

July 9, 2020

Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: Notice of *Ex Parte* Presentations, CG Docket No. 17-59

Dear Ms. Dortch,

This letter serves as the notice of *ex parte* telephone calls that representatives of the American Bankers Association, ACA International, American Association of Healthcare Administrative Management, American Financial Services Association, Consumer Bankers Association, Credit Union National Association, Mortgage Bankers Association, National Association of Federally-Insured Credit Unions, and the Student Loan Servicing Alliance (the Associations) had with Joseph Calascione, Legal Advisor for Wireline and Consumer Protection for Commissioner Brendan Carr; Travis Litman, Chief of Staff and Senior Legal Advisor for Wireline and Public Safety for Commissioner Jessica Rosenworcel; Diane Holland, Legal Advisor for Media and Consumer Protection for Commissioner Geoffrey Starks; Justin Perkins with Commissioner Starks' office; and Arielle Roth, Wireline Legal Advisor to Commissioner Michael O'Rielly. The participants to the meetings are identified in the appendix to this letter.

In the meetings, the Associations expressed support for the Commission's goal to eliminate illegal automated calls. At the same time, it is critical that the Commission's rules governing call-blocking practices protect consumers from the risk that they might not receive important, often time-sensitive, calls from health care providers, finance companies, banks, credit unions, other participants in the financial services marketplace, retailers, and other legitimate businesses. When outbound calling numbers used by legitimate businesses are mislabeled as "fraud" or "spam," or calls from those numbers are blocked, consumers are harmed because they may not receive lawful calls affecting their health, safety, or financial well-being. These calls include, for example, safety alerts, fraud alerts, data security breach notifications, product recall notices, healthcare and prescription reminders, power outage updates, and other necessary account updates needed to maintain financial health. It is critical for consumers that these calls be completed without delay, and that the caller and call recipient are notified immediately when a call is blocked. When those calls are blocked, the Commission's rules should ensure that businesses can promptly have the block removed.

The Associations also offered specific feedback on the draft Third Report and Order released on June 25, 2020 (Draft Order).¹ The Draft Order provides a safe harbor for telephone companies (voice service providers) that block calls based on “reasonable analytics designed to identify unwanted calls,” as long as the analytics incorporates call authentication information into the blocking decision.

During the meetings, the Associations discussed the points raised in their July 2, 2020, *ex parte* letter in this docket.² Specifically, the Associations asked that the Commission make the following modifications to the Draft Order in order to protect consumers against illegal calls while ensuring that all voice service providers and third-party call-labeling service providers have the incentive to avoid mislabeling and erroneously blocking time-sensitive, legal calls on which consumers rely:

- The Commission should require an entity that blocks calls to notify callers immediately that it is blocking their calls.
- The Commission should require a voice service provider to remove an erroneous block within 24 hours of the provider’s learning of the block.
- The Commission should clarify and confirm that a terminating service provider that blocks calls is prohibited from imposing a charge on callers for reporting, investigating, resolving, and, as appropriate, removing erroneous blocks promptly.
- The Commission should confirm that the obligation on terminating voice service providers to provide callers with effective redress options applies equally to mislabeled outbound calling numbers.
- The Commission should confirm that implementing the required redress mechanism is a condition of receiving the protections of the safe harbor.
- The Commission should prohibit terminating voice service providers from blocking a fully authenticated call unless the provider can determine with a high degree of certainty that the call is unlawful through application of objective, defined criteria, and after investigation into the call.

How a voice service provider redresses the mislabeling of outbound calling numbers and erroneous blocking of calls is a critical data point for determining whether that provider’s analytics accurately and consistently distinguishes between legal and illegal calls. If an entity blocks a caller’s call, but does not provide notification of the block, it is very difficult to

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 17-59, FCC-CIRC2007-02.

² See Letter from Am. Bankers Ass’n et al., to Marlene H. Dortch, Sec., Fed. Comm’n, CG Docket No. 17-59 (July 2, 2020), [https://ecfsapi.fcc.gov/file/10703016815375/Trade%20Associations%20Ex%20Parte%2006.30.2020_Active\(Active\).PDF](https://ecfsapi.fcc.gov/file/10703016815375/Trade%20Associations%20Ex%20Parte%2006.30.2020_Active(Active).PDF).

determine if that entity's analytics accurately identified an illegally placed call, because the caller may not know that its call has been blocked and therefore may not have the opportunity to challenge the blocking. However, if the blocking is transparent — i.e., notification is provided to the caller — the caller has an opportunity to challenge the blocking, and the provider can improve its analytics. Thus, transparency and effective redress provide critical feedback to blocking entities that will improve the accuracy of the blocking determination, to the benefit of callers and consumers alike.

As stated above, we urge the Commission to require an entity that blocks calls to notify the caller immediately that it has blocked the caller's calls. To the extent that the Commission wishes to consider imposing a requirement that entities use a certain means by which to provide such notification, we suggest that the Commission seek comment in the Fourth Further Notice of Proposed Rulemaking on the efficacy of different notification mechanisms as a means to advise the caller immediately that its call has been blocked.

Sincerely,

A handwritten signature in black ink that reads "Jonathan Thessin". The signature is written in a cursive, flowing style.

Jonathan Thessin
Vice President/Senior Counsel
Consumer & Regulatory Compliance
Regulatory Compliance and Policy

APPENDIX

Meeting Attendees

Meeting on July 7, 2020

Office of Commissioner Brendan Carr
Joseph Calascione

Associations

Jonathan Thessin, American Bankers Association
Leah Dempsey, ACA International
Mark Brennan, Hogan Lovells (Counsel for the American Association of Healthcare Administrative Management)
Celia Winslow, American Financial Services Association
Stephen Congdon, Consumer Bankers Association
Elizabeth Eurgubian, Credit Union National Association
Michael Pryor, Brownstein Hyatt Farber Schreck (Counsel for the Credit Union National Association)
Kaley Schafer, National Association of Federally-Insured Credit Unions
Scott Buchanan, Student Loan Servicing Alliance

Meetings on July 9, 2020

(1)

Office of Commissioner Jessica Rosenworcel
Travis Litman

Associations

Mark Brennan and Arpan Sura, Hogan Lovells (Counsel for the American Association of Healthcare Administrative Management)
Jonathan Thessin, American Bankers Association
Leah Dempsey, ACA International
Stephen Congdon, Consumer Bankers Association
Elizabeth Eurgubian, Credit Union National Association
Michael Pryor, Brownstein Hyatt Farber Schreck (Counsel for the Credit Union National Association)
Elizabeth LaBerge, National Association of Federally-Insured Credit Unions

(2)

Office of Commissioner Geoffrey Starks

Diane Holland

Justin Perkins

Associations

Mark Brennan and Arpan Sura, Hogan Lovells (Counsel for the American Association of Healthcare Administrative Management)

Jonathan Thessin, American Bankers Association

Leah Dempsey, ACA International

Celia Winslow, American Financial Services Association

Stephen Congdon, Consumer Bankers Association

Elizabeth Eurgubian, Credit Union National Association

Michael Pryor, Brownstein Hyatt Farber Schreck (Counsel for the Credit Union National Association)

Elizabeth LaBerge, National Association of Federally-Insured Credit Unions

Scott Buchanan, Student Loan Servicing Alliance

(3)

Office of Commissioner Michael O’Rielly

Arielle Roth

Associations

Mark Brennan, Hogan Lovells (Counsel for the American Association of Healthcare Administrative Management)

Michael Pryor, Brownstein Hyatt Farber Schreck (Counsel for the Credit Union National Association)

Jonathan Thessin, American Bankers Association