

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Advanced Methods to Target and Eliminate) CG Docket No. 17-59
Unlawful Robocalls)
)

Reply Comments of the Credit Union National Association, American Bankers Association, ACA International, American Financial Services Association, Consumer Bankers Association, Mortgage Bankers Association, National Association of Federally-Insured Credit Unions, National Retail Federation, and the Student Loan Servicing Alliance

The Credit Union National Association, American Bankers Association, ACA International, American Financial Services Association, Consumer Bankers Association, Mortgage Bankers Association, National Association of Federally-Insured Credit Unions, National Retail Federation, and the Student Loan Servicing Alliance (the “Associations”)¹ file these reply comments to the above-captioned proceeding.² These reply comments focus on the Commission’s legal obligation under the TRACED Act to establish a real-time notification requirement to inform callers that their calls have been blocked or adversely labeled.³ The initial comments, including those filed by the undersigned jointly with other trade associations, reflect

¹ The Associations are described in the attached appendix.

² *Advanced Methods to Target and Eliminate Unlawful Robocall*, Third Report and Order, Order on Reconsideration, and Fourth Further Notice of Proposed Rulemaking, CG Docket No. 17-59, FCC 20-96 (rel. July 17, 2020) (“Fourth Further Notice”). Unless specifically noted otherwise, all comments cited herein are in response to the Fourth Further Notice.

³ Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274 (2019) (“TRACED Act”).

substantial support and need for such a notification requirement.⁴ The record also supports the establishment of a time certain to resolve blocking or labeling disputes.

I. The Commission Must Adopt a Notification Requirement to Discharge Its Obligations Under the TRACED Act

A. There is Widespread Support for a Notification Requirement

A wide range of commenters support establishing a per-call, real-time notification requirement.⁵ Real-time notification, as various commenters note, is required to fully implement the TRACED Act's requirement for transparent and effective redress.⁶ Currently, many callers are unaware that their calls are being blocked and instead are presented with false busy signals or their calls simply drop into a "black box" where the caller receives no notification that their calls are being blocked or have been adversely labeled.⁷ While callers are trying to ascertain what is happening with their calls, consumers remain unaware that calls from legitimate businesses, often with critical information such as alerts, are being blocked or negatively-labeled. Obscuring the fact that calls are being blocked by sending false busy signals or other inaccurate signaling information is the antithesis of the TRACED Act's transparency requirement. Lack of notification harms callers and their customers.

⁴ American Bankers Assoc. (ABA) et al., Comments at 11-12. The comments filed in response to the Fourth Further Notice add to the already substantial record supporting notification. *See* Noble System Comments at 25 (listing parties urging adoption of a notification requirement).

⁵ *See, e.g.*, Ad Hoc Telecom Users Comments at 10; Cloud Communications Alliance Comments at 2; Encore Comments at 3-4; INCOMPAS Comments at 12; Insights Association Comments at 2; NAFCU Comments at 3; National Opinion Research Center (NORC) Comments at 10; Noble Systems Comments at 7-16 (detailing numerous benefits from notification); NTCA Comments at 3-4; PACE Comments at 3; Ring Central Comments at 4; Securus Comments at 8; Telnyx Comments at 1 (notice should be sent to service providers using SIP 608 Code); Twilio Comments at 2.

⁶ TRACED Act § 10(b). *See*, Ad Hoc Comments at 5; NORC Comments at 8-9; PACE Comments at 3-4

⁷ *See, e.g.*, NORC Comments at 3 (describing increase in busy signals from 2% to 26%); Insights Comments at 2 (noting blocked calls fall into a "black box").

The record also amply demonstrates that notification is technically feasible. Intercept messages have long been a feature of blocking technologies such as anonymous call rejection, which a number of providers informed the Commission they currently employ in their blocking efforts.⁸ Some providers also provide an error code when IP-enabled calls are being blocked.⁹ Use of these common forms of intercept messaging demonstrates that there is no technical barrier to providing notification.

Apart from the crucial role notification plays in mitigating the harm of erroneous blocking and mislabeling, the Associations concur with comments describing the important role notification can play in generating data on the efficacy of blocking analytics and in providing “actionable data” to assist callers in developing best practices.¹⁰ Over the past three years, the Commission has embarked on an ambitious experiment of increasing voice providers’ authority to block or label calls without the consumer’s affirmative knowledge or consent. The Commission’s dramatic expansion of blocking authority has been undertaken without quantitative data on the efficacy of “reasonable analytics” to distinguish between illegal and legitimate calls. The record is sharply conflicting, with some providers and their analytics partners claiming a de minimis level of “false positives” whereas callers provide studies and anecdotal evidence of substantial blocking of legitimate calls. A per call notification requirement will provide critical information without the burden of imposing specific data collection requirements.

⁸ See Cloud Communications Alliance Comments at 3-4 (citing to the FCC’s June 20 report on call blocking identifying providers that provide some form of notification).

⁹ For example, Verizon sends an intercept message in the form of a Session Initiation Protocol error code, code 603 Decline, when it undertakes certain network level blocking. Letter from Christopher D. Oatway, Associate General Counsel, Verizon, to G. Patrick Webre, Chief, FCC Consumer and Governmental Affairs Bureau, CG Docket No. 17-59, at 4 (Feb. 28, 2020).

¹⁰ See, e.g., NAFCU Comments at 3; Noble Systems at 10; PACE Comments at 3-4

Requiring blocking entities to inform callers and their originating service providers that their calls are being blocked or negatively labeled will create a wealth of reliable, actionable data showing, for example, which numbers are blocked, by whom, and why they were blocked. This data can provide an effective feed-back mechanism to sharpen analytics while informing callers of problematic calling practices and simultaneously enabling the prompt removal of erroneous blocking or mislabeling. Gathering this data is all the more important as analytics providers and their blocking partners increasingly place on callers the burden of ensuring their calls will be completed.¹¹ A notification requirement would fulfill the TRACED Act’s mandate for transparent and effective redress and would improve the entire effort to combat illegal robocalls.

B. Objections to Notification Lack Merit

Objections to notification fall within three primary camps, none of which has merit. First, some providers and their third-party vendors argue that no further action is required by the Commission because some blocking services supposedly provide effective redress.¹² The record does not support these claims. The Commission has voluminous evidence before it that many time-sensitive calls are being wrongly blocked, including emergency calls from public safety answering points;¹³ anti-fraud messages;¹⁴ “critical calls” relating to “life and safety”;¹⁵ “security-related messages”;¹⁶ research calls on behalf of the Center for Disease Control

¹¹ *See, e.g.*, TNS Comments at 3-4 (arguing that instead of notification, callers should contact third party vendors to determine how their calls are being treated and purchase services to help ensure completion of legitimate calls).

¹² *See, e.g.*, First Orion Comments at 2-3; TNS Comments at 3-4.

¹³ Comments of NENA: The 9-1-1- Association, CG Docket No. 17-59, at 2 (filed Jan. 29, 2020).

¹⁴ Comments of INCOMPAS, CG Docket No. 17-59, at 3 (filed Jan. 29, 2020).

¹⁵ Comments of Numeracle, Inc., CG Docket No. 17-59, at 11 (filed Jan. 30, 2020).

¹⁶ Reply Comments of Twilio, Inc., CG Docket No. 17-59, at 7 (filed Feb. 28, 2020).

(CDC);¹⁷ and other communications. In light of this record, the Commission cannot reasonably conclude that callers have “transparency” or “effective redress” under the *status quo*.

Second, some providers claim that a notification requirement would constitute overly prescriptive regulation and would deprive them of needed flexibility to address illegal robocalls.¹⁸ Tellingly, no major voice service provider, or its third-party vendor, has claimed that notification is technically infeasible or credibly explained how notification would pose an undue burden.

A notification requirement need not be overly prescriptive. The Commission need not prescribe a specific means by which voice service providers notify callers, but the industry should strive toward creating uniform standards. Uniformity could reduce implementation costs as “off-the-shelf” notification technology is deployed. The proposed 608 SIP error code, for example, would constitute a uniform standard readily incorporated into the STIR/SHAKEN SIP framework. Moreover, as noted by the Cloud Communications Alliance, the proposed error code would provide a mechanism for notification in non-IP networks and is designed to mitigate security concerns.¹⁹

The Commission should direct the prompt finalization of the SIP 608 error code standard, but the Commission need not demand that providers utilize this specific mechanism for notification if another form better suits the needs of a particular provider. A general mandate to provide real-time notification without prescribing the specific manner of such notification is

¹⁷ Comments of the National Opinion Research Center, CG Docket No. 17-59, at 5 (filed Jan. 29, 2020).

¹⁸ *See, e.g.*, CTIA Comments at 17-18; US Telecom Comments at 10-11.

¹⁹ Cloud Communications Alliance Comments at 6-7.

no more prescriptive than mandating all providers implement illegal robocall mitigation without specifying how that might be accomplished.²⁰

The third objection raised against a notification requirement is that it would undermine efforts to combat illegal robocalls by tipping off bad actors.²¹ Commenters have effectively rebutted this argument.²² For one, the alleged harm is speculative – there is no actual evidence or reasonable data indicating notification of blocking would increase unlawful behavior.²³ Moreover, the claim of harmful effects is belied by fact that a number of providers currently do provide some form of real-time notification.²⁴ They would presumably stop if they believed they were facilitating illegal robocalls. Instead, they have continued to send notifications because they apparently have not resulted in an increase in illegal robocalls and, presumably, benefit both their customers and those trying to reach them.

Moreover, the Commission clearly did not agree with this argument when it specifically *encouraged* providers to notify callers when their calls were being blocked.²⁵ At any rate, even assuming some bad actors attempt another route to reach consumers upon being notified that

²⁰ See USTelecom Comments at 7 (urging the Commission to mandate robocall mitigation but provide flexibility in addressing how to do so).

²¹ See, e.g., TNS Comments at 3.

²² See, e.g., Cloud Communications Alliance Comments at 3 (alleged harm from notification belied by existing use of intercept messages); Noble Systems Comments at 18-22 (noting lack of evidence of harm from notifications).

²³ TNS, for example, argues that notification might facilitate “snowshoe spamming” where illegal robocallers spread calls over more numbers. TNS Comments at 3. This tactic, however, apparently is already occurring and TNS offers no evidence that it has been a reaction to existing notification practices as opposed to blocking efforts generally, or that notification would increase use of this practice.

²⁴ The Commission’s June 2020, Call Blocking Report identified a number of providers that offer some form of notification, including AT&T, CenturyLink, Comcast and Cox. Call Blocking Tools Now Substantially Available to Consumers: Report on Call Blocking, CG Docket No. 17-59, Consumer and Governmental Affairs Bureau, June 2020 at 12-16 (“Call Blocking Report”), <https://docs.fcc.gov/public/attachments/DOC-365152A1.pdf>.

²⁵ *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Declaratory Ruling and Third Further Notice of Proposed Rulemaking, 34 FCC Rcd 4876, 4888-89, ¶ 38 (2019).

their call attempts are being blocked,²⁶ that hypothetical harm must be weighed against the documented considerable harms and costs imposed on callers and their customers when legitimate calls are blocked or mislabeled without informing the caller.²⁷ The Commission should not assume that the potential harm from alerting bad actors that their calls are blocked exceeds the actual harm to consumers who miss important calls.²⁸

II. The Record Demonstrates the Need for Response and Resolution Deadlines

The Commission requires providers blocking calls to resolve complaints about erroneous blocking within a reasonable time and has sought further comment on whether more concrete timeframes should be adopted.²⁹ The record developed in this proceeding provides substantial evidence of the need for the Commission to specify what constitutes a reasonable amount of time. The comments received by the Commission reveal that providers have starkly divergent views on this issue. Time limits proposed for resolving complaints range from 24 hours to up to 45 days for smaller providers engaged in blocking, an untenable and unreasonable 4,400% difference in proposed response times.³⁰ The TRACED Act's requirement for "effective" redress requires more than open-ended, subjective time frames that stretch into days or weeks before erroneous blocks are removed. The Associations thus reiterate their

²⁶ As Noble Systems points out, another response may be that the bad actor stops trying altogether, which is the ultimate goal of the war on illegal robocalls. Noble Systems Comments at 19.

²⁷ See, e.g., Telnyx Comments at 2 (noting that its customers include doctors, pharmacies and schools who rightfully expect prompt resolution of inappropriate call blocking.)

²⁸ Noble Systems Comments at 19.

²⁹ Fourth Further Notice at ¶ 108.

³⁰ See, e.g., American Bankers Association et al. Comments at 11 (erroneous blocks should be removed within 24 hours); Securus Comments (investigate complaints within 24 hours); NAFCU Comments at (resolve within 24 hours); INCOMPAS (suggesting no time limit, but if one established, recommending 72 hours based on the Industry Traceback Group's response deadlines); Twilio Comments at 4-5 (redress within 3 days); WTA Comments at 13 (proposing resolution time limit of at least 30 to 45 days).

request that the Commission adopt a 24-hour time frame within which to lift an erroneously applied block.

If more time is needed to resolve a particular complaint, the burden should be on the blocking provider to demonstrate why it was unable to resolve the complaint within the time limit established. The Commission could, for example, require providers that cannot meet the established deadline to contact the caller before the deadline expires and briefly explain why it cannot resolve the matter within the time allotted and provide a good-faith estimate of when it will reach its determination. The repeated inability to meet the deadline should be grounds for Commission intervention. A vague reasonableness standard provides no baseline against which to measure dilatory responses and, as demonstrated in the record, leaves legitimate businesses without any expectation that their complaints will be heard, recognized, and resolved within a reasonable amount of time.

In addition to setting a time limit for resolving complaints, the Associations concur with other commenters that the Commission should set a time limit for providers to acknowledge receipt of a complaint. Acknowledgement of receipt is especially important if the Commission establishes a longer time limit for resolution than 24 hours or refuses to adopt any time limit for resolution beyond what is “reasonable” under the circumstances.³¹ There is no reason why a simple acknowledgement cannot be sent within a matter of hours, if not minutes, particularly for entities that establish web-based portals for complaint intake. A responsive email or text could be sent automatically and virtually instantaneously as long as the complaint contains an email or telephone number to which a response can be sent.³² Such acknowledgements are a

³¹ See, e.g., Comcast Comments at 6-7; Neustar Comments at 5.

³² Where the complaint contains readily accessible contact information the concerns raised by WTA on behalf of smaller providers that it may take some time to identify the entity whose calls are being blocked are alleviated.

common occurrence in any number of industries for a number of circumstances and do not impose an undue burden on providers.

III. Redress, Including Notification, Should Apply to Mislabeled Calls

The Commission should impose the same redress obligations for mislabeling a call that it established for blocking. A voice service provider that attaches labels or partners with an analytics provider to attach labels should be required to identify a point of contact to receive complaints about mislabeling and this may be the same contact identified for erroneous blocking. The provider should also be required to resolve mislabeling disputes within the same time frame required to investigate and resolve blocking. In either case, the investigation will determine whether the caller is legitimate. Notification that a provider is attaching an adverse label on a call should also be required.

The record supports imposing the same redress mechanisms, including notification, on providers that mislabel calls. As pointed out by various parties, labeling a call as “spam” or “fraud likely” is tantamount blocking because consumers will not take the call.³³ Mislabeling may be more pernicious because, as Twilio notes, it “can be more difficult to detect and appears to be widespread.”³⁴ It is arbitrary and capricious to provide redress for overt blocking of legitimate calls while ignoring a practice, mislabeling, that has the same harmful outcome for callers and for consumers who are inadvertently misled into believing a potentially critical call is likely a scam. Entities that have voluntarily provided some form of redress apply their regimes to both blocking and labeling of calls, confirming that there is no reason to distinguish between them when it comes to providing redress.³⁵

³³ See, e.g., Cloud Communications Alliance Comments at 9; NTCA Comments at 4; Twilio Comments at 3.

³⁴ Twilio Comments at 3, 5-6.

³⁵ See, e.g., First Orion Comments at 2.

The Commission has ample legal authority to adopt reasonable redress mechanisms to correct adversely labeled legitimate calls. As it did with respect to redress for erroneous call blocking, the Commission can rely on sections 201 and 202 of the Communications Act require traditional telecommunications carriers to adopt redress mechanism.³⁶ These provisions bar unreasonable, unjust, or unreasonably discriminatory actions. Attaching an adverse label such as “likely fraud” to a legitimate call should be considered an unjust and unreasonable practice in the absence of providing a transparent and effective redress mechanism.³⁷ Moreover, the TRACED Act expressly directs the Commission to address misidentification of a call as well as the inadvertent blocking of calls based on, in whole or in part, call authentication information.³⁸ As stated in the legislative history of the TRACED Act, safe harbors “should not be used to support blocking or mislabeling calls from legitimate businesses.”³⁹

Conclusion

For the reasons set forth above, the Associations urge the Commission to adopt a notification requirement and establish firm deadlines to resolve disputes for both erroneous blocking and mislabeling.

³⁶ Fourth Further Notice ¶¶ 61-62.

³⁷ Cf. Fourth Further Notice ¶ 62 (concluding that redress mechanisms are a “necessary corollary” to finding that blocking is just and reasonable under section 201(b) and to ensure that “lawful traffic is not impeded without the consent of the call recipient.”).

³⁸ See TRACED Act § 4(c)(1)(B) (in promulgating safe harbor rules, the Commission must address inadvertent blocking “*or inadvertent misidentification*” based on call authentication information.) (emphasis added); *id.* § 4(c)(2)(A) (requiring the Commission to consider limiting liability based on the extent to which a provider blocks “*or identifies calls*”) (emphasis added).

³⁹ S. Rep. No. 116-41, at 15 (2019).

Respectfully submitted,

s//Jonathan Thessin

Jonathan Thessin
Vice President/Senior Counsel
American Bankers Association
1120 Connecticut Avenue, NW
Washington, DC 20036
(202) 663-5016

s//Damon Smith

Damon Smith
Senior Director of Advocacy and Counsel
Credit Union National Association
99 M Street, SE #300
Washington, DC 20003
(202) 235-3390

s//Leah Dempsey

Leah Dempsey
Vice President and Senior Counsel, Federal
Advocacy
ACA International
509 2nd Street, NE
Washington, DC 20002
(410) 627-3899

s//Celia Winslow

Celia Winslow
Senior Vice President
American Financial Services Association
919 18th Street, NW
Washington, DC 20006
(202) 776-7300

s//Stephen Congdon

Stephen Congdon
Assistant Vice President, Regulatory
Counsel
Consumer Bankers Association
1225 New York Avenue, NW, Suite 1100
Washington, DC 20005
(202) 552-6381

s//Justin Wiseman

Justin Wiseman
Associate Vice President, Managing
Regulatory Counsel
Mortgage Bankers Association
1919 M Street, NW
Washington DC 20036
(202) 557-2854

s//Elizabeth LaBerge

Elizabeth LaBerge
Senior Regulatory Counsel
National Association of Federally-Insured
Credit Unions
3138 10th St. N.
Arlington, VA 22201
(703) 842-2272

s//Scott Buchanan

Scott Buchanan
Executive Director
Student Loan Servicing Alliance
1100 Connecticut Avenue, NW
Suite 1200
Washington, DC 20036
(202) 262-8348

s//Paul Martino

Paul Martino
Vice President, Senior Policy Counsel
National Retail Federation
1101 New York Ave., NW,
Washington, DC 20005
(202) 783-7971

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APPENDIX

The American Bankers Association is the voice of the nation's \$21.1 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard nearly \$17 trillion in deposits, and extend nearly \$11 trillion in loans.

ACA International is the leading trade association for credit and collection professionals. Founded in 1939, and with offices in Washington, D.C. and Minneapolis, Minnesota, ACA represents 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. As part of the process of attempting to recover outstanding payments, ACA members are an extension of every community's businesses. Without an effective collection process, businesses and, by extension, the American economy in general, is threatened. 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.

The American Financial Services Association (AFSA) is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with closed-end and open-end credit products including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

The Consumer Bankers Association is the only national trade association focused exclusively on retail banking. Established in 1919, the association is now a leading voice in the banking industry and Washington, representing members who employ nearly two million Americans, extend roughly \$3 trillion in consumer loans, and provide \$270 billion in small business loans.

The Credit Union National Association, Inc. (CUNA) is the largest trade association in the United States serving America's credit unions and the only national association representing the entire credit union movement. CUNA represents nearly 5,300 federal and state credit unions, which collectively serve more than 120 million members nationwide. CUNA's mission in part is to advocate for responsible regulation of credit unions to ensure market stability, while eliminating needless regulatory burden that interferes with the efficient and effective administration of financial services to credit union members.

The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry that works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans.

The National Association of Federally-Insured Credit Unions (NAFCU) advocates for all federally-insured not-for-profit credit unions that, in turn, serve 121 million consumers with personal and small business financial service products. NAFCU provides its credit union members with representation, information, education, and assistance to meet the constant challenges that cooperative financial institutions face in today's economic environment. NAFCU proudly represents many smaller credit unions with relatively limited operations, as well as many of the largest and most sophisticated credit unions in the nation. NAFCU represents 75 percent of total federal credit union assets and 54 percent of all federally-insured credit union assets.

The National Retail Federation (NRF), the world's largest retail trade association, passionately advocates for the people, brands, policies and ideas that help retail thrive. From its headquarters in Washington, D.C., NRF empowers the industry that powers the economy. Retail is the nation's largest private-sector employer, contributing \$3.9 trillion to annual GDP and supporting one in four U.S. jobs — 52 million working Americans. For over a century, NRF has

been a voice for every retailer and every retail job, educating, inspiring and communicating the powerful impact retail has on local communities and global economies.

The Student Loan Servicing Alliance (SLSA) is the nonprofit trade association that focuses exclusively on student loan servicing issues. Our membership is responsible for servicing over 95% of all federal student loans and the vast majority of private loans, and our membership is a mix of companies, state agencies, non-profits and their service partners. Our servicer members and affiliate members provide the full range of student loan servicing operations, repayment support, customer service, payment processing, and claims processing for tens of millions of federal and private loan borrowers across the country.