



January 29, 2020

Submitted via Electronic Comment Filing System

Ms. Marlene H. Dortch

Secretary

Federal Communications Commission

RE: Comments to provide input for the first FCC staff report on call blocking -- Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59, and Call Authentication Trust Anchor , WC Docket No. 17-97

I write to provide input into the first FCC staff report on call blocking, on behalf of the Insights Association¹ and the marketing research and data analytics industry we represent.

The Insights Association continues to support the intent of the FCC's efforts to combat the scourge of illegal and fraudulent phone calls, which make consumers less likely to answer any call on their phone (including calls for marketing research). Hence, we heartily encourage the FCC's attempts to go after bad actors who pay no heed to the requirements and restrictions of law, such as the Telephone Consumer Protection Act (TCPA), nor to the best practices and codes and standards of industry bodies representing callers.²

As acknowledged in the FCC June 2019 Declaratory Ruling,³ the agency needs to consider more than just levying fines to counter illegal and fraudulent calls.⁴ Some of the problem would be alleviated by

¹ The Insights Association is the leading nonprofit association representing the marketing research and data analytics industry, helping our members provide competitive advantage. IA members are the world's leading producers of intelligence, analytics and insights defining the needs, attitudes and behaviors of consumers, organizations and their employees, students and citizens. With that essential understanding, leaders can make intelligent decisions and deploy strategies and tactics to build trust, inspire innovation, realize the full potential of individuals and teams, and successfully create and promote products, services and ideas.

² These include the Insights Association Code of Standards and Ethics for Marketing Research and Data Analytics <https://www.insightsassociation.org/issues-policies/insights-association-code-standards-and-ethics-market-research-and-data-analytics-0>

³ Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59, WC Docket No. 17-97, Declaratory Ruling and Third Further Notice of Proposed Rulemaking, 34 FCC Rcd 4876 (2019) (Call Blocking Declaratory Ruling and Third Further Notice). <https://ecfsapi.fcc.gov/file/0607046191409/FCC-19-51A1.pdf>

⁴ For example, according to the Wall Street Journal, the FCC has levied \$208.4 million in fines for TCPA violations since 2015, of which only \$6,790 has been collected. See: "The FCC Has Fined Robocallers \$208 Million. It's

reforming the TCPA to focus strictly on bad actors and fraudulent calls, which the Insights Association has long urged, and allowing FCC enforcement to focus on bad actors, without distraction. The FCC's 2015 TCPA rules, which defined an autodialer as anything short of a rotary dial phone and thus created massive liability for almost all phone calls to a cell phone, were rejected by a Circuit Court decision in 2017, and we're still waiting on FCC rules in response. Similarly, the Insights Association and AAPOR filed an FCC petition in October 2017 for clarification on the difference in TCPA between marketing and marketing research;⁵ that petition also remains unanswered.

The further problem with the June 2019 Declaratory Ruling is that it didn't bother to drill down on illegal calls, or even just robocalls, but effectively encouraged the blocking of **any** calls, and the telephone ecosystem is working out the exact same way. The FCC noted that the call blocking and authentication measures in the Declaratory Ruling "were essential to curtailing illegal calls," but the Declaratory Ruling's vision of "reasonable analytics designed to identify unwanted calls" turns out to be a system that treats most legitimate voice calls as telemarketing and/or automated calls that should be blocked, or at least labeled as spam, regardless of their legality or illegality. Those blocking and labeling systems and algorithms not only struggle to differentiate between legal and illegal calls, they similarly fail to determine if the call recipient has consented to the call, such as by opting into a marketing research panel. Nowadays, those challenges are what legitimate dialers, including Insights Association members conducting bona fide marketing research,⁶ face when trying to place calls to American consumers and households.

The FCC is seeking all sorts of "data and other information on the effectiveness of call-blocking tools offered to consumers,"⁷ of which the most salient to the Insights Association revolve around the issue of "false positives" – calls improperly blocked or labeled.

Collected \$6,790." By Sarah Krouse. The Wall Street Journal. March 28, 2019. <https://www.wsj.com/articles/the-fcc-has-fined-robocallers-208-million-its-collected-6-790-11553770803>

⁵ The Insights Association and AAPOR File FCC Petition Seeking Legal Differentiation for Marketing and Research. October 30, 2017. <https://www.insightsassociation.org/article/insights-association-and-aapor-file-fcc-petition-seeking-legal-differentiation-marketing-and>

⁶ "Bona fide marketing research" is the collection, use, maintenance, or transfer of personal information as reasonably necessary to investigate the market for or marketing of products, services, or ideas.

⁷ "What are the most appropriate metrics to measure the effectiveness of call-blocking tools, e.g., by fraction of illegal calls blocked? How effective are available tools at blocking illegal and unwanted calls? What tools, if any, send an intercept message for blocked calls? How do blocking tools define false positives? What is the rate of false positives? How do the tools remedy false positives? What is the rate of false negatives (illegal or unwanted calls that reach consumers)? What is the number of illegal robocalls transiting our phone system? How is that number determined?" Further, the FCC asked about how voice service providers have "responded to the Commission's actions to empower them to protect their customers from illegal calls? What initiatives have voice service providers implemented as a result of these and other actions by the Commission? Do voice service providers block Do-Not-Originate calls? Have consumers seen a corresponding reduction in scam calls from numbers on the Do-Not-Originate list, such as Internal Revenue Service and Social Security Administration numbers that unauthorized callers have fraudulently spoofed? Have voice service providers implemented the blocking of calls that purport to be from invalid, unallocated, or unused numbers? Do voice service providers offer opt-out call-blocking programs?

Sadly, voice service providers and call blocking and labeling providers may have an incentive to downplay their rates and skew their definitions. Legitimate callers, including Insights Association members, are discovering a need to pay handsomely to voice service providers and call blocking and labeling providers, when possible, for vetting and the hope that their calls might get through the minefield of blocking and labeling to reach the intended consumers.

In the bigger picture, voice service providers and call blocking and labeling providers share a common interest with us legitimate callers in mitigating the problem of false positives, especially with labeling. Inaccurate labels or automatic over-blocking may result in telephone subscribers missing important calls (not just a call from an emergency service – important is in the eye of the beholder). Once that happens, the value of labeling and blocking diminishes to the consumer. Therefore, errors in the ecosystem can impact everyone negatively.

The telephone ecosystem is complicated, which is part of the reason that if a research call center collaborates (generally at extra cost) with their local voice service provider for help in getting their calls through the minefield, there is a limit to what that provider can do, since the call may end up transferred across multiple providers' systems and have to traverse multiple different call analytics algorithms all without the originating transmission information necessarily making it through each hoop.

The recently enacted TRACED Act (P.L. 116-105) has new requirements for how the FCC is supposed to treat call blocking services. The FCC has to "take a final agency action" by the end of 2020 to "ensure" that "robocall blocking services" include "transparency and effective redress options for both" consumers and callers and "are provided with no additional line item charge to consumers and no additional charge to callers for resolving complaints related to erroneously blocked calls," and "make all reasonable efforts to avoid blocking emergency public safety calls."

That requirement to provide "transparency and effective redress options" to dialers is a key part of the TRACED Act. The Insights Association urges the FCC to make transparency and redress a priority since many research calls are now being blocked outright or labeled as spam (or telemarketing) without the callers ever knowing or having any form of redress. This drives up the cost of producing insights via the telephone, which remains an important tool in the research toolbox when it comes to reaching various audiences, especially for public opinion and government-sponsored surveys, and hurts those insights' accuracy.

The current opaque and unaccountable telephone environment was in motion before the June 2019 Declaratory Ruling, but the FCC solidified and justified this result by worrying only about direct impact on consumers and voice service providers and disregarding the concerns of legitimate callers.

The Insights Association urges the FCC to:

1. Issue clear guidance for voice service providers and call blocking and labeling providers to use in distinguishing between types of calls (something which we have previously noted⁸ does not

If so, how many consumers have opted out? Do voice service providers offer opt-in white-list blocking? If so, how many consumers have requested such blocking?"

⁸ As explained in the Insights Association's April 2018 Ex Parte letters: "Perhaps unintentionally, the FCC is helping to fuel the call blocking and tagging problem by releasing questionable complaint data every quarter. We

even happen in the quarterly data releases from the FCC complaint file), since an “unwanted” call could be *any* call; and

2. Promote accountability and transparency, as required by the TRACED Act, through national standards on the following:
 - a. How legitimate callers, like those in the marketing research industry, can provide attestation to the voice service providers and call blocking and labeling providers that they are legitimate and not bad actors;
 - b. How marketing research callers may provide the caller identification information of the client on whose behalf they are calling – a research practice performed with the consent of the client – without being treated as illegal or spam calls;
 - c. How voice service providers and callers to be informed if a legitimate call has been blocked or mis-labeled, and with what speed and frequency;
 - d. Improvement of call analytics algorithms such that they are not triggered simply by numbers originating a high volume of calls or turning up in a handful of social media complaints; and
 - e. Requirement that voice service providers and call blocking and labeling providers offer useable and swift mitigation and remediation options for such calls and any callers subject to erroneous blocking or mis-labeling.

The FCC’s aim should be to ensure that legitimate calling entities may know when their calls are being blocked, check the status of their calls and their outgoing numbers, and request changes to correct any mistakes. A safe harbor was rushed for the voice service providers to encourage them to roll out call blocking en masse; it is time for the FCC to accept the consequences of that rush and work to mitigate those consequences.

Consumers obviously need help against scam calls and caller ID spoofing. Unfortunately, legitimate calls are already being blacklisted en masse, leading to marketing research calls being blocked or mislabeled as spam, with consumers and voters being deprived of their opportunity to confidentially share their concerns on policy issues, elections, products and services to improve the quality of life for all.

Telephone research is still one of the marketing research modes with the least bias and greatest reach, but it faces massive challenges. Call blocking and labeling has combined with the ongoing restrictions of the FCC’s 2015 TCPA rules (which made legitimate calls to cell phones problematic without class actions

respectfully request that the FCC reconsider these data dumps, or at least incorporate specific data for each call record, such that every call about which someone files a complaint does not get automatically added to every black list in the U.S. Particularly since illegal robocalls generally use spoofed caller ID, how many legitimate callers or run-of-the-mill phone subscribers are being inadvertently blacklisted when some scam artist briefly uses their numbers for a scam call campaign?” <https://ecfsapi.fcc.gov/file/104162415127688/IA-FCC-Bender-Susskind-ex-parte-4-16-18.pdf> and <https://ecfsapi.fcc.gov/file/1042090044601/IA-FCC-Litman-Martinez-ex-parte-4-20-18.pdf>

from serial plaintiffs but resulting in little success combating scam callers) to lower telephone survey response rates to an average of five percent or less, according to the Pew Research Center.

Citizens often ask why they never get called for a survey; overreaching and misdirected attempts to protect them from almost any calls may help explain why consumers are getting scammed instead of surveyed.

The Insights Association remains committed to working with the FCC and voice service providers and call blocking and labeling providers in pursuit of consumer protection, and transparency and accountability in the telephone ecosystem for both callers and call recipients.

Sincerely,

A handwritten signature in black ink, appearing to read "Howard Fienberg". The signature is fluid and cursive, with a stylized "H" and "F".

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VP Advocacy

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