

**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 THE RETAIL ENERGY SUPPLY ASSOCIATION**

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**Comments of Retail Energy Supply Association**

The Retail Energy Supply Association (“RESA”)<sup>1</sup> hereby submits these comments in response to the Commission’s recent *Public Notice*<sup>2</sup> seeking comment on the so-called “false positive” blocking and labeling of legitimate commercial phone calls mistaken for illegal or fraudulent robocalls. RESA applauds the Commission for focusing on the issue of false positives and urges near-term action to ensure that commercial calls are no longer blocked and mislabeled.

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<sup>1</sup> The comments expressed in this filing represent the position of the Retail Energy Supply Association (“RESA”) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at [www.resausa.org](http://www.resausa.org).

<sup>2</sup> *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*”).

## **I. Introduction and Summary of Comments**

RESA is comprised of over twenty retail electricity and natural gas suppliers operating throughout the United States.<sup>3</sup> Some members of RESA supply both electricity and natural gas to residential, commercial, and industrial customers, while some members may supply only electricity or natural gas. However, all of RESA's members share the common vision that competitive retail electricity and natural gas markets deliver a more efficient, customer-oriented outcome than does the monopoly-protected, rate-regulated utility structure. RESA's marketing efforts promoting competition in the retail electric and natural gas industries are critical to implementing important public policy goals in those markets.

As explained in greater detail in RESA's prior comments in this docket,<sup>4</sup> RESA members depend on the public telephone network to reach current and prospective customers in order to expand the growth of competitive energy services. Unfortunately, the illegal blocking of RESA's members' marketing efforts threatens to impede the further growth of competitive energy suppliers, thereby significantly degrading competition in retail energy markets and ultimately harming consumers. In these comments, RESA recommends that the Commission take prompt action to eliminate so-called "false positives," the "blocking of lawful calls thought to be illegal."<sup>5</sup> First, RESA supports immediate measures to curtail the inaccurate labeling of calls, including a requirement that voice and third-party app providers provide Caller ID ahead of any other call label. Second, RESA also recommends that the Commission adopt an industry-wide "white list" or trusted caller

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<sup>3</sup> *Who We Are*, RESAUSA.ORG, <https://www.resausa.org/about-us/who-we-are> (last visited January 22, 2018).

<sup>4</sup> Comments of Retail Energy Supply Association, CG Docket No. 17-59 (Jan. 23, 2018).

<sup>5</sup> *Public Notice* at 3.

database to ensure that companies listed in such database are not blocked or labeled. Third, RESA urges the Commission to require intercept messages or response codes be returned for any call blocked or labeled by a voice provider or third-party app provider. Such feedback is critical to notifying call originators like RESA as to what entity is blocking and/or labeling their calls.

## **II. The Commission Should Place Restrictions on Call Labeling**

The Commission has asked whether “call labeling is preferable to blocking in some cases?” and whether there should “be restrictions on how providers label calls?”<sup>6</sup> The fact is that if a call is labeled “scam likely,” it might as well be blocked because the called party will rarely if ever answer such a call. RESA members go to great ends to comply with the Telecommunications Consumer Protection Act (“TCPA”) and other federal requirements. They are also closely regulated as energy resellers by the state public service commissions, and under the watchful eye of state attorneys general RESA members should not be faced with still further obstacles to reach customers and prospective customers when they make routine and entirely legal calls over the public switched networks.

The Commission should therefore provide limits on how and when calls are permitted to be labeled. The simplest and easiest change the Commission could make would be to require that Caller ID appears first and foremost on any call, before any other label, accurate or inaccurate, and that it be illegal for any voice provider or third party to interfere with that primary display. The Commission has gone to great ends to require originating voice providers to pass all Calling Party Number and SS7 signaling

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<sup>6</sup> *Public Notice* at 3.

information. 47 C.F.R. §64.1601(a)(1). The Commission also requires intermediate carriers to carry forward the same information to the terminating provider. 47 C.F.R. §64.1601(a)(2). To then permit the terminating voice provider or a third party, even at the end user's direction, to displace that Caller ID is completely inconsistent with the Commission's rules requiring that it be carried to that point in the first instance, and particularly so when Caller ID is replaced with a negative moniker like "spam" or "scam."<sup>7</sup>

Likewise, it is hard to imagine a First Amendment argument that would support eliminating critical call signaling information that allows for the display of Caller ID. The FCC should ensure that Caller ID continues to the end of the call path to the called party in every instance.<sup>8</sup> It remains to be seen whether parties will raise other First Amendment arguments to allow them to label calls with false or misleading labels. But the Commission has jurisdiction to eliminate interference with call completion, as it already prohibits jamming of calls and other types of call interference.<sup>9</sup> Undue blocking and displacing Caller ID with labels is just another form of such interference with the completion of calls on the public switched networks.

In addition to requiring Caller ID to be passed first, the Commission can take steps, as recommended herein, to require companies applying labels and blocking calls to inform the originating caller of their actions. By implementing a trusted caller database

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<sup>7</sup> To the extent that there are limitations on either wireless handsets or networks that prevent the display of Caller ID, the Commission should mandate that all handsets and services enable such display.

<sup>8</sup> The Commission's privacy rules permit the originating caller to block delivery of their Caller ID (e.g., by dialing \*67) (47 C.F.R. §64.1601(b)), but say nothing about the called party blocking the receipt thereof.

<sup>9</sup> *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).

and requiring intercept messages, the Commission will improve communication between originating callers and labeling/blocking entities. This will help resolve the current problem of false positive blocking and labeling.

### **III. The Commission Should Implement an Industry-Wide White List or Trusted Caller Database**

The Commission has requested “additional information regarding ‘white lists,’ which would allow calling parties to provide numbers to voice service providers to avoid calls being blocked or otherwise adversely impacted.”<sup>10</sup> RESA strongly supports the establishment of a “white list” or trusted caller database that would permit the listing of legitimate commercial call originators like RESA members and prohibit the blocking or labeling of their calls by voice service providers.

Given that many calls are blocked or labeled by third-party app providers, RESA urges the Commission to also require that app providers access any such database and also be prohibited from blocking or labeling calls from numbers listed therein. Absent the inclusion of third-party app providers, voice service providers will simply delegate otherwise illegal blocking and labeling functions to these providers. Previous comments by SiriusXM have recommended ways in which the Commission can extend its jurisdiction to cover such app providers, and RESA supports such an extension.<sup>11</sup> Indeed, if the Commission cannot influence the actions of app providers, it will not be able to ensure that calls made over the public switched networks are completed without interference.

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<sup>10</sup> *Public Notice* at 3-4.

<sup>11</sup> See Reply Comments of Sirius XM Radio Inc., at 19-20, CG Docket No. 17-59 (Aug. 20, 2018).

To be truly effective, any “white list” or trusted caller database authorized by the Commission should be implemented in a way that maximizes its availability. First, the list should be industry-wide and not carrier-specific. Having one resource that is available to all industry participants will reduce the burden on those using it and eliminate the unnecessary and redundant costs involved in maintaining more than one resource. Second, the “white list” or database should not be limited to government and emergency entities alone. To so limit it would not only be discriminatory against private versus public sector entities, it would also miss a golden opportunity to address the issue of “false positives” raised by the *Public Notice*.<sup>12</sup> The docket in this proceeding is replete with testimony from various commercial parties that have faced undue blocking and labeling. For example, the American Bankers Association (“ABA”) recently asserted that:

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.<sup>13</sup>

If the Commission intends to invest the time and expense required for the creation of such a database, it should be deployed in such a way as to maximize its efficacy and treat all originating callers equally. As such, it should not favor public over private, or high volume over smaller callers.

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<sup>12</sup> *Public Notice* at 4.

<sup>13</sup> 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).

#### **IV. The Commission Should Implement Call Intercept Messages**

The Commission, in its *Public Notice*, solicited additional feedback regarding the issue of intercept messages.<sup>14</sup> RESA strongly believes that the development and implementation of intercept messages for companies applying labels and blocking calls will be of immense benefit to all the parties involved—in that appropriate intercept messages will help resolve the problematic information deficit faced by originating callers who currently have no way of knowing what company is blocking or labeling their calls. A brief intercept message would clearly be the most efficient way for a calling party to know who to contact to unblock legitimate calls and is perfectly feasible for voice service providers to implement. AT&T has already noted that it has created such an intercept system for its AT&T Smart Call Blocker phones.<sup>15</sup>

In addition to the implementation of intercept messages, the Commission should also address the issue of voice service providers and third-party app providers transmitting a false busy signal back to the calling party. A wide variety of industry participants have repeatedly notified the Commission of this ongoing problem and detailed the many issues that it raises.<sup>16</sup> As noted by Noble Systems, “a fake busy signal is misleading, and does not accurately inform the caller of the status of the call.”<sup>17</sup> Because the calling party is potentially unaware of any issue with the call, there

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<sup>14</sup> See *Public Notice* at 4.

<sup>15</sup> Comments of AT&T, at 4, CG Docket No. 17-59 (Jul. 20, 2018).

<sup>16</sup> See, e.g., Letter from James C. Falvey to Marlene, Counsel to Sirius XM, Inc., to Marlene H. Dortch, FCC Secretary, CG Docket No. 17-59, at 6 (June 7, 2018) (“SiriusXM June 7 Ex Parte”); Comments of Noble Systems Corporation, at 4-5, CG Docket No. 17-59 (Jul. 20, 2018) (“Noble Systems Comments”); Comment of Professional Association for Customer Engagement, at 5-6, CG Docket No. 17-59 (Jul. 20, 2018); Reply Comments of ACA International, at 5, CG Docket No. 17-59 (Aug. 13, 2018);

<sup>17</sup> Noble Systems Comments at 4.



is no opportunity for the calling party to even start a dialog with the entity blocking its calls. As several commenters have already explained, this continued practice further erodes “the public’s trust in the telephone network.”<sup>18</sup> The Commission has clearly and unequivocally prohibited these actions in the past, and, as of yet, no one has presented the Commission with a compelling rationale as to why it should act differently today.<sup>19</sup>

At a minimum, the Commission should: 1) expressly prohibit the types of false and misleading messages currently routinely transmitted today; and 2) require all companies applying labels and/or blocking calls to transmit an intercept message<sup>20</sup> or response code indicating whenever a call has been blocked and providing the identity of the blocking provider. Simply providing the calling party with the identity of the blocking party will foster communication and hopefully resolve many of the issues with false positives identified by the *Public Notice*. As such, RESA believes that the required implementation of intercept messages should be one of the Commission’s highest priorities for this proceeding.

## **V. Conclusion**

RESA is encouraged by the Commission’s willingness to address the various issues detailed in the *Public Notice* that continue to harm legitimate calling parties.

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<sup>18</sup> *Id.*

<sup>19</sup> See, e.g., *In the Matter of Developing a Unified Inter-carrier Compensation Regime; Establishing Just and Reasonable Rates for Local Exchange Carriers*, Declaratory Ruling, CC Docket No. 01-92, WC Docket No. 07- 135, DA 12-154 (Feb. 6, 2012) at ¶ 13 (“The Commission has found that practices by common carriers that deceive or mislead customers are unjust and unreasonable practices under section 201(b). It is a deceptive or misleading practice, and therefore unjust and unreasonable under section 201(b), to inform a caller that a number is not reachable or is out of service when the number is, in fact, reachable and in service.”).

<sup>20</sup> 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.

Simply put, calling parties that use the public telephone network for reasonable business purposes should not be punished because of abuses perpetrated by others. RESA therefore urges the Commission to take the steps outlined above including: requiring Caller ID; implementing an industry-wide trusted caller database, covering commercial as well as public entities; prohibiting false and misleading messages; and requiring the use of intercept messages.

Respectfully Submitted,

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