



August 20, 2018

Derek Moore
Office of Policy Planning
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

John Dubiansky
Office of Policy Planning
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Mr. Moore and Mr. Dubiansky:

On behalf of ACA International, I am writing regarding the invitation for public comments on potential hearing topics on Competition and Consumer Protection in the 21st Century. Specifically, we urge the Federal Trade Commission (FTC) to hold a hearing to further consider the use of call blocking and labeling technologies and their impact on legitimate businesses. ACA International is the leading trade association for credit and collection professionals representing approximately 3,000 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs more than 230,000 employees worldwide.

The credit and collection industry is a highly regulated industry complying with applicable federal and state laws and regulations regarding debt collection, as well as ethical standards and guidelines established by ACA. ACA members contact consumers exclusively for non-telemarketing and legitimate business reasons to facilitate the recovery of payment for services that have already been rendered, goods that have already been received, or loans that have already been provided. The use of modern technology is critical for the ability to contact consumers in a timely and efficient matter. Often if a consumer is put on notice of a debt sooner and earlier in the collection process, his or her chances improve of resolving that matter favorably.

Yet, because of unclear requirements for how the credit and collection industry can use modern, and even not so modern, technologies to communicate with consumers, the industry often remains unable to provide critical financial information in a timely and effective manner. Despite the fact that the credit and collection industry is already highly regulated, and notwithstanding that the industry is making informational calls not subject to the Do Not Call List, which is aimed at telemarketing communications, many industry calls have been blocked or impeded by technologies allegedly targeting “robocalls.” The Federal Communications Commission’s (FCC) and FTC’s joint efforts in this area concerning “robocalls” have been laudable for their focus on bad actors making illegal calls. Accordingly, we support efforts to compile a report on

robocalling and the spirit of the November 2017 *Call Blocking Order*.¹ However, it is imperative that the FTC along with the FCC develop protocols and/or a regulatory framework directed at call blocking and labeling companies to require them to differentiate between legal informational calls and illegal robocallers. Sweeping all communications into the category of robocalls is misleading and unhelpful to consumers since it unfairly lumps legal and consumer friendly communications in with illegal scam calls.

It is concerning that service providers in the marketplace are using technologies that enable third parties to unilaterally determine what calls consumers should receive in place of federal laws and regulations that already govern communications with consumers. While illegal actors, by their very nature are not concerned with laws governing communications, those operating legally, such as those in the credit and collection industry, already are following consumer protection laws such as the Fair Debt Collection Practices Act (FDCPA). Technologies including mobile applications and carrier services should not unfairly mislabel, erroneously block, or create fake busy signals for entirely legal calls being made for business purposes. Moreover, even if they are accidentally doing so based on faulty analytics, there should be consequences for this harmful activity. Furthermore, callers should have some redress and ability to correct erroneously blocked or mislabeled calls.

Specifically, ACA would like the FTC to consider the following point for a potential hearing topic, or as part of a larger discussion: new call blocking and labeling technologies are unfairly impeding calls from credit and collection professionals, in some instances in deceptive ways, or ways that engage in slanderous labeling of these calls.

I. Call Blocking and Labeling Technologies are Improperly Impeding Legitimate Business Communications

ACA's concerns fall into the following categories, which we ask the FTC to consider as it develops hearing topics:

A. Mislabeled Calls

In 2017, ACA members became increasingly alarmed as they began to discover drops in right-party contacts coupled with discoveries that their legitimate business calls were being labeled as "suspected scam," "scam likely," or another label that implied the call was not from a legitimate caller. This has escalated to a new, even higher level of concern, when recently ACA became aware of a call labeling which identified legal collection calls as "Extortion." This mislabeling has prompted misguided complaints about legitimate call attempts against the industry, and even worse, has caused reputational harm when calls are labeled with confusing and questionably slanderous labels. Moreover, inability to communicate with consumers about their debt has forced creditors to resort to instead file lawsuits, without ever having the ability to work out terms and conditions of repayment that may be more favorable or preferable to consumers.

B. Fake Busy Signals

¹ Advanced Methods to Target and Eliminate Unlawful Robocalls, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9706, 9727 (2018) (Call Blocking Order).

Currently, industry members continue to report that certain carriers will provide a busy signal to the call originator when they block a legitimate call. Often the consumer does not even know a call attempt was made. If a legitimate caller receives a busy signal, typically the caller will make repeated attempts in an effort to make live contact, wasting time and resources. It is inherently deceptive for a carrier to return a signal that a called number is busy when in fact the call has been blocked by the carrier. This type of activity is a slippery-slope in limiting legitimate communications.

C. Erroneously Blocked Calls

When calls are erroneously blocked, there must be more responsibility placed on providers to be able to identify this mistake and alert callers to it sooner. As the FTC and FCC consider longer term solutions to the problem of illegal robocalls such as SHAKEN/STIR, they should immediately address current problems that erroneously blocked calls are causing. As part of this, carriers or other third parties should remediate mistakes and have protocols for doing so.

D. Scammers are Evading Many Call Blocking Technologies

The worst actors and illegal robocallers have found ways around call blocking technologies and continue to plague consumers with scam and other fraudulent calls. Thus, the FTC's focus should be on narrowly targeting these illegal actors through enforcement actions and appropriately tailored technological solutions.

E. Conflict with FDCPA

Call labeling technologies targeting legitimate debt collection activities also pose a risk of disclosing the existence of debts to third parties, which could potentially invoke FDCPA related concerns.² Certain technologies have been reported to flash "debt collector" or identify a collection agency, even lighting up in different colors drawing attention to the call when a debt collection call comes in on cell phone. A consumer may be in a crowded room or in a situation where others could become aware of this call labeling. However, the FDCPA does not allow disclosure of debts or that a debt collector is attempting to contact the consumer to third parties. The debt collection industry is already subject to voluminous, often frivolous, litigation in this area and unknown threats such as labeling that is beyond a credit and collection professional's control is a matter of great concern. A different, but just as pressing, concern for collection agencies is when the labeling does not provide sufficient identification, making it less likely for a consumer to trust or answer the unknown call.

The FTC should work with the FCC and the Bureau of Consumer Financial Protection (BCFP) to consider whether these types of alerts raise privacy concerns, if debt collection calls need to be treated differently, and how to encourage providers to work with the industry to develop acceptable labeling protocols. While debt collectors have no control over these alerts, it is problematic that they could be unfairly blamed, face reputational harm with their customers, or worse, lose the trust of consumers through these practices. The FTC must also work closely with

² 15 U.S. Code § 1692c (b).

the BCFP, which is currently developing debt collection rules, to ensure that debt collectors are on the same level playing fields as other industries when it comes to call blocking and labeling.

II. Other Regulators Have Recently Stressed the Need for Clarity Concerning Modern Communications, the Importance of the Work the Credit and Collection Industry, and the Ability to Communicate with Consumers

As the U.S. Department of Treasury (Treasury) recently acknowledged in its report *A Financial System That Creates Economic Opportunities Nonbank Financials, Fintech, and Innovation*, “Debt collectors and debt buyers play an important role in minimizing losses in consumer credit markets, thereby allowing for increased availability of and lower priced credit to consumers.”³ In addition to overall economic benefits the industry provides, the Treasury also addresses how the ability to communicate with consumers is harmed by outdated and onerous approaches to the use of modern communications. In the report the Treasury states, “Current implementation of the TCPA constrains the ability of financial services firms to use digital communication channels to communicate with their customers despite consumers’ increasing reliance on text messaging and e-mail communications through their mobile devices.”

Similarly, the Small Business Administration (SBA) Office of Advocacy addressed the confusion surrounding the TCPA and the use of modern technology as it pertains not only to consumers but also to small business owners. The SBA Office of Advocacy stated, “In an environment where fifty to seventy [percent] of a business’ customers might only be reachable by mobile phone, it is important that the FCC move quickly to establish clear guidance to small business compliance without depriving customers of required or desired communications.”⁴

Furthermore, the BCFP recently noted in a letter to the FCC that, “Consumers benefit from communications with consumer financial products providers in many contexts, including receiving offers of goods and services and notifications about their accounts. Recent years have seen rapid increases in the use of smart phones, text messages, email, social media, and other new or newer methods of communication. With the advent and deployment of these communication technologies, it is important to review how statutes and regulations apply to them.”⁵

Multiple regulatory agencies have recently recognized there are significant benefits to consumers when they can communicate with credit and collection professionals through the channels that the consumers prefer. Allowing service providers or carriers to inhibit communications, even unintentionally, ultimately harms consumers when they do not receive information that they need.

³ U.S. Department of Treasury, *A Financial System That Creates Economic Opportunities Nonbank Financials, Fintech, and Innovation* (July 2018), available at <https://home.treasury.gov/sites/default/files/2018-07/A-Financial-System-that-Creates-Economic-Opportunities---Nonbank-Financi....pdf>.

⁴ Ex parte Notice of SBA Office of Advocacy, Consumer and Government Affairs Bureau Seeks Comment on Interpretation of the Telephone Consumer Protection Act in Light of the D.C. Circuit’s ACA International Decision, CG Docket Nos. 18-152, 02-278.

⁵ Comments of the Bureau of Consumer Financial Protection, In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act and CG Docket No. 02-278 Interpretations in Light of the D.C. Circuits CG Docket No. 18-152 ACA International Decision (June 13, 2018).

Without an effective collection process, the economic viability of businesses and, by extension, the American economy and credit system in general, is threatened. When the cost of recovering debt unnecessarily rises, creditors are overly cautious about extending loans, and lower income consumers and those with thin credit files are harmed most. Recovering rightfully-owed consumer debt enables organizations to survive, helps prevent job losses, keeps credit, goods, and services available, and reduces the need for tax increases to cover governmental budget shortfalls.

Accordingly, the FTC should consider these important topics as it holds hearings about Consumer Protection in the 21st Century. Thank you for your willingness to solicit input on these important topics and your attention to these matters.

Sincerely,

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Mark Need
Chief Executive Officer