

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 Federation of America

August 20, 2018

Consumers Union,¹ the National Consumer Law Center on behalf of its low-income clients,² and the Consumer Federation of America³ welcome the opportunity to submit reply comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) request for comment on their pending robocall report, which it is developing with the Federal Trade Commission (“FTC”).⁴ The comments submitted to the proceeding thus far demonstrate that:

- Consumers need more, not fewer, protections against unwanted robocalls from legitimate companies as well as scam robocalls.
 - The FCC should reject efforts to weaken the Telephone Consumer Protection Act (TCPA),⁵ the law that protects consumers from unwanted robocalls.
 - Free, advanced call-blocking and caller ID authentication technologies should be required and implemented along consumer-friendly principles, as a last line of defense against unwanted robocalls.
 - The FCC should establish an appropriate mechanism for callers to challenge mistakenly blocked calls.
- The calling industry and the phone companies should provide more complete information about the robocall problem.
- The FCC should work with the phone companies to explore additional means of addressing the robocall problem.

The comments filed thus far demonstrate that unwanted, autodialed calls continue to plague consumers, and that additional action is needed to defend consumers’ privacy rights under the TCPA. Below, we explore these points in more detail.

¹ 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, health care, food and product safety, energy, financial services, and competition policy, 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 7 million subscribers to its magazine, website, and other publications.

² 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.

³ 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.

⁴ Fed. Comm’n Comm’n, Public Notice, Consumer and Governmental Affairs Bureau Seeks Input for Report on Robocalling, CG Docket No. 17-59 (Jun. 20, 2018), <https://docs.fcc.gov/public/attachments/DA-18-638A1.pdf>.

⁵ 47 U.S.C. § 227.

The comments submitted indicate that consumers need more, not fewer, protections against unwanted robocalls from legitimate companies as well as scam robocalls.

The FCC should reject efforts to weaken the TCPA.

Several commenters to this proceeding have argued, with little evidence, that scam robocalls, not unwanted telemarketing or debt collection calls from legitimate companies, are the sole problem warranting attention. On this unsupported basis, they seek to weaken the robocalls laws to allow callers to contact consumers without their prior consent.⁶ This argument is refuted not only by the consumer comments to a recent TCPA proceeding,⁷ but by comments to this proceeding as well. In addition, consumers have reported to us that unwanted automated calls interfere with important incoming and outbound calls, interrupt night shift workers when they are trying to sleep during the day, and can be costly, particularly to consumers with limited-minute cell phone plans.

Data from the call analytics company TNS indicates that callers dislike robocalls even from legitimate companies. According to TNS, the majority of outbound toll-free calls are rated negatively,⁸ and debt collection robocalls are viewed with particular disdain.⁹ Particularly because so many of these calls are unwanted, and because of their susceptibility to abuse, it's important that consumers maintain the ability to decide whether or not they will receive a robocall. It's therefore imperative that the FCC, which is currently considering a number of issues relating to the TCPA, upholds the law's strong privacy protections.¹⁰

We also urge you to reject the calling industry's request in this proceeding to diminish the FCC's definition of "robocall," a Trojan Horse that would undermine the TCPA rules.¹¹ The FCC's definition of robocall reflects the TCPA and the FCC's rules, in which autodialed calls to

⁶ See, e.g., Comments of the American Association of Healthcare Administrative Management, CG Docket No. 17-59 at 1-2 (Jul. 20, 2018), [https://ecfsapi.fcc.gov/file/10720929113148/AAHAM%20Robocalling%20PN%20Comments%20\(07-20-2018\).pdf](https://ecfsapi.fcc.gov/file/10720929113148/AAHAM%20Robocalling%20PN%20Comments%20(07-20-2018).pdf); Comments of Noble Systems Corporation, CG Docket No. 17-59 at 8 (Jul. 20, 2018), https://ecfsapi.fcc.gov/file/10720970914974/Noble_System_Comments_Robocall_DA-18-638.pdf.

⁷ See, Reply Comments of Consumers Union, CG Docket No. 18-152 (Jun. 28, 2018), <https://ecfsapi.fcc.gov/file/10629208708577/CU%20TCPA%20Reply%20Comments%206.28.18.pdf>.

⁸ Comments of TNS, CG Docket No. 17-59 at 5 (Jul. 20, 2018), <https://ecfsapi.fcc.gov/file/10720017728535/TNS%20COMMENTS%20ON%20FCC%20PUBLIC%20NOTICE%20CG%20Docket%20No.%2017-59.pdf>.

⁹ *Id.* at 6-7.

¹⁰ For detailed comments on these issues, please see the Comments of the National Consumer Law Center et al., CG Docket No. 02-278 and 18-152 (Jun. 13, 2018), <https://ecfsapi.fcc.gov/file/106131272217474/Comments%20on%20Interpretation%20of%20TCPA%20in%20Light%20of%20ACA%20International.pdf>; and the Comments of Consumers Union, CG Docket No. 02-278 and 18-152 (Jun. 13, 2018), <https://ecfsapi.fcc.gov/file/10614715908175/CU%20Comment%2018-152%2002-278%20061318.pdf>.

¹¹ Comments of Noble Systems Corporation, *supra* note 6, at 1-3.

cell phones are considered “robocalls,” and generally require the recipient’s prior consent, regardless of whether the call features a live operator or uses a prerecorded message.¹² This definition captures a variety of harmful and unwanted calls, including IRS scam calls to cell phones featuring a live operator. The calling industry asks that the FCC define “robocall” as a call featuring a pre-recorded message. However, this request is misguided. It is the autodialed nature of the robocall that makes it so easy to use to harass consumers. The FCC should continue to define “robocall” in accordance with the TCPA and accompanying rules.

Phone companies should be required to provide free, advanced call-blocking and caller ID authentication services, implemented along consumer-friendly principles.

The FCC should require phone companies to offer to all of their consumers free, advanced robocall-blocking tools. The submissions from the major phone companies show that some have made progress in providing consumers with free and advanced robocall-blocking tools, particularly to wireless customers and those with advanced-technology landlines (Voice over Internet Protocol, or “VoIP”). It reveals, however, that traditional landline consumers in general still lack affordable and effective call-blocking options. While AT&T has made branded phones available to traditional landline customers that promise improved call-blocking capability, they are fairly pricey—between \$60 and \$120.¹³ Consumers should not have to bear the costs of unwanted robocalls. And while we applaud Verizon for making available to traditional landline customers a free service that flags robocalls, it does not have an automatic blocking component for scam calls.¹⁴ Services from other phone companies, such as AT&T’s Call Protect service for wireless and VoIP customers, have that important capability.¹⁵

Having access to effective, free call-blocking tools is particularly important in light of the fact that the FCC’s new rules allowing phone companies to block certain categories of clearly illegally-spoofed calls without the consumer’s prior permission only applies to a small percentage of fraudulent traffic.¹⁶ While we appreciate that the FCC is exploring new ways to enable providers to block fraudulent calls, more comprehensive tools are needed. All consumers should have access to effective anti-robocall technology, at no charge.

Furthermore, phone companies should explore new ways to make consumers aware of their call-blocking options. The American Cable Association noted in this proceeding that

¹² 47 CFR § 64.1200.

¹³ Comments of AT&T, CG Docket No. 17-59 at 4 (Jul. 20, 2018), <https://ecfsapi.fcc.gov/file/107202129719577/7.20.2018%202018%20Robocall%20Report%20Comments%20FINAL.pdf>.

¹⁴ Comments of Verizon, CG Docket No. 17-59 at 2-3 (Jul. 20, 2018), <https://ecfsapi.fcc.gov/file/1072021107952/2018%2007%2020%20Verizon%20Robocall%20PN%20Comments.pdf>.

¹⁵ Comments of AT&T, *supra* note 13, at 2-3.

¹⁶ 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>.

consumers like the Nomorobo service, which can automatically identify and block a broad spectrum of unwanted calls.¹⁷ But this and similar advanced call-blocking tools are optional, and the data suggests that relatively few consumers are taking advantage of them. First Orion, which provides call-mitigation services for T-Mobile, indicates that only about 5% of eligible T-Mobile customers have activated their free “Scam Block” service.¹⁸

While advanced call-blocking tools have been shown to provide the consumers who use them with real relief from robocalls,¹⁹ technology that addresses caller ID spoofing has the potential to dramatically increase their effectiveness. Caller ID authentication technology that is currently in advanced stages of development, known as SHAKEN/STIR, should give consumers and phone companies greater confidence in correctly blocking unwanted calls. We are pleased that several carriers have made commitments to implement SHAKEN/STIR in 2018 and 2019.²⁰ But as Verizon points out, most, if not all, of the carriers need to participate for its efficacy to be realized.²¹ As such, the FCC should set a deadline for compliance. The Canadian regulator has set a deadline for SHAKEN/STIR implementation by March 31, 2019,²² and the FCC should follow their example.

Moreover, Sprint suggests that SHAKEN/STIR as it is currently conceptualized will not protect against fraudulent calls originating internationally.²³ Unless the FCC steps in to ensure that it will truly protect consumers, SHAKEN/STIR will have limited utility. We renew our call for the FCC to require carriers to implement caller ID authentication in a way that protects all consumers from all unwanted spoofed calls, at no additional charge, has a blocking capability, and respects callers’ privacy.²⁴

The FCC should manage a consumer-friendly system for challenging mistakenly blocked calls.

The calling industry has suggested that the FCC pursue a rulemaking that would allow them to easily circumvent even optional call-blocking tools, on the grounds that some call-

¹⁷ Comments of the American Cable Association, CG Docket No. 17-59 at 7 (Jul. 20, 2018), <https://ecfsapi.fcc.gov/file/10720194520237/180720%20-%20ACA%20Robocall%20PN%20Comments.pdf>.

¹⁸ Comments of First Orion, CG Docket No. 17-59 at 2 (Jul. 20, 2018), https://ecfsapi.fcc.gov/file/10720397404606/PublicNoticeCommentsv7_20_2018.pdf.

¹⁹ *Robocall Blocker Review*, Consumer Reports (Aug. 14, 2015), <https://www.consumerreports.org/cro/magazine/2015/07/robocall-blocker-review/index.htm>.

²⁰ See, e.g., Comments of AT&T, *supra* note 13, at 6; Comments of Verizon, *supra* note 14, at 6.

²¹ Comments of Verizon, *supra* note 14, at 6.

²² *Report on Selection of Governance Authority and Timely Deployment of SHAKEN/STIR*, NANC Call Authentication Trust Anchor Working Group at 16 (May 18, 2018), http://www.nanc-chair.org/docs/mtg_docs/May_18_Call_Authentication_Trust_Anchor_NANC_Final_Report.pdf.

²³ Comments of Sprint, *supra* note 16, at 2.

²⁴ Comments of Consumers Union, National Consumer Law Center, et. al, CG Docket No. 17-59 at 2 (Jan. 23, 2018), <https://ecfsapi.fcc.gov/file/10124162204278/Consumer%20group%20comments%20FNPRM%201.23.18.pdf>.

blocking services may intercept wanted calls.²⁵ This proposal is excessive in that it could undermine consumers' rights to block unwanted telemarketing calls. Extreme caution is especially warranted with respect to evading optional blocking services, in which consumers have sought out more robust robocall mitigation technologies to protect themselves from unwanted calls. Still, we agree that the FCC should take appropriate precautions to ensure that consumers can receive wanted robocalls. The FCC should establish a system to manage unblocking requests, paid for by callers who seek to use it (similar to the Do Not Call Registry), that never overrides consumer preferences, and that only allows through legal calls with authenticated Caller ID information, to ensure that callers do not inappropriately circumvent blocks.²⁶

The calling industry and the phone companies should provide more complete information about the robocall problem.

In our original comments to this proceeding, we called on the FCC to expand the focus of its inquiry beyond simply scam calls.²⁷ To do so, the calling industry must provide more detailed information. So far, they have reported primarily on their falling call-completion rates.²⁸ We urge the calling industry to also provide the number of robocalls made per day; the equipment used; the numbers of prerecorded and artificial voice calls, and the numbers of calls made with human agents using any type of automated equipment; the numbers of robocalls directed to home phones, and the numbers directed to cell phones; and the type of call (such as telemarketing, debt collection, informational, etc.). These figures should all be readily available. Robocall mitigation companies, too, should supplement this data, where they have the ability to do so. This way, stakeholders will have better understanding of the robocall problem and can devise appropriately tailored solutions.

In addition, while some phone companies have provided helpful data about the number of calls they have blocked, those numbers need to be contextualized so that we can track progress in the fight against unwanted robocalls. The phone companies should report the overall volume of unwanted robocalls; the percentage blocked; the volume of robocalls broken out by individual companies making the calls, if able to do so; and the geographical origin of the robocalls.

²⁵ Comments of Noble Systems, *supra* note 6, at 3-6.

²⁶ Comments of Consumers Union, National Consumer Law Center, et. al, *supra* note 24, at 3-5.

²⁷ Comments of Consumers Union, National Consumer Law Center, and Consumer Federation of America, CG Docket No. 17-59 (Jul. 20, 2018), <https://ecfsapi.fcc.gov/file/10721556624155/Consumer%20Group%20Comments%20on%20Robocall%20Report%2007.20.18.pdf>.

²⁸ Comments of Professional Association for Customer Engagement, CG Docket No. 17-59 at 3 (Jul. 20, 2018), [https://ecfsapi.fcc.gov/file/10720128858463/PACE%20TCPA%20Comment%20to%20FCC%20\(7-20-18\).pdf](https://ecfsapi.fcc.gov/file/10720128858463/PACE%20TCPA%20Comment%20to%20FCC%20(7-20-18).pdf).

As we indicated above, more phone companies should provide information about the percentage of consumers who have opted into advanced call-blocking tools, which is an important factor in assessing their usefulness.

Finally, all should provide data for a period of several years to provide a basis for comparison and reveal trends over time.

The FCC should work with the phone companies to explore additional means of addressing the robocall problem.

Despite progress in the expansion of call-mitigation tools and in developing caller ID authentication technology, consumers are still plagued with robocalls. Complaints about unwanted calls to the Federal Trade Commission increased again last year, from about 5 million in FY 2016 to more than 7 million in FY 2017.²⁹ We appreciate that Verizon, for example, is taking steps to assess whether the calls that are placed to their subscribers through other providers are legitimate.³⁰ And, we appreciate that AT&T is blocking robocalls that violate the terms of their business contracts.³¹ Sonic, a phone service provider based in California, offers Nomorobo to their subscribers on an opt-out basis.³² But more work is needed. We encourage the FCC to continue to explore new ways to address robocalls, particularly as scammers have shown that they are adept at avoiding current roadblocks. We urge the FCC to consider, for example, charging domestic phone service providers fees for call traffic associated with illegal robocalls, such as abandoned and short-duration calls, to raise the costs of scam calls.

We appreciate that the FCC is continuing to work to address the robocall problem. While there is clearly room for improvement, and phone companies, call-blocking companies, and the calling industry need to do their part too, we thank you for your efforts to stop unwanted robocalls.

Respectfully submitted,

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²⁹ *National Do Not Call Registry Data Book FY 2017*, Fed. Trade Comm'n at 6 (Dec. 2017), https://www.ftc.gov/sites/default/files/filefield_paths/dnc_data_book_fy2017.pdf.

³⁰ Comments of Verizon, *supra* note 14, at 9.

³¹ Comments of AT&T, *supra* note 13, at 10.

³² Sonic, Spam Call Blocking (last visited Aug. 15, 2018), https://wiki.sonic.net/wiki/Spam_Call_Blocking.

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