

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Advanced Methods to Target and) CG Docket No. 17-59
Eliminate Unlawful Robocalls)

**Reply
Comments
of**

**Consumers Union
National Consumer Law Center, on behalf of its low-income clients
Consumer Action
Consumer Federation of America
National Association of Consumer Advocates
Public Citizen**

October 8, 2018

The undersigned consumer advocacy groups are pleased to submit reply comments in the Federal Communication Commission’s (“FCC” or “Commission”) refresh of the record of Advanced Methods to Target and Eliminate Unlawful Robocalls.¹ We reiterate the points made in our previous submission to this proceeding,² and respond to several of the points made by other commenters.

To address the robocall problem impacting tens of millions of American consumers, we encourage the FCC to:

1. Require phone companies to implement caller ID authentication technology in the near future and to immediately offer free call-blocking tools;
2. Ensure that consumers have effective legal and technological protections not only from scam robocalls, but also from unwanted automated calls even if they are coming from legitimate companies;
3. Maintain its inclusive definition of what is a robocall; and
4. Refrain from requiring voice service providers to send intercept messages when a call is blocked, and refrain from establishing whitelists at this time.

Below, we will briefly develop each of these points.

The FCC should require phone companies to implement caller ID authentication technology in the near future and to immediately offer free call-blocking tools.

The FCC has said that combatting robocalls is its top priority. This is appropriate, given that unwanted calls are the top complaint to the FCC and the source of over seven million complaints to the Federal Trade Commission (“FTC”) in fiscal year 2017.³ To that end, the FCC should take aggressive steps to ensure that consumers have effective protections against unwanted robocalls, including requiring phone companies to immediately offer to all of their customers free, optional call-blocking tools, and to implement caller ID authentication technology in the near future. We strongly disagree with several commenters who argue that the FCC should give phone companies flexibility to decide how to address the robocall problem.⁴ While we appreciate that several of the voice service providers commenting in this proceeding have taken steps to help address the robocall problem—for example, AT&T and T-

¹ Fed. Commc’ns Comm’n, Public Notice, Consumer and Governmental Affairs Bureau Seeks to Refresh the Record on Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59 (Aug. 10, 2018), <https://docs.fcc.gov/public/attachments/DA-18-842A1.pdf> [hereinafter “Public Notice”].

² Comments of Consumers Union et al, CG Docket No. 17-59 (Sept. 24, 2018), <https://ecfsapi.fcc.gov/file/10925773721639/Consumer%20Group%20Comments%20Robocall%20Blocking%20Refresh%20the%20Record%2009.24.18.pdf>.

³ Fed. Commc’ns Comm’n, Stop Unwanted Robocalls and Texts (last updated Sept. 26, 2018), <https://www.fcc.gov/consumers/guides/stop-unwanted-robocalls-and-texts>; Fed. Trade Comm’n, *National Do Not Call Registry Data Book FY 2017* at 6 (Dec. 2017), https://www.ftc.gov/sites/default/files/filefield_paths/dnc_data_book_fy2017.pdf.

⁴ Comments of the US Telecom Ass’n, CG Docket No. 17-59 at 2-3 (Sept. 24, 2018), <https://ecfsapi.fcc.gov/file/1092581102444/USTelecom-Robocall-Comments-2018-09-24-FINAL.pdf>; Comments of CTIA, CG Docket No. 17-59 at 8 (Sept. 24, 2018), <https://ecfsapi.fcc.gov/file/10924067969366/CTIA%20Comments%20re%20FCC%20Call%20Blocking%20PN%2009.24.18%20FINAL.pdf>.

Mobile offer free robocall-blocking tools to customers—all consumers deserve similar protections.⁵ And though caller ID authentication has been in development for several years,⁶ and a few carriers have made commitments to implement SHAKEN/STIR in 2019, none has yet to complete implementation.⁷ Clearly, stronger FCC action is warranted to ensure compliance, and to establish guidelines and requirements to ensure that these technologies are effective.⁸

The FCC should ensure that consumers have effective protections not only from scam robocalls, but from unwanted calls even if they are coming from legitimate companies.

While scam robocalls are a big problem, they are far from the only robocall problem. Debt collection robocalls and telemarketing calls from legitimate companies make up nearly half of the robocalls currently received by consumers.⁹ In August 2018, the overall volume of robocalls had expanded over 40% from the same month in 2017, and those increases are not attributable solely to scam calls.¹⁰ As we noted in our previous comments, maintaining strong, privately enforceable legal protections against unwanted robocalls is key to controlling the number of unwanted robocalls.¹¹

It is also important that consumers have the opportunity to block unwanted robocalls, either one-by-one or through an optional advanced call-blocking service, even if they are coming from legitimate companies. The FCC reaffirmed in 2015 that phone companies may offer optional call-blocking services that block entire categories of calls, such as telemarketing calls.¹² Unfortunately, several of the commenters representing the calling industry are focused on enabling callers to more easily circumvent blocks on robocalls, on the grounds that their calls are incorrectly blocked, instead of respecting consumers' contact preferences.¹³

⁵ AT&T Mobile Security & Call Protect (last visited Oct. 8, 2018), <https://www.att.com/features/security-apps.html>; T-Mobile, Get Automatic Scam Protection for Your Phone (last visited Oct. 8, 2018), <https://www.t-mobile.com/resources/call-protection>.

⁶ Internet Engineering Task Force, Secure Telephone Identity Revisited (stir), (last visited Oct. 8, 2018), <https://datatracker.ietf.org/wg/stir/history/>.

⁷ Comments of AT&T, CG Docket No. 17-59 at 6 (Jul. 20, 2018), <https://ecfsapi.fcc.gov/file/107202129719577/7.20.2018%202018%20Robocall%20Report%20Comments%20FINAL.pdf>;

Comments of Verizon, CG Docket No. 17-59 at 6 (Jul. 20, 2018), <https://ecfsapi.fcc.gov/file/1072021107952/2018%2007%2020%20Verizon%20Robocall%20PN%20Comments.pdf>.

⁸ For more information on the appropriate guidelines to ensure caller ID authentication is effective, see Comments of Consumers Union et al., *supra* note 2, at 4-7.

⁹ YouMail, *4.2 Billion Robocalls in August Set All-Time Record for YouMail Robocall Index* (Sept. 10, 2018), <https://www.prnewswire.com/news-releases/4-2-billion-robocalls-in-august-set-all-time-record-for-youmail-robocall-index-300708998.html>.

¹⁰ *Id.*

¹¹ Comments of Consumers Union et al., *supra* note 2, at 4.

¹² In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act, Declaratory Ruling and Order, CG Docket No. 02-278, at ¶154-157 (Rel. July 10, 2015), https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-72A1.pdf.

¹³ Comments of Sirius XM Radio, Inc., CG Docket No. 17-59 (Sept. 24, 2018), [https://ecfsapi.fcc.gov/file/1092451216314/COMMENTS%20OF%20SIRIUS%20XM%20RADIO%2C%20INC.%20\(N0297604xA35AA\).pdf](https://ecfsapi.fcc.gov/file/1092451216314/COMMENTS%20OF%20SIRIUS%20XM%20RADIO%2C%20INC.%20(N0297604xA35AA).pdf); Comments of Retail Energy Supply Association, CG Docket No. 17-59 (Sept. 24, 2018), [https://ecfsapi.fcc.gov/file/1092473564804/RESA%20FALSE%20POSITIVES%20COMMENTS%209%2024%20FINAL%20\(N0297608xA35AA\).pdf](https://ecfsapi.fcc.gov/file/1092473564804/RESA%20FALSE%20POSITIVES%20COMMENTS%209%2024%20FINAL%20(N0297608xA35AA).pdf).

If a call-unblocking process is needed, it should be guided by a set of criteria, established by the FCC, that gives consumers the final say as to whether they will receive a call.¹⁴ As CTIA points out, the falling call-completion rates cited by the calling industry are likely due to the fact that consumers are not answering these calls, not because they are incorrectly blocked by providers or third-party blocking services.¹⁵ And, as the call analysis company TNS indicates, false positives are subjective.¹⁶ Moreover, there is no inherent legal right to reach a consumer by robocall. Debt collectors who are seeking to contact consumers can write a letter, email them, or pick up the phone and dial the consumer.

Debt collectors have raised concerns that some call-flagging services that prominently label debt collection calls may create privacy concerns for the called parties.¹⁷ However, we do not agree that the Fair Debt Collection Practices Act (“FDCPA”) —which does not allow debt collectors to notify third parties that they are contacting the consumer—would make a collector liable for the consequences of a label someone else applied to their caller ID. However, the labeling can violate the privacy of the person called. Therefore, we urge the FCC to work with both the CFPB and call-labeling companies to find ways to accurately indicate to the consumer the identity of the caller without causing this breach of privacy to the consumer.

The FCC should maintain its inclusive definition of what is a robocall.

The FCC should maintain its current definition of a robocall, which includes autodialed calls or those featuring an artificial or pre-recorded voice.¹⁸ This definition reflects both the specifics of the TCPA which requires special protections for these calls, and the fact that it is the autodialed nature of the call that makes these automated calls. We disagree with Encore, which has asked that the FCC redefine robocall so that it only covers scam robocalls,¹⁹ and PRA, which claims that their calls, since they are live voice calls, should not be considered unlawful robocalls.²⁰ This is a Trojan Horse to try to weaken the FCC rules for unwanted automated calls, and undermine consumers’ ability to block them.²¹ Instead, to ensure that consumers can maintain control over the calls that they receive, the definition of a robocall should follow the FCC rules under the TCPA, and the FCC should reaffirm that consumers may block any unwanted calls, at no charge, either one-by-one or through a call-blocking service.

¹⁴ For more information on the appropriate criteria of the call-unblocking system, see Comments of Consumers Union et al, *supra* note 2, at 7.

¹⁵ Comments of CTIA, *supra* note 5, at 20-21.

¹⁶ Comments of TNS, CG Docket No. 17-59 at 5 (Sept. 24, 2018),

<https://ecfsapi.fcc.gov/file/1092502310658/TNS%20Response%20FCC%20Public%20Notice%20CG%20Docket%20No.%2017-59%20Sept%202018.pdf>.

¹⁷ ACA International, Notice of Ex Parte, CG Docket No. 17-59 at 5-6 (Sept. 25, 2018),

<https://ecfsapi.fcc.gov/file/10925506811875/ACA%20International%20Letter%20-%20Notice%20of%20Ex%20Parte%20Carr.pdf>.

¹⁸ Fed. Comm’n’s Comm’n, *supra* note 3 (defining robocalls as “calls made with an autodialer or that contain a message made with a prerecorded or artificial voice.”)

¹⁹ Comments of Encore Capital Group, CG Docket No. 17-59 at 2 (Sept. 24, 2018),

<https://ecfsapi.fcc.gov/file/10924634707712/Encore%20comments%20CG%20Docket%20No.%2017-59%20Sep.%202018%20FINAL.pdf>.

²⁰ Comments of Portfolio Recovery Associates, CG Docket No. 17-59 at 2 (Sept. 24, 2018),

[https://ecfsapi.fcc.gov/file/1092473326516/PRA%20Comments%20CG%20Docket%20No.%2017-59%20\(9-24-18\).pdf](https://ecfsapi.fcc.gov/file/1092473326516/PRA%20Comments%20CG%20Docket%20No.%2017-59%20(9-24-18).pdf).

²¹ In addition, defining what is a robocall and subject to these requirements based on who makes the call or its content could implicate First Amendment concerns regarding limiting freedom of speech.

The FCC should refrain from requiring voice service providers to implement intercept messages to signal blocked calls, and refrain from establishing whitelists at this time.

It is highly unlikely that the blocking at issue in this proceeding, which is calls blocked without the consumer's prior consent, would significantly interfere with legitimate traffic.²² The FCC has authorized only limited call-blocking without the consumer's prior direction. The FCC selected the categories of spoofed calls that may be blocked (those spoofed with unassigned, unallocated, or incomplete numbers, or at the request of the owner of the number) because no legitimate caller would spoof those calls.²³ Moreover, as Sprint points out, this traffic constitutes only a miniscule portion of the total call traffic.²⁴

Thus, it is inappropriate to require phone companies to send intercept messages when calls are blocked at this time. These messages would be transmitted primarily to scammers, who would then likely spoof a different number, for example, one that is currently in use by a legitimate phone customer. While these intercept messages may make sense once caller ID authentication is fully implemented and effective, at this time it would only make the spoofing problem worse.

For similar reasons, we reiterate our objection to "whitelists," which would not only serve as an invitation for scammers to spoof legitimate and even emergency numbers,²⁵ but could be used to override consumers' wishes to block other unwanted calls. Only after implementation of caller ID authentication should this be considered, and even then, the whitelists should be strictly limited to emergency numbers only.

Conclusion

The phone industry lags far behind email providers, as anti-spam technology is able to automatically identify spam and direct it into separate folders.²⁶ Addressing the robocall problem in a way that is not burdensome for consumers—for example, by providing anti-robocall tools on an opt-out basis—should be just as high a priority for the phone companies and the FCC, because unwanted messages are clogging communication channels, interrupting important inbound and outbound calls, and diminishing the value of the phone service for which consumers pay dearly. This discourages consumers from using their phones for personal or business purposes. Voice service providers—many of which did not file comments to this proceeding—have for years been slow to respond as robocall complaints have exploded. We reiterate the need for the FCC to require the phone companies to implement effective caller ID authentication technology that has the ability to screen out all unwanted, spoofed robocalls, to all customers, at no charge, as well as to immediately offer free technology to screen out all unwanted robocalls.

²² Public Notice, *supra* note 1, fn. 1.

²³ 32 FCC Rcd 9706 (11) at ¶ 9, <https://www.fcc.gov/document/fcc-adopts-rules-help-block-illegal-robocalls-0>.

²⁴ Comments of Sprint Corporation, CG Docket No. 17-59 at 5 (Jul. 20, 2018), <https://ecfsapi.fcc.gov/file/1072026059446/Sprint%20Robocall%20Comments%20July%2020%202018.pdf>.

²⁵ See, Comments of TNS, *supra* note 15, at 7.

²⁶ Paul Gillin, *The Art and Science of How Spam Filters Work*, SECURITYINTELLIGENCE (Nov. 2, 2016), <https://securityintelligence.com/the-art-and-science-of-how-spam-filters-work/>.

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Descriptions of the Organizations Joining this Filing

Consumers Union is the advocacy division of Consumer Reports. Consumers Union works for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves, focusing on the areas of telecommunications, food and product safety, energy, and financial services, among others. Consumer Reports is the world's largest independent product testing organization. Using its dozens of labs, auto test center, and survey research center, the nonprofit organization rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 6 million subscribers to its magazine, website, and other publications.

National Consumer Law Center (NCLC) is a non-profit corporation founded in 1969 to assist legal services, consumer law attorneys, consumer advocates and public policy makers in using the powerful and complex tools of consumer law for just and fair treatment for all in the economic marketplace. NCLC has expertise in protecting low-income customer access to telecommunications, energy and water services in proceedings at the FCC and state utility commissions and publishes Access to Utility Service (5th edition, 2011) as well as NCLC's Guide to the Rights of Utility Consumers and Guide to Surviving Debt.

Consumer Action has been a champion of underrepresented consumers since 1971. A national, nonprofit 501(c)(3) organization, Consumer Action focuses on financial education that empowers low to moderate income and limited English-speaking consumers to financially prosper. It also advocates for consumers in the media and before lawmakers and regulators to advance consumer rights and promote industry-wide change particularly in the fields of credit, banking, housing, privacy, insurance and utilities. www.consumer-action.org

The Consumer Federation of America is an association of more than 250 nonprofit consumer groups that was established in 1968 to advance the consumer interest through research, advocacy and education.

The National Association of Consumer Advocates (NACA) is a nonprofit association of consumer advocates and attorney members who have represented hundreds of thousands of consumers victimized by fraudulent, abusive and predatory business practices. NACA is actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means.

Public Citizen is a national nonprofit organization with more than 400,000 members and supporters. We represent consumer interests through lobbying, litigation, administrative advocacy, research, and public education on a broad range of issues including consumer rights in the marketplace, product safety, financial regulation, safe and affordable health care, campaign finance reform and government ethics, fair trade, climate change, and corporate and government accountability.