

**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

COMMENTS OF SIRIUS XM RADIO INC.

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Sirius XM Radio Inc. (“SiriusXM”) hereby submits these comments on issues raised in the Consumer and Governmental Affairs Bureau’s August 10, 2018 Public Notice¹ with respect to the blocking and labeling of robocalls.

I. INTRODUCTION AND SUMMARY

SiriusXM recognizes the challenge of preventing illegal calls without inadvertently impacting legal ones and appreciates the Commission’s attention to the matters raised in the Public Notice. For companies like SiriusXM, whose legal marketing efforts have been impacted by the Commission’s laudable efforts to deter spoofing and other illegal calling, the Commission’s effort to distinguish “illegal callers” from “lawful, high-volume callers” is welcome.² SiriusXM also appreciates the Commission’s awareness of the harms inherent in call labeling, the impact of call intercept messages, and the potential value of a trusted caller database. SiriusXM files these comments to indicate its support for, *inter alia*, limitations on the

¹ *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. Aug. 10, 2018) (“Public Notice”).

² *Id.* at 2.

labeling of calls, a trusted caller database, near-term implementation of intercept messages, and other efforts to eliminate the “false positive” blocking and labeling of legitimate calls that have unfortunately resulted from efforts to combat robocalls.³

II. CLEAR DISTINCTIONS ARE NEEDED BETWEEN LEGAL AND ILLEGAL CALLS

The problem of false positives is a serious one that has been documented by a wide variety of commenters. Most recently, the American Bankers Association (“ABA”) explained:

one large bank ABA member reported that a phone number from which the member places calls to 60,000 customers per month has been labeled as “scam or fraud” by a popular third-party service. The bank then asked an external vendor to review how Voice Service Providers label nine phone numbers from which the bank makes outbound calls. The vendor’s research revealed that eight of those nine phone numbers are labeled as “spam likely,” “suspected spam,” or “spam number” by at least one of the four largest Voice Service Providers.⁴

Hiya raised the same issue in its recent Reply Comments:

In the push to make a difference with the tools and information on hand, some players within the analytics services space are running the risk of false positives and harming the legitimate US business spaces that still rely on phone calls to reach their current and potential customers.⁵

³ In its previous filings in this docket, SiriusXM discussed the harm being caused to legitimate businesses by blocking and labeling of telephone calls. *See, e.g., In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, Reply Comments of Sirius XM Inc., CG Docket No. 17-59, at 2-3 (Aug. 20, 2018) (“*SiriusXM August 20 Reply Comments*”) (citing to concerns with its own marketing calls as well as calls from businesses in other sectors, including life insurance companies, credit unions, retail energy companies, and electronic payment companies).

⁴ Ex Parte Letter from Jonathan Thessin, Senior Counsel, Center for Regulatory Compliance, American Bankers Ass’n., to Marlene H. Dortch, Secretary, Federal Communications Commission, CG Docket No. 17-59, at 3 (Aug. 17, 2018) (“*ABA Ex Parte Letter*”).

⁵ Ex Parte letter from Jonathan Nelson, Director of Product Management, Hiya, to Marlene H. Dortch, Secretary, Federal Communications Commission, CG Docket No. 17-59, at 5-6 (Aug. 20, 2018).

Given the severe impact overblocking has on legitimate businesses, if criteria can be identified that enable carriers to objectively distinguish between illegal and legal calls,⁶ SiriusXM would likely support the adoption of such criteria. SiriusXM would be particularly supportive of the Commission's establishing a clear definition of the limited subset of illegal calls that may be blocked while prohibiting the blocking or labeling of any other calls. SiriusXM looks forward to reviewing the criteria proposed by commenters in this regard.

However, SiriusXM could not support vague criteria that paint with too broad a brush or that do not clearly define the types of calls that may be blocked. And even if the Commission establishes objective criteria and strict limits on the calls it will permit to be blocked or labeled, any such approach should be paired with additional safeguards like a trusted caller database, intercept messages, and procedures and timeframes to promptly investigate and remedy calls that are being improperly blocked.

Depending on the objective criteria the Commission adopts, it may also need to ensure that voice providers communicate with the calling party before blocking calls.⁷ One method of communication would be through a trusted caller database that voice providers and app providers would be required to consult before blocking any number. If the calls are legitimate calls by a subscriber listed in the database, call blocking would be prohibited. Even if there is a risk that such corroboration might delay effective action, this risk must be balanced against the current

⁶ The Commission is appropriately moving to adopt the SHAKEN/STIR proposal to identify spoofed numbers and SiriusXM supports those efforts. However, those efforts are limited to spoofed calls and, even when fully implemented, will not solve the broader problems related to the blocking and labeling of legal calls.

⁷ See *Public Notice* at 2.

reality of blocking high volumes of entirely legal calls, as the ABA highlighted in the example above.⁸

III. THE COMMISSION SHOULD ADDRESS IMPROPER CALL LABELING, WHICH IS OFTEN TANTAMOUNT TO CALL BLOCKING

The same issue that pertains to overblocking of calls also applies in the context of call labeling. In fact, it was inaccurate call *labeling* (mis-identifying its calls on caller ID as “scam” or “fraud”) about which the ABA recently complained.⁹ Parties have good reason to be concerned about inaccurate call labeling that identifies legitimate callers in such a negative light that their calls are much less likely to be answered. SiriusXM has observed this problem as well and has urged the Commission to take simple steps to restrain call labeling by voice service providers and app providers alike. For example, to the extent the Commission permits any call labeling, it should require a caller’s Caller ID to be displayed before any other message.¹⁰

Labeling ties into broader “false positive” solutions. As detailed below, in any instance where a call is blocked or labeled, a call intercept message must be sent back to the caller identifying the party blocking or labeling the call. Establishing a trusted number database, also discussed further below, could create a further feedback loop; if the Commission establishes such a database, it could then prohibit the labeling of any call from a trusted number without first notifying the trusted party of the label to be applied. Upon discovering that their calls are being labeled in any way, a caller listed on the database could notify the entity responsible for labeling

⁸ The nature of the standard for illegal calls could determine whether corroboration is necessary. If a calling volume standard were set very high, for example, then such corroboration might not even be necessary as a practical matter.

⁹ See *supra* at 2 & fn. 4.

¹⁰ Ex Parte Letter from James C. Falvey, Counsel for Sirius XM Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CG Docket No. 17-59, at 6 (June 7, 2018) (“*Sirius XM June 7 Ex Parte*”).

if it believes that such labels are inaccurate and potentially even slanderous, libelous, or disparaging (which would likely be the case with labels such “scam,” “spam,” or “fraud”). This process should provide much-needed discipline currently lacking among labeling providers.

The Commission should prohibit the inaccurate mislabeling of lawful calls. Labels such as “spam” and “scam” should be defined as applying only to illegal or fraudulent calls and voice service and app providers should be prohibited from labeling lawful calls with those terms, absent specific, credible proof of illegal activity. Moreover, as SiriusXM previously proposed, the Commission should prohibit voice service providers from contracting with any app provider that fails to comply with Commission rules.¹¹

A significant amount of mislabeling activity appears to originate from third party app providers. SiriusXM has previously indicated various ways in which the Commission can assert jurisdiction over third-party app providers.¹² Even absent such jurisdiction, the Commission could address call mislabeling by third party app providers by, for example, requiring voice providers to adopt acceptable use policies prohibiting the use of their services by third party app providers that block or label calls in any manner that does not comply with Commission policies. The Commission could also make such voice providers jointly liable for any violation of their acceptable use policies that is not halted upon reasonable notice by the calling party.

Inaccurate call labeling significantly harms legitimate callers and SiriusXM urges the Commission to take concrete steps to prevent the mislabeling of calls. As an immediate first step, the Commission should require that Caller ID (both name and telephone number) appear before any other label is placed on a call by a voice service or app provider.

¹¹ *Id.* at 5.

¹² *See, e.g., SiriusXM August 20 Reply Comments* at 19.

IV. IMMEDIATE ACTION IS NEEDED TO ELIMINATE FALSE POSITIVES

SiriusXM commends the Commission for highlighting the pressing problem of false positives -- defined by the Commission as “blocking lawful calls thought to be illegal” -- and then asking, “what measures could be used to reduce false positives?”¹³ The best means to address false positives would be to make it clear that illegal and fraudulent calls are the only calls that may be blocked or labeled, whether by voice service providers or third party app providers, many of which provide their services under contract with voice service providers. The next best means of addressing the problem would be to implement two of the solutions the Commission identified, as discussed in further detail below: requiring use of a trusted caller database and call intercept messages.

Absent a central trusted caller database, it would be impractical for any call originator to coordinate and provide real-time updates to every voice service provider (including every ILEC, CLEC, and VoIP provider), data analytics company, and app provider in the country. Commenters have noted that over 550 third party app providers offer blocking and labeling today.¹⁴ The relationships between providers, analytics companies, and third party app providers are constantly in flux and the players come and go. Establishing a centralized database is the most practical solution to protect legitimate callers from overzealous call blocking and labeling.

SiriusXM’s recent Reply Comments in this docket explained why originating callers cannot furnish information directly to every such provider and company:

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

¹³ *Public Notice* at 3.

¹⁴ *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Comments of CTIA at 10 (July 20, 2018).

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, 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, 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.¹⁵

Given the challenges inherent in this type of information-sharing, the Commission should focus first on establishing a trusted caller database and effective blocking/labeling intercept messages.

V. A TRUSTED CALLER DATABASE WOULD HELP STOP OVERBLOCKING

The Commission's inquiry into the need for a "white list" or trusted caller database has been previously supported by numerous parties in this proceeding.¹⁶ A centralized database would help blocking and labeling providers, including third party app providers, to ensure that their actions do not impede legitimate calls. Any such list or database should be industry-wide; a provider-specific approach is simply not feasible given the sheer number of providers, third party app providers, and data analytics providers. In addition to the challenge of initially contacting

¹⁵ See *SiriusXM August 20 Reply Comments* at 10-11.

¹⁶ See, e.g., *ABA Ex Parte Letter* at 3; *SiriusXM Comments* at 9 (Jan. 23, 2018); *RESA Comments* at 9 (Jan. 23, 2018); *CPL Comments* at 9-10 (Jan. 23, 2018); *Comments of Encore Capital Group, Inc.* at 2 (Jan. 23, 2018).

each provider, originating caller numbers change periodically and it would be impossible to continuously update such changes across the entire calling ecosystem.

Neither voice service nor app providers should be allowed to block or label calls from numbers listed in the trusted number database without first contacting the company assigned to such numbers. Any such notice could identify why the numbers are being blocked and, in the case of labeling, how the calls are being labeled and why they are being placed in that category. No mechanism currently exists to provide effective feedback to an originating caller and the originating caller therefore cannot discern who is blocking or labeling its calls or why. Inputs into and feedback from any such database should be automated as much as possible to streamline the database's effectiveness and minimize the effort needed by all parties.

The Commission should not limit its trusted number database to only “legitimate emergency calls” or “government emergency numbers,”¹⁷ because the problem of “false positives” goes well beyond those two categories. The record in this docket is replete with examples of legitimate commercial calls being blocked or mislabeled, including the ABA example cited above. Commercial callers have complained, for example, that their customers have requested return calls but that they are then blocked from returning those calls,¹⁸ or they have been unable to reach consumers with whom they had a prior business relationship due to blocking or mislabeling.¹⁹ The Commission should establish a trusted caller database and it should maximize the database's utility by addressing problems faced by legitimate commercial callers.

¹⁷ See *Public Notice* at 4.

¹⁸ Comments of Colonial Penn Life Insurance Company at 1 (Jan. 23, 2018).

¹⁹ See, e.g., Comments of Comcast Corporation at 5 (Jan. 23, 2018) (Comcast service appointment reminders labeled as “nuisance likely”).

A single, uniform trusted caller database should be made available to any government or commercial party (a) desiring to ensure that its legitimate numbers are included in the database and (b) that is willing to provide updates to its numbers on a regular basis. If numbers are included in such a database, providers should be required to contact the originating caller's designated point of contact to verify that the caller listed on the database is in fact making the calls before any blocking or labeling could occur.²⁰ If the listed caller is the party making the legitimate commercial calls, no such blocking or labeling would be permitted.

In addition, before applying any negative label (*e.g.*, “spam likely” or “scam likely”) to a number listed in the trusted caller database, a provider or third party app provider should be required to contact the listed company, inform their contact person of the label, and provide an opportunity to contest the label. This process would improve communication and eliminate the blind labeling of calls without any notice to the originating caller. In order to be included in the database, a caller would need to verify that it is the lawful subscriber of a phone number, verify its identity, verify that it has adopted procedures to comply with the TCPA and related federal laws, and designate a point of contact readily available to review requests from providers.

VI. INTERCEPT MESSAGES ARE NEEDED FOR EVERY BLOCKED OR LABELED CALL

The Commission also requested comment on the idea of requiring intercept messages to communicate to the originating caller that its calls are being blocked. SiriusXM strongly supports some form of intercept message or response code so that originating callers will know what company is blocking or labeling its calls, eliminating what is currently a problematic information gap. Whether the Commission requires an intercept message or a response code,

²⁰ *See Public Notice* at 4.

originating callers must be given sufficient information to identify the party disrupting its calls as well as a mechanism to contact the party causing the disruption.

SiriusXM recently addressed the issue of intercept messages in its August 20 Reply

Comments:

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. Noble Systems correctly explains that providing “a fake busy signal is misleading, and does not accurately inform the caller of the 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.

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.

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 much smaller provider, has also demonstrated the ability to send false disconnect messages back to originating callers. Sending these false messages constitutes a violation of the Commission's Rules. 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 5.²¹

²¹ *SiriusXM August 20 Reply Comments* at 14-16 (footnotes omitted).

SiriusXM supports requiring some form of intercept message or response code so that a call's originator can know that its call is being blocked or labeled, which entity is responsible for that action, and how to remedy any erroneous blocking. Simply making the blocking or labeling party known to the originating caller will open up dialogue and make it harder for call blockers and labelers to mistreat originating callers or apply slanderous, libelous, or disparaging labels to their calls.

VII. REQUIREMENTS ARE NEEDED FOR HOW PROVIDERS RESPOND AFTER THEY ARE NOTIFIED OF OVERBLOCKING

The Commission also requested comment as to what a voice provider should be required to do upon being notified that it is blocking lawful calls.²² To minimize the harm being done to legitimate businesses, voice service and app providers should promptly cease blocking such calls and then investigate the basis for blocking those calls. Where numbers are being spoofed, the provider and caller can reach that conclusion quickly through cooperative efforts and act promptly to stop the activity. Ending the call blocking while investigating will still allow the parties to quickly identify circumstances where spoofing is implicated.

In addition, when a voice service or app provider is notified of a call originator's concern with blocked calls, the voice service or app provider should be required to investigate and remedy the issue within two business days.²³ Voice service and app providers should also have a

²² *Public Notice* at 4.

²³ The recommendation of two business days is in line with a number of other commenters likewise recommending a quick response time for such complaints. *See, e.g.*, Comments of NTCA – The Rural Broadband Association at 3 (Jan. 23, 2018) (recommending immediate resolution); PACE Comments at 5 (1 business day response time); Comments of Noble Systems Corporation, at 9 (Jan. 23, 2018) (1 business day to act on a request).

dedicated point of contact for such complaints and sufficient staffing to provide prompt resolution to allegations of improper blocking and labeling.

Where the problem is spoofing, SiriusXM is willing to fully cooperate with any inquiry, recognizing that it is in all parties' best interests to identify and halt spoofed calls that inaccurately appear as though they were made by another caller. SiriusXM has had its own numbers spoofed in the past and has worked with both providers and the Commission to address those issues. Therefore, the fact that spoofing occurs is not sufficient reason to allow blocking to continue while a spoofing incident is being investigated.

VIII. CONCLUSION

SiriusXM applauds the Commission for releasing the *Public Notice* to obtain further comment on a variety of issues that are critical to lawful commercial callers and the voice calling ecosystem. False positives continue to be a severe problem for originating callers that rely on the public telecommunications networks to make lawful commercial marketing calls. SiriusXM urges the Commission to press forward with reforms to the current regulatory regime, including requiring Caller ID only as specified in the Commission's Rules, implementing an industry-wide trusted number database, mandating intercept messages, and other measures discussed herein

necessary to prevent and, if necessary, remedy harmful blocking and labeling of legitimate commercial calls.

Respectfully Submitted,

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