

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)
)

COMMENTS OF
ITTA – THE VOICE OF AMERICA’S BROADBAND PROVIDERS

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ITTA – The Voice of America’s Broadband Providers (ITTA) hereby submits its comments in response to the Notice of Proposed Rulemaking and Notice of Inquiry in the above-captioned proceeding, proposing rules that would allow voice service providers to block illegal robocalls on their customers’ behalf.¹

I. INTRODUCTION AND SUMMARY

The pestilence of illegal robocalls is well documented.² As part of its efforts to dial them down, the Commission proposes rules in the *NPRM and NOI* to allow voice providers to block robocalls on their customers’ behalf. ITTA applauds this effort.

There are two principles that ITTA urges the Commission to incorporate in any rules that it adopts in this proceeding. First, although the *NPRM and NOI* emphasizes that almost all of its proposals would allow, rather than require, action by providers, the reality is that implementing

¹*Advanced Methods to Target and Eliminate Unlawful Robocalls*, Notice of Proposed Rulemaking and Notice of Inquiry, 32 FCC Rcd 2306 (2017) (*NPRM and/or NOI*).

² See, e.g., *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Notice of Apparent Liability for Forfeiture, FCC 17-80, at 1, para. 1 (June 22, 2017) (finding apparent liability for perpetrating “one of the largest spoofed robocall campaigns that the Commission has ever investigated, involving nearly 100 million robocalls during a three-month period in 2016,” and proposing a penalty of \$120 million).

permissible call blocking may become a competitive necessity. The Commission should acknowledge this reality and ensure that smaller providers are not disadvantaged by any of the measures it adopts. ITTA is pleased that the *NPRM and NOI* in numerous places seeks specific comment on how the proposals will affect smaller providers. ITTA encourages the Commission to keep smaller providers' resources and needs in mind when it adopts final rules.

Second, the *NPRM and NOI* recognizes that there is a certain level of inherent imprecision in crafting rules that maximize consumer protections while safeguarding network reliability.³ When a provider implements permissible call blocking measures, the primary beneficiary is the customer. The adage that “no good deed goes unpunished” decidedly should not apply here. As long as the provider is acting in good faith within the contours of the rules the Commission adopts, it should be immune from any Commission enforcement liability for legitimate calls blocked or illegal calls that are not blocked.⁴ In this regard, for example, ITTA supports the *NPRM*'s proposal to exclude calls blocked in accordance with the rules that are adopted in this proceeding from calculation of providers' call completion rates.⁵ ITTA also is

³ See, e.g., *NOI*, 32 FCC Rcd at 2314, para. 28 (“we seek comment on objective standards that would indicate to a reasonably high degree of certainty that a call is illegal”); *id.* at 2315, para. 30 (“What can the Commission do to help providers minimize the possibility for false positives when blocking calls[?]”).

⁴ See Statement of Ajit Pai, Chairman, Fed. Communications Comm'n, Hearing on the FCC's Fiscal Year 2018 Budget Request: Before the Subcommittee on Financial Services and General Government, Committee on Appropriations, U.S. Senate 3-4 (June 20, 2017) (“In March . . . the Commission adopted a Notice of Proposed Rulemaking and a Notice of Inquiry to consider allowing service providers to block robocalls under certain circumstances, without fear of liability for failing to complete calls.”).

⁵ See *NPRM*, 32 FCC Rcd at 2314, para. 26. The Commission is tentatively scheduled to consider a Second Further Notice of Proposed Rulemaking proposing to eliminate the rural call completion recording, retention, and reporting rules altogether at its July 13, 2017 Open Meeting. See Press Release, FCC, FCC Announces Tentative Agenda for July Open Meeting (June 22, 2017), http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0622/DOC-345480A1.pdf (July Open Meeting Tentative Agenda).

heartened that the *NOI* seeks comment on “whether to adopt a safe harbor to give providers certainty that they will not be found in violation of the call completion and other Commission rules when they block calls based upon an application of objective standards,”⁶ and encourages the Commission to do so.

II. DISCUSSION

A. The Commission Should Adopt a More Expansive Definition of “Illegal Robocall”

The *NPRM* tentatively concludes that an “illegal robocall” is one that “violates the requirements of the Telephone Consumer Protection Act of 1991, the related FCC regulations implementing the [Communications] Act, or the Telemarketing Sales Rule, as well as any call 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.”⁷ The *NPRM* then queries whether this definition is sufficient to capture all robocalls that should be subject to provider-initiated blocking.⁸ ITTA believes it is not, and recommends that the definition be amended to conclude with “as well as any call made for the prohibited purpose of defrauding a consumer, or that is otherwise as prohibited, under a variety of federal, ~~and~~ state, and municipal laws and regulations, including the federal Truth in Caller ID Act, or that is prohibited pursuant to a court order.”

This expanded definition will enhance consumer protections against calls that are illegal or unlawful by any reasonable definition and thus not deserving of protection by the Commission’s rules or processes. At the same time, because permissible call blocking would be

⁶ *NOI*, 32 FCC Rcd at 2314, para. 28.

⁷ *Id.* at 2311, para. 13.

⁸ *See id.*

allowed, rather than required, by the Commission's rules, providers would have flexibility in how aggressively they choose to block calls falling within the scope of the expanded definition. Competitive considerations aside, such flexibility may be particularly helpful to smaller providers who may not have the resources to undertake the due diligence entailed to ensure the legal bona fides of each block request, and may need to only honor requests that are based on violations of a more limited range of statutes and regulations. As discussed above, ITTA also urges the Commission to immunize from enforcement liability providers that implement this definition in good faith, regardless of whether they do so narrowly or as expansively as the definition permits.

B. A Centralized Database or Other Information Sharing Mechanism Should be Leveraged to Facilitate Permissible Call Blocking

The *NPRM* seeks comment on what measures, if any, the Commission should consider to facilitate the sharing among providers of call block requests from subscribers endeavoring to prevent their telephone number from being spoofed where, for example, the subscriber asks the provider that serves the number at issue to disseminate his or her request throughout the industry.⁹ ITTA submits that in this context as well as others, as discussed below, it would be particularly helpful for all providers, regardless of size, to be able to consult a centralized database of numbers from which calls permissibly may be blocked.¹⁰ This would be

⁹ *See id.* at 2311-12, para. 15. ITTA also believes that when a subscriber requests such blocking, she or he is implicitly authorizing that information to be shared among providers, absent instructions to the contrary. *See id.* at 2312, para. 15.

¹⁰ ITTA notes that, also in the robocalls context, the Commission may propose establishment of a centralized database, in that case to make reassigned telephone number data available to legitimate robocallers to avoid making unwanted calls to consumers. *See Advanced Methods to Target and Eliminate Unlawful Robocalls*, Second Notice of Inquiry [Draft], FCC-CIRC1707-02, para. 16, http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0622/DOC-345473A1.pdf.

competitively neutral insofar as it would be available to all providers, would best ensure up-to-date information, and would be the least burdensome method of ensuring that block requests are disseminated to all relevant providers.¹¹ Such a database should be supported by state-of-the-art security protocols – for example, akin to the number portability database administered by the Number Portability Administration Center (NPAC) – to ensure that would-be Caller ID spoofers do not gain access and render these laudable call blocking measures for naught.¹²

In addition, as noted by the *NPRM*, this would enhance consumer protection since subscribers may not be readily able to identify, let alone submit a call block request to, each and every relevant provider.¹³ In the absence of such a database, an alternative could be a requirement that each provider of voice service of any type (i.e., wired or wireless) and that is subject to the Commission’s jurisdiction furnish the Commission with a contact to receive block requests electronically,¹⁴ and that the Commission post the resulting list of contacts on its website. Regardless of the mechanism to alert providers of the call block request, when a provider blocks calls from the putatively spoofed number, it should be immune from any

¹¹ The *NOI* seeks comment on whether sharing of information among providers can increase the effectiveness of call blocking methodologies. *See NPRM and NOI*, 32 FCC Rcd at 2315, para. 33. ITTA responds with an emphatic yes, and believes that a centralized database of numbers from which calls permissibly may be blocked would be a highly effective tool.

¹² *Cf. id.* at 2317, para. 38 (seeking comment on safeguards against white lists being accessed or obtained by makers of illegal robocalls).

¹³ *See id.* at 2312, para. 15.

¹⁴ The Commission should also require that it be provided with any changes to the contact information within one business day of the prior contact no longer being effective.

Commission enforcement liability should the block information it received turn out to be erroneous.¹⁵

For the same reasons as discussed above, a centralized database would also be the best source of up-to-date information on the three categories of unassigned numbers proposed by the Commission from which calls may permissibly be blocked,¹⁶ a proposal that ITTA supports.¹⁷ Accurate and timely population of this database could be ensured with assistance from the North American Numbering Plan Administrator (NANPA), the National Number Pool Administrator (PA), and the number portability database administered by the NPAC.¹⁸ In order to further maintain competitive neutrality and not disadvantage smaller providers, costs to access the data should be allocated on a proportional basis, for instance, via a per-dip charge.

¹⁵ Of course, the provider serving the number subject to the call block request must comply with the Commission's rules and guidance applicable to handling such requests in order to preclude liability. *See id.* at 2311, para. 14 (proposing to codify prior guidance).

¹⁶ These three categories of numbers are invalid numbers, valid numbers that are not allocated to a voice service provider, and valid numbers that are allocated but not assigned to a subscriber. *See id.* at 2312-13, paras. 16-23.

¹⁷ *See id.* at para. 18 (seeking comment on whether there are any particular measures the Commission or the numbering administrators can implement to assist smaller providers in more readily identifying or blocking calls originating from invalid numbers); para. 20 (seeking comment on what further steps the Commission can take to assist providers, especially small providers, in identifying and blocking calls originating from numbers that have not been allocated to any provider); para. 2 (seeking comment on whether the Commission should mandate the sharing of information about numbers not assigned to a subscriber to facilitate appropriate robocall blocking and, if so, what are the most appropriate means to facilitate such information sharing).

¹⁸ *See id.* at para. 20 (seeking comment on whether providers can readily identify numbers that have yet to be allocated to any provider and, if not, whether the NANPA or PA could assist); para. 22 (seeking comment on whether the number portability database administered by the NPAC can provide information on numbers that are allocated to a provider, but not assigned to a subscriber).

ITTA also endorses the *NPRM*'s proposal not to require providers to obtain an opt-in from subscribers in order to permissibly block calls.¹⁹ As the *NPRM* reasons, such a requirement would add unnecessary burdens and complexity, and may be technically infeasible for some providers.²⁰ It would also add unnecessary delays. Utilizing a centralized database accessible by all providers, regardless of size, would further obviate the need for an opt-in process by helping to ensure consistency across providers as far as from which numbers calls may be blocked permissibly.

C. The Commission Should Exclude Permissibly Blocked Calls from Call Completion Rates

The *NPRM* proposes to exclude calls blocked in accordance with the rules the Commission adopts in this proceeding from calculation of providers' call completion rates.²¹ ITTA steadfastly supports this proposal to the extent the call completion reporting rules remain in place.²² As discussed above, it is in accord with one of the two crucial principles that ITTA maintains must underlie whatever rules the Commission adopts in this proceeding, namely, that as long as the provider is acting in good faith within the contours of the rules the Commission adopts, it should be immune from any Commission enforcement liability for legitimate calls blocked.

¹⁹ *See id.* at 2314, para. 25.

²⁰ *See id.*

²¹ *See id.* at para. 26.

²² *See supra* note 5.

D. The Commission Should Adopt Objective Standards to Identify Calls, and a Safe Harbor for the Blocking of Calls Identified Using Such Objective Standards

The *NOI* seeks comment on objective standards that would indicate to a reasonably high degree of certainty that a call is illegal, and whether the Commission should adopt a safe harbor to give providers certainty that they will not be found in violation of the call completion and other Commission rules when they block calls based upon an application of objective standards.²³ Among the objective standards on which it seeks comment, the *NOI* asks whether unauthenticated Caller ID alone should be sufficient grounds for a provider to block a call, or whether it should be used only in combination with other methods.²⁴ ITTA believes it should alone be sufficient grounds to block a call. Requiring the supplemental use of other methods may be particularly burdensome for smaller carriers, delay the blocking of calls that should be blocked and allow some to get through, and layer on additional confirmation processes while yielding little, if any, additional accuracy as to whether the purported originating number was spoofed. This is especially so given continued progress on refinement of call authentication technologies.²⁵

The *NOI* also seeks comment on what other methods or standards can be used to identify illegal calls to a reasonably high degree of certainty.²⁶ Furthermore, it asks whether the Commission should adopt a safe harbor, and if so, what blocking practices and objective

²³ *See id.* at para. 28.

²⁴ *See id.* at 2315, para. 32.

²⁵ *See id.* (“The Commission recognizes that standards bodies have made significant progress on Caller ID Authentication Standards.”). That progress has now ripened to the point that the Commission tentatively plans to consider at its July 2017 Open Meeting a Notice of Inquiry seeking comment on implementing authentication standards. *See* July Open Meeting Tentative Agenda.

²⁶ *See NOI*, 32 FCC Rcd at 2315, para. 29.

standards should be covered by it, and whether there are any considerations specific to small providers.²⁷ Examples the *NOI* recites of methods to determine whether a certain call is illegal include “soliciting and reviewing information from other carriers, performing historical and real time call analytics, making test calls, contacting the subscriber of the spoofed number, inspecting the media for a call (audio play back of the Real Time Protocol stream to understand the context of the call), and checking customer complaint sites.”²⁸ Some of these methods can be quite costly, in terms of monetary expenditures, labor resources, or both. Such costliness would hit smaller carriers particularly hard. ITTA supports the Commission establishing a safe harbor, but emphasizes that the Commission should try its utmost to ensure that the blocking practices and objective standards covered by it are among the less costly options it recites or that are otherwise suggested in the record. This will ensure that the safe harbor is competitively neutral, and able to be utilized by providers of all sizes.

E. The Commission Should Establish Protections that Minimize and Quickly Rectify Blocking of Legitimate Calls but that Account for the Lesser Resources of Smaller Providers

The *NOI* seeks comment on whether the Commission should require providers to “white list” legitimate callers who give them advance notice and, if so, what the requirements should be for the white list, and how white list information should be shared by providers.²⁹ ITTA submits that white list functionality should be incorporated as a separate field in the centralized database of numbers from which calls permissibly may be blocked. This will enable “one-stop shopping” for providers as to numbers from which calls may or may not be blocked, and will facilitate

²⁷ *See id.* at 2316, paras. 34-36.

²⁸ *Id.* at 2314-15, para. 29.

²⁹ *See id.* at 2316-17, paras. 37-38.

timely sharing of white list information among providers. In turn, timely sharing of white list information will ease burdens on consumers to contact providers individually, and will be especially pivotal when a number has been blocked erroneously.

In that regard, ITTA supports the Commission establishing a challenge mechanism for callers who may have been blocked erroneously.³⁰ ITTA cautions, however, that an ounce of prevention is worth a pound of cure. Unlike with placing numbers on a permissible block list, which would be initiated by a provider after processing a subscriber request or declining an unauthenticated call, or by the NANPA, PA, or NPAC, placing a number on the white list would not be initiated by the provider or third-party administrator. Therefore, safeguards must be in place to ensure that a request to be added to the white list is, indeed, legitimate. Moreover, once a legitimate number has been added to the white list, there needs to be a mechanism for providers to timely become aware that the number is legitimate.

In order to reconcile goals of ensuring, on the one hand, that requests to be added to the white list are legitimate while, on the other hand, minimizing and swiftly rectifying erroneous call blocking, ITTA does not object to the Commission establishing guidelines, such as the proof establishing that a caller is legitimate, as well as timelines to cease call blocking, so long as such guidelines account for the greater burdens on smaller providers, who have fewer resources to implement such guidelines.³¹ Utilizing a centralized database of numbers for the white list, as suggested above, should relieve smaller providers of undue administrative burdens,³² and would be a simple matter of a customer service representative of the provider referring the ostensibly

³⁰ *See id.* at 2316, para. 37.

³¹ *See id.* at 2317, para. 39.

³² *See id.* at para. 40.

legitimate caller to the database point of contact. The database administrator would be responsible for developing a reasonable screening process to establish the legitimacy of white list requests which could include, for instance, a notarized written request, followed by a telephone interview. While ITTA recognizes that this process would not lend itself to immediate resolution of erroneous call blocking, the benefits of ensuring in this manner the bona fides of the caller's request to be added to the white list outweigh any incremental delays. In addition, the database administrator's screening process should include processing times for white list requests.

To ensure that each provider has up-to-date white list information, the Commission could provide guidance for how often each provider should refresh the white list each provider maintains for its own systems, for example, once every 24 hours. So long as the provider complies with the refresh guideline and any other guideline the Commission sets forth to protect legitimate callers, a provider should not be subject to any enforcement liability where a legitimate call ends up being blocked accidentally or, conversely, where an illegitimate caller mistakenly ends up on the white list.

III. CONCLUSION

For the above reasons, the Commission should adopt its proposals to allow providers to block illegal robocalls at the behest of the subscriber of the purported originating number, or originating from unassigned numbers or otherwise deemed illegal pursuant to objective standards. In doing so, it must ensure that smaller providers are not disadvantaged by any of the measures it adopts, and that providers are immune from any Commission enforcement liability for legitimate calls blocked or illegal calls that are not blocked, as long as the provider is acting in good faith within the contours of the rules the Commission adopts. The Commission also

should facilitate establishment of a white list to help protect legitimate calls from getting blocked.

Respectfully submitted,

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