

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Consumer and Governmental Affairs)	CG Docket No. 17-59
Bureau Seeks to Refresh the Record on)	
Advanced Methods to Target and)	
Eliminate Unlawful Robocalls)	

COMMENTS OF PRA GROUP, INC.

PRA Group, Inc.,¹ by counsel and pursuant to the Commission’s Public Notice in the above-referenced proceeding,² hereby respectfully requests that the Commission take action to ensure that lawful live voice calls do not continue to be blocked (or mislabeled) by carriers, a practice that is occurring today following the Commission’s earlier decision to permit the blocking only of unlawful robocalls. The blocking or mislabeling of legitimate calls is both unfair and unlawful and is not aligned with the Commission’s policy rationale for its limited call blocking rule.

Overbroad call blocking and mislabeling practices impede PRA’s ability to operate its business and prevent it from engaging with consumers to address — and in many cases reduce — their debt obligations. Since the Commission’s call blocking rule first took effect in early 2018, and as carriers presumably have undertaken more aggressive call blocking and labeling efforts, a meaningful volume of PRA’s live voice calls have become ensnared in overbroad

¹ PRA Group, Inc. is the publicly traded parent company of Portfolio Recovery Associates, LLC (“PRA”), a leader in the debt buying industry. PRA’s employees contact consumers to inform them of their obligations and work with them to find ways to repay their debts.

² *Consumer and Governmental Affairs Bureau Seeks to Refresh the Record on Advanced Methods to Target and Eliminate Unlawful Robocalls*, Public Notice, CG Docket No. 17-59, DA 18-842 (Aug. 10, 2018) (“*Public Notice*”).

carrier call blocking and mislabeling practices. PRA's experience is especially troubling because its calls are live voice in nature, not the sort of unlawful automated robocalls that the Commission's rule was designed to prevent. PRA has incurred substantial expense in structuring its calling practices to comply with applicable laws, including the Telephone Consumer Protection Act ("TCPA") and the Fair Debt Collection Practices Act ("FDCPA"). The blocking and mislabeling of PRA's lawful calls undercuts those efforts and harms consumers who lose the ability to negotiate repayment terms and avoid judicial collections. PRA understands that its experience is not unique, and that the lawful calls of other commercial and non-commercial entities also are being unlawfully blocked or mislabeled.³

The blocking or mislabeling of lawful calls contravenes the Commission's limited call blocking rule, diminishes the value of the public switched telephone network, and harms both businesses and consumers. This is not what the Commission had in mind when it put in place a limited call blocking rule to enable carriers to identify and prevent fraudulent robocalls. The Commission should investigate this matter fully to ensure that its desire to curtail unlawful robocalls does not result in the inappropriate blocking or mislabeling of lawful live voice calls.

I. UNLAWFUL CALL BLOCKING OR MISLABELING VIOLATES THE LEGAL AND POLICY RATIONALE FOR THE EXISTING RULE.

The blocking or mislabeling of lawful calls contravenes both the Commission's stated policy goal for permitting carrier-initiated blocking and the legal justification for permitting it.

³ A wide range of parties have filed comments in this proceeding to inform the Commission that their lawful calls are being blocked or mislabeled by carriers. *See, e.g.,* Comments of Sirius XM Radio Inc., *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, at 6-7 (Jan. 23, 2018); Comments of American Bankers Association, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, at 2-3 (Aug. 17, 2018); Comments of AARP, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, at 2 (July 3, 2017); Comments of Microsoft Corporation, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, at 6-7 (July 3, 2017).

The Commission embarked on its call blocking effort with “the goal of eliminating illegal robocalls” by recognizing at the outset that it had to “balance competing policy considerations.” Indeed, the Commission correctly found that, as it pursued this goal, it had “to protect the reliability of the nation’s communications network and to protect consumers from provider-initiated blocking that harms, rather than helps, consumers.”⁴ This acknowledgement reflected the reality that carrier-initiated call blocking has the potential to harm as much help and that efforts to prevent illegal robocalls cannot come at the expense of network reliability.

The Commission based its legal authority for permitting carrier-initiated blocking on sections 201 and 202 of the Communications Act, “which prohibit unjust and unreasonable practices and unjust and unreasonable discrimination,” by finding that the blocking of illegal robocalls is not an unjust or unreasonable practice or unjust or unreasonable discrimination.⁵ Implicit in the Commission’s legal conclusion was that the blocking of *lawful* calls necessarily must be — and is — unjust, unreasonable, and improperly discriminatory.⁶ To the extent the Commission’s rule now is resulting in the blocking or mislabeling of otherwise lawful calls, the Commission’s own legal authority no longer supports its rule and should be reexamined and addressed.

The blocking or mislabeling of lawful calls also contravenes Commission precedent regarding call blocking.⁷ The Commission has long recognized that “[o]ne of the seminal

⁴ *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Notice of Proposed Rulemaking and Notice of Inquiry, 32 FCC Rcd 2306, 2310 ¶ 10 (2017).

⁵ *Id.* at 2310 ¶ 12 (citing 47 U.S.C. §§ 201, 202).

⁶ *See Establishing Just & Reasonable Rates for Local Exch. Carriers*, Declaratory Ruling and Order, 22 FCC Rcd 11629, 11631 ¶ 5 (2007) (“[T]he Commission previously has found that call blocking is an unjust and unreasonable practice under section 201(b) of the Act.” (citing 47 U.S.C. § 201(b))).

⁷ *See Policies and Rules Concerning Operator Serv. Providers*, Declaratory Ruling and Order, 28 FCC Rcd 13913, 13917 ¶ 9 & n.31 (2013) (“This ban on call blocking is nothing new. The Commission has acted to prohibit the

objectives of the Communications Act” is to make sure that the phone network is open to all — and that “[t]he blocking of telephone calls is antithetical to this fundamental goal.”⁸ This is so because, to maximize the utility of the public switched telephone network, access to that network must be universal. The Commission therefore has rightly been skeptical and intolerant of overzealous or inappropriate blocking of calls.⁹

In light of this, the Commission has an obligation to prevent otherwise lawful calls from being ensnared in call blocking mechanisms that are not being applied correctly or appropriately. When the Commission determined in 2017 that it was in the public interest to establish a narrow process designed to reduce or eliminate unlawful robocalls, it also acknowledged that the *unlawful* blocking of *legitimate* calls is decidedly *not* in the public interest. The Commission therefore should revisit its call blocking rules to ensure that lawful calls are not impermissibly blocked.

II. THE COMMISSION SHOULD BE GUIDED BY CERTAIN CORE PRINCIPLES WHEN TAKING STEPS TO ENSURE THAT LAWFUL CALLS ARE NOT BLOCKED UNLAWFULLY.

The *Public Notice* sought comment on criteria that carriers can use to identify and block illegal robocalls, with the goal of identifying call-blocking criteria “that cannot be abused” by,

blocking of phone calls for many years.” (citing *Blocking Interstate Traffic in Iowa*, Memorandum Opinion and Order, 2 FCC Rcd 2692 (1987))).

⁸ *Id.* at 13916 ¶ 8; *see also id.* (“The Commission has long recognized that the refusal to deliver voice telephone traffic risks degradation of the country’s telecommunications network. Call blocking poses a serious threat to the ubiquity and seamlessness of the network.” (citations and internal quotation marks omitted)).

⁹ *See, e.g., Establishing Just & Reasonable Rates for Local Exch. Carriers*, 22 FCC Rcd at 11629 ¶ 1 (“Because the ubiquity and reliability of the nation’s telecommunications network is of paramount importance to the explicit goals of the Communications Act of 1934, as amended, (Act), we reiterate here that Commission precedent does not permit unreasonable call blocking by carriers.” (citation omitted)).

for example, blocking calls “for reasons other than stopping illegal calls.”¹⁰ PRA supports the Commission’s goal of reforming carrier-initiated call blocking so that lawful calls are not blocked unlawfully.¹¹ While PRA does not oppose Commission efforts to prevent illegal robocalls, those efforts should not — and lawfully cannot — come at the expense of legitimate callers. PRA therefore requests that the Commission incorporate the principles set forth below into its efforts to address and eliminate the unlawful blocking and mislabeling practices that today are occurring.

A. The call blocking rule should err on the side of being under-inclusive, rather than over-inclusive, to ensure that lawful calls do not get blocked.

Because the blocking of legitimate calls is unlawful and countermands the public interest, the Commission should permit carriers (including third parties they may engage for this purpose) to block certain calls only if they do so on the basis of criteria that can be demonstrated to not result in legitimate calls being blocked. In other words, to ensure that the call blocking rule does not prevent the transmission of legitimate calls, the Commission should establish call blocking protocols or criteria for carriers and their agents to follow that, if imperfect, are demonstrated to be under-inclusive, rather than over-inclusive.

The Commission’s *Public Notice* seeks comment on certain criteria intended to identify unlawful calls. However, some of these criteria (such as short call duration or high call volume¹²) can reflect legitimate caller practices. For example, school notifications of closings or early dismissals or public safety messages — which of course are legal and often of critical

¹⁰ *Public Notice* at 1 & n.5.

¹¹ *Id.* at 3–4.

¹² *Id.* at 2.

importance — are short in duration and are transmitted in large bursts during a small window.¹³

To avoid exacerbating the already serious problem of false positives, the Commission should not embrace criteria for identifying unlawful calls that will prove to be over-inclusive and ensnare lawful calls, too. Absent an approach that can reliably identify and prevent the delivery *only* of unlawful calls, the Commission should err on the side of under-inclusiveness to ensure that a practice designed to prevent a subset of certain calls does not prevent lawful and legitimate calls from being delivered.

B. The duty to ensure that lawful calls are not blocked should be borne by carriers, not callers.

To prevent false positives from continuing to occur, carriers should have a duty to ensure that a call is illegal *before* it is blocked. As previously noted, carriers already have a duty to transmit lawful communications and not to discriminate unreasonably.¹⁴ Carriers have the most visibility into the calls they carry and thus are best positioned to distinguish between lawful and unlawful calls. They have access to information about their network, whereas customers do not. In these circumstances, it is appropriate for carriers, in adhering to Commission rules, to bear responsibility for determining whether a call is unlawful and to take steps to make sure that determination is accurate *before* a call is blocked. This duty should apply equally when carriers engage the services of third parties to perform call blocking or labeling.

¹³ See District of Columbia Public Schools, *Comments on Second NOI (FCC 17-90) re: Robocalls made to Reassigned Telephone Numbers*, CG Docket No. 17-59 (Aug. 28, 2017) (“[M]any school systems . . . depend on automated and prerecorded messages to send mass notifications to parents, guardians, students, and faculty regarding emergency weather closures, threat situations, unplanned student absences, event scheduling, and to provide other important education-related information.”).

¹⁴ See 47 U.S.C. §§ 201, 202.

C. Call blocking procedures should be sufficiently common across carriers so that lawful callers can more easily contest them if needed.

To date, the Commission has provided carriers with flexibility to implement their own call blocking practices. The challenge with this approach is that there are many hundreds (and potentially thousands) of carriers involved in blocking or labeling calls across the nation. Absent a standard approach to resolving over-inclusive blocking practices, callers are left to navigate a patchwork of carrier procedures and mechanisms to address and resolve inappropriate or inadvertent call blocking. It should not be the responsibility of lawful callers to do this simply to ensure that their legitimate calls will be transmitted. Indeed, requiring that of callers would be contrary to the very purpose of common carriage.¹⁵ Carriers and their agents should be required to adhere to a more standardized process so that callers can quickly and easily address over-blocking practices if and when they occur.

¹⁵ See *Nat'l Ass'n of Regulatory Util. Comm'rs v. F.C.C.*, 525 F.2d 630, 640–42 (D.C. Cir. 1976).

CONCLUSION

For the foregoing reasons, PRA respectfully requests that the Commission take steps to ensure that lawful calls transmit freely across the public switched telephone network and do not continue to be blocked or mislabeled unlawfully.

Respectfully submitted,

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