



September 24, 2018

Submitted via <http://apps.fcc.gov/ecfs/>

Commission's Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**RE: CG Docket No. 17-59
Advanced Methods to Target and Eliminate Unlawful Robocalls**

To Whom It May Concern:

Encore Capital Group, Inc. (along with its subsidiaries, collectively referred to as "Encore") submits its comments in response to the August 10, 2018 Public Notice in the above-referenced docket. We support the Commission's efforts to target and eliminate unlawful robocalls, and we appreciate that the Commission seeks to refresh the record on, among other items, how to avoid false positives. Unfortunately, false positives – service providers blocking lawful calls thought to be illegal robocalls – has become an enormous unintended consequence of the Commission's rule to target and eliminate unlawful robocalls.¹ The result, as described more below, has been significant harm both to businesses making large volumes of legitimate calls, and to the consumers they serve. We urge the Commission to create safeguards, including a white list of legitimate numbers, to stop the surge of improper blocking of legitimate calls.

Service Providers Are Incorrectly Blocking Legitimate Calls as Robocalls – Creating Harm to Both Legitimate Callers and Their Consumers

We have seen first-hand that inappropriate blocking of legitimate calls made by our company is happening with increasing frequency since the FCC adopted its rules last year. We are seeing legitimate calls being repeatedly blocked, and we understand from the service providers that the uptick is a result of the rules. Put differently, based on the large volume of calls we make, service providers are incorrectly blocking our legitimate callers as robocalls. Companies like Encore make large volumes of calls intended to provide important, and often

¹ *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9706 (2017).



time-sensitive, account information to our consumers, and blocking by service providers has created significant disruptions to our consumer communications. This can result in harm not just to our business, but to the consumers we serve with regard to their credit reports and ability to resolve their debt obligations in a timely manner. We therefore urge the Commission to take several actions, outlined below, to mitigate this unintended consequence of the rules.

Clarify Definition of Robocall

The term “robocall” is widely misused to capture even legitimate calls made using a dialing device and/or in large volumes. Service providers don’t seem to have a good understanding of what a robocall is and is not, and the narrow instances the Commission identified in which service providers could appropriately block calls as robocalls. Those narrow instances of acceptable blocking include:

- (1) calls originating from a North American Numbering Plan number that is not valid;
- (2) a valid North American Numbering Plan number that is not allocated to a provider by the North American Numbering Plan Administrator or the Pooling Administrator; and
- (3) a valid North American Numbering Plan number that is allocated to a provider by the North American Numbering Plan Administrator or Pooling Administrator, but is unused, so long as the provider blocking the calls is the allocatee of the number and confirms that the number is unused or has obtained verification from the allocatee that the number is unused at the time of the blocking.²

These categories of calls a provider may block appear to be clearly delineated, but we are seeing that service providers are confused about what robocalls are and which types of calls they may block. Simply put, confusion of what constitutes robocall is rampant, and the result is massive amounts of inappropriate blocking of legitimate, and often time-sensitive, telephone calls.

Unfortunately, valid debt collection calls often get lumped into the same category of “robocall” as *any* call made to a wireless number using a dialer. Service providers have repeatedly informed us that they have blocked our calls because we dial in large numbers. Our company owns an account with one out of every five American consumers, and our making large volumes of calls to our consumers is to be expected. However, our calls are not robocalls and should not be blocked a such.

² *Id.*; 47 CFR § 64.1200(k)(2).

The overly broad term “robocall” sweeps in normal, expected and desired communications into the same bucket as telemarketing and scam calls, and is an impediment to much-needed clarification under the Telephone Consumer Protection Act (TCPA).³

To address this, we urge the Commission to adopt a definition of illegal robocall. The words in the definition “as well as any call” should be replaced with “and is,” so as to read:

“A call that violates the requirements of the TCPA, the related FCC regulations implementing the TCPA, or the Telemarketing Sales Rule, ~~as well as any call~~ and is made for the purpose of defrauding a consumer, as prohibited under a variety of federal and state laws and regulations, including the federal Truth in Caller ID Act.”⁴

While the Commission previously declined to adopt a definition of “illegal robocall,” such clarification is needed to inform service providers about what the term “robocall” really means. For example, a high call volume associated with a particular number does not necessarily indicate a robocall. More is needed, such as the intent to defraud, to correctly categorize calls as “robocalls.” With such clarification, valid debt collection calls will be less likely lumped together with illegitimate calls as “robocalls,” which is an overly-broad word that stands in the way of common-sense clarification.

Create Clear Approval Process for White List

In addition to clarity as to what a “robocall” is, there needs to be more to stop the widespread blocking of legitimate calls that is wreaking havoc on many industries and the consumers they serve. It is imperative that legitimate callers should be able to upload legitimate numbers to a white list with relative ease, and update numbers regularly as needed. This should be accomplished through a clear, efficient process, such as a hotline or email. As we stated in our prior filings, at Encore we routinely have approximately five to eight outbound phone numbers in use at any given time, and those numbers may change on a periodic basis.

Before uploading numbers to the white list, service providers should validate numbers to ensure that they are indeed legitimate. Validation can be done by calling the number. To ensure

³ 47 U.S.C. § 227.

⁴ See Advanced Methods NPRM and NOI, 32 FCC Rcd at 2311 (proposing to define “illegal robocall” as “one that violates the requirements of the Telephone Consumer Protection Act of 1991, the related FCC regulations implementing the Act, or the Telemarketing Sales Rule, as well as any call made for the purpose of defrauding a consumer, as prohibited under a variety of federal and state laws and regulations, including the federal Truth in Caller ID Act”).

that validation is done and that the white list contains only legitimate numbers, service providers should record and document their validation of calls.

We think it is reasonable to require that service providers must upload legitimate numbers submitted by companies on the white list within five business days of their submission. There should be a penalty assessed to service providers that fail to appropriately upload legitimate numbers within five business days. There should also be a burden on service providers to do some investigation to verify the legitimacy of numbers uploaded to the white list, such as through calling the number to verify that it is indeed a robocall and not a legitimate number.

In addition, before service providers remove a number from the white list as a suspected robocall, the service provider should validate that the number is truly illegitimate. Such validation would require the service provider to call the number. Service providers should be required to record and document such validation to remove a number from the white list.

We do not have a preference on whether the Commission or a private third party administers the white list, so long as it is run to ensure an efficient and accurate process.

When There is Inappropriate Blocking, There Should Be a Near Real-Time Notice Mechanism to Service Providers

To protect legitimate callers and their consumers, there should be a formal mechanism – through a dedicated email or hotline number – to immediately notify service providers of inadvertent blocking. A near real-time process should be developed that would allow a phone number that has been incorrectly marked as a robocall to be captured in the flagging logic, to prevent damage to both the callers and the consumers themselves. Before re-uploading a number to the white list, the service provider should have to call the number to verify that it is legitimate.

Require Service Provides to Unblock Legitimate Calls Expeditiously

For our industry, many debt collection calls are time-sensitive, given federally-governed validation and dispute periods, statute of limitations timetables, credit reporting time frames, and the fact that many collection agencies cause interest and fees to accrue on a consumer's account with each passing day.⁵ Indeed, even with just 24 hours of our calls being improperly blocked,

⁵ At Encore, we do not charge consumers any pre-judgment interest or fees on debt we purchase. However, this policy, and other consumer protections set forth in our Consumer Bill of Rights



the result would be harmful to thousands of consumers with whom we were unable to make contact. It is therefore critical that there be an expedited process for service providers to unblock legitimate calls, upon notice by a legitimate caller on the white list. Should a service provider mistakenly block a legitimate number, it is vital that unblocking take place within 24 hours of the error. If a service provider does not timely unblock a legitimate number as directed, a penalty should be assessed to the service provider.

Promote Information Sharing Among Service Providers to Mitigate Bad Actor Behavior

We understand that bad actors trying to get onto the white list, or to assert that their robocalls were erroneously blocked, is a concern. To address this, we think it would be helpful to create an information sharing mechanism, such that service providers share phone numbers identified as robocalls across the white list network to ensure that the bad actors are not simply switching carriers in order to resume making robocalls, this time from another provider. Information about calling patterns can also be shared, such as the fact that under the Fair Debt Collection Practices Act, debt collectors may only call between the hours of 8 a.m. and 9 p.m.⁶ Accordingly, service providers should be aware that calls made outside of this time frame could not be legitimate debt collection calls.

Require Service Providers to Inform Callers Why Their Calls Are Being Blocked

Currently, it is difficult to know why every instance of call blocking is occurring. For a company like Encore with tens of millions of consumers across all 50 states, our calls have the potential to be blocked by hundreds or even thousands of service providers across the country. A notification system, through which service providers would be required to notify callers of the reason their calls are being blocked, is essential. Notification could be done through codes indicating why the call is being blocked. Without such a system in place, it is often unclear why our calls are being blocked, and it is extremely difficult to know whether the blocking is being done for a legitimate reason (*e.g.*, at the subscriber's request) or for an illegitimate reason (*e.g.*, by a service provider mistakenly categorizing our calls as "robocalls").

(<https://www.encorecapital.com/about/consumer-bill-of-rights-english>), go well beyond federal and state law requirements and are industry-leading standards.

⁶ 15 U.S.C. § 1692d(a)(1).



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Thank you for your efforts to create a clear and efficient process for service providers to identify not just robocalls, but also legitimate callers, as well as a mechanism for service providers to quickly unblock callers that were blocked in error. Please don't hesitate to let us know if you have any questions about our comments and suggestions, or need further information.

Respectfully submitted,

/s/ Sheryl A. Wright
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