

November 23, 2020

VIA ECFS

Ms. Marlene Dortch
Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: Notice of *Ex Parte* Meeting, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59.

Dear Ms. Dortch:

On Thursday, November 19, 2020, representatives of various trade associations (the Associations) met with staff of the Consumer and Governmental Affairs Bureau by telephone to discuss the Fourth Further Notice of Proposed Rulemaking in the above-captioned proceeding.¹ A complete list of meeting participants is provided in Appendix A. We reiterated our strong support for the Commission's effort to mitigate illegal robocalls and our appreciation of the agency's adoption in its Order of requirements that voice service providers provide redress when lawful calls are erroneously blocked. Consistent with their comments in this proceeding, the trade association participants explained that, despite the Commission's initial steps, the record demonstrates the need for enhancing redress processes to rectify erroneous blocking and mislabeling of legitimate and important calls.² In particular, we stressed the need for real-time notification of blocking and the establishment of a concrete 24-hour time-frame within which to resolve complaints of erroneous blocking or mislabeling.

Legitimate and Important Calls Continue to Blocked and Mislabeled

We noted that erroneous blocking and mislabeling continues to be a prevalent and pernicious problem. In prior comment letters, the Associations, and numerous others, have individually submitted data that demonstrated that phone numbers used by companies to place lawful and important outbound calls were being labeled as "Potential Spam," "Suspected Spam," "Spam Number," "Nuisance Label," or other derogatory labels, and that calls from those

¹ *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Third Report and Order, Order on Reconsideration, and Fourth Further Notice of Proposed Rulemaking, CG Docket No. 17-59, FCC 20-96 (rel. July 17, 2020) ("Order" or "Further Notice"). During the meeting, we also discussed the pending rulemaking to implement section 8 of the TRACED Act regarding existing exemptions to the consent requirement of the Telephone Consumer Protection Act. A separate *ex parte* notice will be submitted with respect to those issues.

² See, Corrected Comments of the American Bankers Association, *et al.*, CG Docket No. 17-59 (filed Sept. 1, 2020); Reply Comments of the Credit Union National Association *et al.* CG Docket No. 17-59 (filed Sept. 29, 2020).

numbers are being blocked. Many of the Associations' members report that they continue to experience widespread improper labeling of outbound calling numbers, blocking of calls, lack of notification of mislabeling and of erroneous blocking, and lengthy delays in remedying blocked calls. Each event requires incident tickets be opened with both originating and terminating Voice Service Providers, which consumes significant time and resources. Moreover, some callers have felt compelled to hire third-party service providers, at significant cost, to work with Voice Service Providers to keep the caller's outbound calling numbers from being mislabeled. During the meeting, we reviewed certain specific incidents of mislabeling or erroneous blocking previously submitted in the record as well as more recent incidents:

- A regional bank reported that, since August 2020, the bank's third-party service provider (retained to assist the bank with preventing the mislabeling of its outbound calling numbers) has advised that 14 unique outbound calling numbers used by the bank were mislabeled by Voice Service Providers despite being registered. Although the bank successfully appealed the mislabeling for 13 of the numbers, those numbers were subsequently mislabeled, leading the bank to file another appeal. That second appeal is outstanding.
- One large bank reported that, in May 2020, a voice service provider's third party call-labeling service provider mislabeled a phone number used by the bank's automobile line of business as spam, resulting in the blocking of collections-related calls from that number. The bank learned about the mislabeling and erroneous blocking indirectly, not from the voice service provider or third party provider directly. It took the bank over a week to resolve the mislabeling and erroneous blocking with the third party provider.³
- In November 2019, a large bank reported an increase in the number of outbound fraud-prevention, servicing, and collections-related calls being mislabeled as fraudulent in the recipient's caller ID display. As a result, many customers chose to block these calls. Moreover, the service provider does not notify banks or other businesses whose calls are blocked. The bank reported that 85% of its outbound call volume across multiple divisions was impacted for a two-week period. It took the bank over two months to obtain a permanent solution with the provider to this occurrence of the mislabeling of the bank's outbound calling numbers.⁴ This same large bank reported that, from November 2019 through October 2020, the bank has received numerous individual reports of calls being displayed in the recipient's Caller ID as "Spam Risk/Robocaller," as well as calls being blocked outright.
- In some instances, lawful calls are being mislabeled (and blocked erroneously) due to the volume of calls initiated within a defined period of time, without consideration for the

³ For a more in-depth discussion of this mislabeling and blocking event, see Letter from American Bankers Association *et al.*, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 17-59, at 3 (July 2, 2020), <https://www.aba.com/advocacy/policy-analysis/aba-urges-fcc-to-require-notification-when-bank-calls-are-blocked>.

⁴ For a more in-depth discussion of this mislabeling and blocking event, see *id.* at 3-4.

type of call or the benefit provided to the customer.⁵ For example, one large bank reported that calls from six of its phone numbers used for collections-related calls were labeled as “spam” recently, because of the volume of calls placed from those numbers, and either blocked or not answered by nearly all call recipients. When the bank appealed to the voice service provider, the appeal was initially denied with respect to five of those numbers, despite the lawful purpose for which each number was used. It took the bank several weeks (during the COVID-19 pandemic) to resolve the mislabeling.⁶

- A credit union recently discovered that their calls are being labeled as “Likely SPAM” but only after being asked by the National Association of Federally-Insured Credit Unions (“NAFCU”) whether they have experienced erroneous call blocking or call labeling. Upon investigation, the credit union discovered the wireless carriers had marked their calls as spam due solely to the volume of calls coming into their network from the credit union’s number. The credit union reported that members who nevertheless answered the calls labeled “Likely SPAM” were dubious that the caller actually was their credit union and believed that credit union staff may be scammers. Inaccurate call labeling is directly interfering with credit unions’ ability to use the phone to conduct regular communications with their businesses. It contributes to broader mistrust in the value of telephone communications. Most troubling is that if NAFCU had not reached out to ask if they were experiencing this issue prompting an investigation, it appears the credit union would not have discovered the issue at all.
- Another credit union informed the Credit Union National Association that a large number of its wellness calls to the credit union’s members were not being completed. The credit union was making these consumer-benefitting calls in response to the COVID-19 pandemic. Because there is no requirement that providers that block or adversely label calls notify callers, the credit union has no way of knowing the extent to which the inability to reach their members is due to erroneous blocking or mislabeling.

The wellness calls made by this credit union are indicative of the type of important and wanted calls that are now in danger of being blocked or mislabeled. As further evidence of consumer preferences, we reviewed the results of a survey of registered voters conducted for the Small Business and Entrepreneurship Council (“SBE”). Among other findings, the survey found overwhelming support for calls and texts for non-telemarketing purposes from medical providers (87%), utility companies (84%), schools (84%) and financial institutions (82%). Moreover, large majorities of voters surveyed expressed concerns that such calls could be blocked. Two thirds of voters say they are concerned that financial institutions may be blocked from contacting consumers with time-sensitive information (67%), may be sued for alerting consumers of

⁵ See Declaratory Ruling and Third Further Notice of Proposed Rulemaking, *Advanced Methods To Target and Eliminate Unlawful Robocalls*, Call Authentication Trust Anchor, 34 FCC Rcd 4876 ¶ 35 (2019) (observing that a “call-blocking program might block calls based on a combination of factors, such as: large bursts of calls in a short timeframe . . .”).

⁶ An initial discussion of this blocking event is contained in Comments of Am. Bankers Ass’n *et al.*, CG Docket No. 17-59, at 9-10 (Aug. 31, 2020), <https://www.aba.com/advocacy/policy-analysis/trades-urge-fcc-to-require-notification-and-redress-of-erroneously-blocked-calls>.

suspicious account activity (66%) and may not contact consumers with fraud alerts or other notifications (65%).⁷

The Record Strongly Supports Adoption of a Real-Time, Immediate Notification Requirement

We reiterated our support for requiring Voice Service Providers or their analytics partners to provide real-time, immediate notification that calls are being blocked. Callers do not receive effective and transparent redress, as required by the TRACED Act, unless they are timely notified. The record reflects that callers are unaware that the calls are being blocked and instead must engage in time-consuming efforts to identify why their calls are not getting through. We discussed information recently submitted into the record in this proceeding by the National Opinion Research Center (“NORC”), which makes calls on behalf of the Center for Disease Control’s National Immunization Survey. NORC reported an increase in busy signals from 2% to 26% and after investigation using a third-party vendor discovered that NORC’s originating carrier was labeling NORC calls as “potential fraud” and blocking the calls. The originating carrier provided no notification to NORC that it was treating its calls in this manner. As a result of the blocking, NORC has had to expend 28% more in labor costs to conduct its important surveys. NORC’s filing also reinforces the insufficiency of relying on market solutions to ensure callers are afforded effective redress.⁸

The record amply demonstrates that notification is technically feasible and that various types of intercept messages have been used extensively in the past and are being provided today as part of blocking or labeling programs.⁹ Moreover, the Internet Engineering Task Force, in a document co-authored by former Commission CTO Eric Burger, has proposed an automated SIP response code designed specifically to address the algorithm-based blocking of calls by intermediate parties before they reach consumers. We noted as well that notification can play an important role in generating data on the efficacy of analytics-based blocking.

Finally, we rebutted objections to notification, which fall into three main categories. First, some claim notification is unnecessary, but the record strongly demonstrates otherwise. Numerous parties have explained the difficulties they have incurred due to blocking and mislabeling that occurs without their knowledge. The lack of notification has spawned an entire industry of vendors selling services that either prevent erroneous blocking or resolve it when it occurs. This undermines the TRACED Act’s requirement that redress be free of charge for callers.¹⁰

⁷ Letter from Karen Kerrigan, President and CEO of SBE, to Marlene Dortch, Secretary, Federal Communications Commission, CG Docket Nos. 02-278, 18-152 (filed Oct. 9, 2020).

⁸ Letter from Laura Phillips, Counsel for NORC, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 17-59 (filed Nov. 2, 2020).

⁹ See, e.g., *Call Blocking Tools Now Substantially Available to Consumers: Report on Call Blocking*, CG Docket No. 17-59 at 12 (rel. June 2020) (AT&T reports that “[w]hen a blocked line calls an [AT&T] Mobility, U-verse, Prepaid, or Cricket customer, the calling party will hear an intercept announcement, which includes a toll-free number to call if they believe they were blocked in error.”).

¹⁰ TRACED Act §10(b).

A second objection is that a notification requirement would be overly prescriptive and deprive industry of the flexibility needed to innovate and meet illegal robocalling campaigns. But no provider has submitted data demonstrating the cost or burden of providing some form of notification. Moreover, many, but not all, Voice Service Providers provide notifications. This indicates that any burden is manageable. A notification obligation does not need to be overly prescriptive. It can provide flexibility for various industry segments to devise a notification mechanism. Industry should, however, strive toward uniform standards, such as the proposed SIP 608 error code, which would reduce implementation cost.

A third objection is that notification would tip off bad actors and reduce the effectiveness of programs to fight illegal robocalls. But the very act of blocking a call tips off bad actors. The extent to which notification would make matters worse is wholly speculative. Most importantly, many providers do offer some form of notification today for at least some of their blocking efforts. There is no indication that this is exacerbating the problem of illegal robocalls. Moreover, the Commission should undertake some assessment to balance any potential to increase the incidence of illegal calling due to notification against the demonstrable harm that occurs when legitimate, often critical calls are blocked without the caller's knowledge.

The Commission Should Establish a Concrete, 24-Hour Time Frame for Resolving Claims of Erroneous Blocking

The Commission requires resolution of claims of erroneous blocking within a reasonable time and the prompt resolution of "credible" claims of blocking. The record in this proceeding provides substantial evidence of the need for the Commission to provide concrete guidance on what constitutes a reasonable or prompt period of time to resolve a claim that calls are being erroneously blocked. The record demonstrates that parties have experienced protracted time frames for resolving erroneous blocking or mislabeling.

The Associations again urged the Commission to adopt a 24-hour time frame for resolving disputes. This timeframe best balances the needs of providers and callers alike. Many blocked calls are urgent and time is of the essence in lifting erroneous blocks. If more than 24 hours is needed to resolve the claim, the burden should be on the provider to contact the caller and explain the delay and provide a good-faith estimate of when the investigation will be resolved. In the vast majority of cases, it should take relatively little investigation to determine that the caller is a legitimate entity, for example, a regulated financial institution, health care provider, school or utility. An open-ended "reasonable time frame" standard provides no base line against which to measure dilatory responses or to hold service providers or their analytics partners accountable for failure to timely resolve cases of erroneous blocking.

Respectfully submitted,

/s/

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Appendix A

Consumer and Governmental Affairs Participants

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Association Participants

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