking of legitimate calls.

Accordingly, CPL recommends that the Commission require that carriers and VoIP service providers only be permitted to recommend call blocking providers that have registered with the Commission and are willing to submit to Commission jurisdiction in connection with call blocking blacklisting complaints. By registering with the Commission, a call blocking provider would be required to provide phone and email contacts for blacklist dispute resolution, and submit to the Commission's jurisdiction to resolve such issues.³ The Commission might also establish jurisdiction directly by establishing that call blocking providers are offering telecommunications services.⁴

Commission jurisdiction is also critical because, in CPL's experience contacting three major call blocking service providers, only one has been reasonably responsive. Two others were not responsive to repeated requests to explain the basis for blacklisting CPL's phone number, and generally do not appear equipped to white list legitimate numbers. None of the three would provide a phone number and all three initially generated stock, nonresponsive emails.⁵ The blocking service providers seem particularly incapable of providing—or unwilling to provide—any meaningful detail as to why certain numbers are being blocked. While these may be growing and poorly resourced companies, they have undertaken the influential and controversial role of blocking phone calls of legitimate callers and must be equipped with ample

² Understandably, many carriers have been reticent to allow and cooperate in call blocking without clear permission from the Commission, particularly in light of the Commission's historic and virtually absolute prohibition on call blocking. In this regard, carriers have been vigilant in recognizing the longstanding prohibition on call blocking, and working diligently to address this concern by ensuring that they have the imprimatur of the Commission for actions that have long been considered verboten across the industry.

³ Both Comcast and Verizon, for example, recommend Nomorobo as a call blocking provider.

⁴ Providers like Nomorobo, which uses “simultaneous ring technology” actually *routes* incoming calls to both the consumer's home phone and the Nomorobo server. If Nomorobo determines that the caller is a robocaller, Nomorobo answers the call on behalf of the user and the subscriber only hears a single ring in their home. *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, WC Docket No. 07-135, Declaratory Ruling And Order, at fn. 519 (rel. July 10, 2015). The Commission could find that these providers, by routing and interrupting telecommunications services, are offering telecommunications for a fee to the public and assert jurisdiction more directly.

⁵ The one provider that did respond did not provide a satisfactory response, but at least returned emails on a routine basis and provided a general response.

resources to handle blacklisting complaints. By asserting jurisdiction, the Commission will ensure that such resources are duly committed.

Call blocking providers and the Commission have suggested that it is permissible to block calls if the called party provides permission and if it is disclosed to the called party that legitimate calls may be inadvertently blocked. But CPL finds this approach objectionable for several reasons. First, there is no policing of the level of disclosure provided to consumers. To the extent a disclaimer is buried in the fine print of a contract of adhesion or unseen terms and conditions, there may be very little actual disclosure at all. Second, blocking of calls cannot be characterized as inadvertent when originating numbers of entirely legitimate calling parties are deliberately included in the black lists of blocking service providers. Third, this approach paints with too broad a brush and fails to take the necessary effort to enforce the Commission's policy of allowing calls to flow freely. Fourth, any called party always has the ability to block specific numbers which provides a safety net if they consider white listed numbers intrusive.

Fortunately, the Commission has recognized in the *NOI* that there is a need to create mechanisms to ensure that legitimate calls are not illegally blocked. The most effective means to discipline the call blocking process, as the Commission has recognized, is by establishing an effective and efficient white listing mechanism for legitimate callers. CPL strongly supports the near-term adoption of such a mechanism, as detailed in the attached presentation. CPL also generally supports the recommendations of other parties, including for example Insights Association and Tele-Town Hall, LLC, that have advocated in favor of white listing.⁶ CPL makes the following specific recommendations in response to the Commission's request:

1. Call blocking providers should be required to provide immediately a clear process and mechanism to white list calls from companies like CPL that are willing to provide an affidavit that they are not engaging in illegal robocalling as defined by the Commission.
2. The Commission should immediately require that every call blocking provider offer a point of contact, including phone and e-mail contacts, to provide a white listing mechanism and resolution of call blocking issues.
3. There should be a presumption that any entity that is calling numbers voluntarily provided by prospective customers and otherwise complies with the Commission's rules should be white listed upon offering an affidavit to that effect.
4. The Commission should establish a white list that would include any company that provides the Commission an affidavit attesting to the fact that it is not engaged in illegal

⁶ See, e.g., Insights Association Reply Comments on Notice of Proposed Rulemaking and Notice of Inquiry, CG Docket No. 17-59, at 5 (July 31, 2017); Comments of Tele-Town Hall, LLC, CG Docket No. 17-59, at 6 (July 5, 2017).

robocalling as defined by the Commission. The Commission should white list any such company within ten (10) business days of when the affidavit is filed with the Commission.

5. The Commission should provide a common database of numbers that have been white listed and require call blocking providers to incorporate those white lists into their systems monthly.

6. In addition, legitimate callers that provide a similar affidavit directly to call blocking providers should be white listed by that provider within ten (10) business days. Numbers that are white listed in this manner must be provided to the Commission by the call blocking provider within ten (10) business days of white listing.

7. All numbers that any carrier or call blocking provider black lists should be provided to the Commission. The Commission should permit any company, like CPL, that has been assigned phone numbers to confirm with the Commission whether its phone number(s) have been black listed and provide a mechanism to contest that action.

8. While blacklisted numbers must be provided to the Commission, it is critical for the Commission to establish an efficient and effective means to white list numbers. Such numbers should remain white listed until such time as it has been proven that they are the source of illegal robocalling. This will reverse the guilty-until-proven-innocent regime currently in effect.

9. To the extent that any carrier or VoIP provider engages in the blocking or black listing of numbers, these rules should likewise apply to such carriers and/or providers.

CPL recognizes that there are competing policy considerations at issue and looks forward to working with Commission, carriers, VoIP providers, and call blocking providers to create constructive solutions. CPL is concerned, however, that legitimate economic activity—including critical sales, marketing, and political activity—is being stifled by the current system. The Commission should act quickly to implement white listing and other reforms necessary to encourage these essential commercial and political activities.

Ms. Marlene H. Dortch
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As required by Section 1.1206(b), this *ex parte* notification is being filed electronically for inclusion in the public record of the above-referenced proceedings. If you have any questions or require additional information, please do not hesitate to contact me at 202.659.6655.

Sincerely,

/s/ James C. Falvey

James C. Falvey

Enclosure

cc: Mark Stone
Kurt Schroeder
Micah Caldwell
Richard Smith
Jerusha Burnett
Alexis Berg
Betty Hewes-Eddinger
Kelly Heindl