

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

July 31, 2017

Consumers Union, Consumer Action, Consumer Federation of America, National Association of Consumer Advocates, National Consumer Law Center on behalf of its low-income clients, Public Citizen, and Public Knowledge submit these reply comments on the above-referenced proceeding concerning Advanced Methods to Target and Eliminate Unlawful Robocalls.¹ We appreciate that the Commission has continued to make combatting robocalls a primary objective, as evidenced by this rulemaking. Ending unwanted robocalls remains a key concern for the undersigned groups and the consumers we represent.

These reply comments briefly develop several of the points made in our original comments.² We reiterate our original points, including that the FCC should clarify that the voice providers may block clearly-spoofed calls at the request of the subscriber to the spoofed number, calls spoofed with an invalid number, calls spoofed with a number that has not been allocated to a voice provider, and calls spoofed with a number that has yet to be assigned to a consumer.³ In response to other comments submitted, we reiterate our view:

1. Call recipients, except in the case of Do Not Originate, should be provided with sufficient information and be able to decide whether they want the call-blocking services described in the NPRM;
2. Any universal “whitelisting” of calls should be limited to emergency numbers, and any “challenge mechanism” should be appropriately limited; and
3. The FCC’s definition of an “illegal robocall” for the purposes of this proceeding should encompass all illegal robocalls, and be able to accommodate technologies such as ringless voicemail and robotexts.

We discuss these three points in detail below.

- 1. Call recipients, except in the case of Do Not Originate, should be provided with sufficient information and be able to decide whether they want the call-blocking services described in the NPRM.**

A key principle of our anti-robocall efforts is that consumers should have meaningful control over their incoming calls.⁴ Voice providers and the Commission should do everything in their power to enable consumers to exercise that choice. Many of the commenters noted that providers should not be required to obtain consumer consent before blocking certain categories of illegal robocalls.⁵ At the same time, several

¹ Advanced Methods to Target and Eliminate Unlawful Robocalls, Notice of Proposed Rulemaking and Notice of Inquiry, 82 Fed. Reg. 22625 (May 17, 2017), *available at* <https://www.federalregister.gov/documents/2017/05/17/2017-09463/advanced-methods-to-target-and-eliminate-unlawful-robocalls> [hereinafter NPRM].

² Comments of Consumers Union et al., CG Docket No. 17-59 (Jun. 30, 2017), *available at* <https://ecfsapi.fcc.gov/file/10630190057273/Robocalls%20NPRM%20and%20%20NOI%20final.pdf>.

³ NPRM, *supra* note 1, at ¶ 3.

⁴ See, Video: Fed. Commc’n’s Comm’n, June 2015 Open Commission Meeting, June 18, 2015, <https://www.fcc.gov/events/open-commission-meeting-june-2015> (statement starting at approximately 160:07). Former FCC Chairman Tom Wheeler has noted that “the consumer should be in control” of unwanted calls.

⁵ See, Comments of NCTA – The Internet and Television Association, CG Docket No. 17-59, 4 (Jun. 30, 2017), *available at* https://ecfsapi.fcc.gov/file/10630183254174/063017%2017-59%20Robocalls%20NPRM_NOI.pdf;

commenters have pointed out that the blocking practices outlined in the NPRM may lead to the inadvertent blocking of legitimate calls.⁶ Thus, we think that call recipients, except in the case of Do Not Originate, should be advised of the risks imposed by provider call-blocking and then be provided with the opportunity to decide whether to accept the service.

2. Any universal “whitelisting” of calls should be limited to emergency numbers, and challenge mechanisms should be appropriately limited.

Several commenters have expressed concerns that debt collection or other robocalls could be blocked by voice providers’ efforts to eliminate illegal robocalls, and have proposed that the FCC develop a “whitelist” that exempts legitimate callers from the robocall blocking mechanisms, and a “challenge mechanism” to enable other legitimate callers to be exempted.⁷ We urge caution. Should a whitelist be developed, we recommend that it be limited to genuine emergency calls only. And we recommend that any challenge mechanism be appropriately limited to callers making legal calls.

An expansive whitelist would rob consumers of meaningful control over the calls that they receive. Even legitimate companies robocall consumers in violation of the law.⁸ A universal whitelisting of legitimate callers would likely lead to abuse of that privilege.

The Commission has already ruled that providers may offer consumers optional advanced tools that block unwanted robocalls.⁹ Accordingly, we believe all customers should have the opportunity to opt-in to block any robocalls that they choose.

3. The FCC’s definition of an “illegal robocall” should encompass all illegal robocalls, and be able to accommodate technologies such as ringless voicemail and robotexts.

Limiting the definition of “illegal robocall” for this proceeding could undermine consumer access to effective technological solutions to unwanted robocalls. The definition of an “illegal robocall,” for the purposes of this proceeding, should accurately characterize the law and accommodate new robocalling technologies. Encore Capital Group’s proposed definition for an illegal robocall as essentially limited to

Comments of the Alliance for Telecommunications Industry Solutions, CG Docket No. 17-59, 10 (July 3, 2017), available at <https://ecfsapi.fcc.gov/file/10703194481523/Robocall%20Blocking%20Comments-FINAL.pdf>.

⁶ See, Comments of ZipDX, CG Docket No. 17-59, 7 (Jun. 27, 2017), available at <https://ecfsapi.fcc.gov/file/10627304016463/ZipDX-17-59-NPRM-NOI-Comments.pdf>; Comments of USTelecom Association, CG Docket No. 17-59, 14 (July 3, 2017), available at <https://ecfsapi.fcc.gov/file/10703149098952/USTelecom-Blocking-Comments-2016-07-03-FINAL.pdf>.

⁷ See, Comments of American Bankers’ Association, CG Docket No. 17-59, 4-6 (June 30, 2017), available at <https://ecfsapi.fcc.gov/file/10630969620022/ABA-Comment-Letter-Spoofed-Calls-2017-06-30-final.pdf>; Comments of Encore Capital Group, CG Docket No. 17-59, 3-4 (July 3, 2017), available at <https://ecfsapi.fcc.gov/file/10703585415251/Encore%20comments%20CG%20Docket%20No.%2017-59%207.3.2017..pdf>.

⁸ See, Fed. Trade Comm’n, Court Orders \$280 Million from Dish Network, Largest Ever Do Not Call Penalty (Jun. 8, 2017), <https://www.ftc.gov/news-events/blogs/business-blog/2017/06/court-orders-280-million-dish-network-largest-ever-do-not>.

⁹ See, In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Declaratory Ruling and Order, FCC 15-72, CG Docket No. 02-278, ¶ 154 (Jul. 10, 2015), available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-72A1.pdf.

scam calls is too narrow.¹⁰ Their definition leaves out a wide variety of illegal robocalls, including illegal debt collection calls. Likewise, Quicken Loans’ suggested definition of a robocall as an artificial voice or recorded telephone call¹¹ fails to encompass several different categories of illegal robocalls, including most unwanted autodialed calls to cell phones featuring a live operator.¹²

We recommend that “illegal robocall” be defined to include a call “including any voice message or text message that violates any law, including the requirements of the Telephone Consumer Protection Act (TCPA), the related Commission regulations implementing the Act, or the Telemarketing Sales Rule (TSR), or that 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.”¹³

Robocalls are the top complaint by consumers to the Commission. We therefore urge the Commission to use this proceeding to give consumers the most comprehensive ability to protect themselves from receiving illegal and unwanted robocalls with technology that gives them more control over the calls they receive.

Respectfully submitted,



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¹⁰ See, Comments of Encore Capital Group, CG Docket No. 17-59, 2 (July 3, 2017), *available at* <https://ecfsapi.fcc.gov/file/10703585415251/Encore%20comments%20CG%20Docket%20No.%2017-59%207.3.2017..pdf>. Encore Capital Group’s suggested definition is: “A call that violates the requirements of the TCPA, the related FCC regulations implementing the TCPA, or the Telemarketing Sales Rule, 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.”

¹¹ See, Comments of Quicken Loans, CG Docket No. 17-59, 2 (July 3, 2017), *available at* https://ecfsapi.fcc.gov/file/106302484010058/QLFCCRobocallComments7_3_17.pdf. Quicken Loans’ suggested definition is: “Any telephone call to a telephone number using an artificial voice or prerecorded message where a live person is not on the line and available to communicate with the intended recipient of the call at the time of connection to the telephone number called.”

¹² 47 U.S.C. 227(b)(1)(A)(iii).

¹³ See, Comments of Consumers Union et al., *supra* note 2, at 11.

Descriptions of the Organizations Joining this Filing

Consumers Union is the public policy and mobilization 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, health care, food and product safety, energy, and financial services, among others. Consumer Reports is the world's largest independent product-testing organization. Using its more than 50 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 8 million subscribers to its magazine, website, and other publications.

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.

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.

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.

Public Knowledge is a nonprofit policy and public interest organization that promotes competition and consumer protection on technology, telecommunications, and intellectual property issues.