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May 31, 2019

VIA ECFS

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

Re: *Ex Parte* Communication of ACA Connects – America’s Communications Association; *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59; *Call Authentication Trust Anchor*, CG Docket No. 17-97

Dear Ms. Dortch:

On May 29, 2019, Ross Lieberman, Sr. Vice President of Government Affairs for ACA Connects – America’s Communications Association (“ACA Connects”)¹ and I discussed the above-captioned proceedings in separate meetings with Zenji Nakazawa, Public Safety and Consumer Protection Advisor to Chairman Ajit Pai, and Karen Schroeder of the Consumer and Governmental Affairs Bureau; Arielle Roth, Wireline Legal Advisor to Commissioner Michael O’Rielly; Travis Litman, Chief of Staff to Commissioner Jessica Rosenworcel; and Michael Scurato, Acting Legal Advisor for Media and Consumer Protection to Commissioner Geoffrey Starks.

In these meetings, ACA Connects expressed its support for the Commission’s adoption of a declaratory ruling that affirms voice providers’ ability to offer robocall blocking services (“call-blocking programs”) to customers on an informed opt-out basis.² The massive volume of illegal robocalls and spoofed calls that consumers receive is indeed a “scourge,”³ one that threatens of the utility and the integrity of the nation’s telephone network. These calls are obnoxious, and often dangerous. The Commission observes that one scam alone “has resulted in

¹ ACA Connects was known previously as the American Cable Association (“ACA”).

² See *Advanced Methods to Target and Eliminate Unlawful Robocalls et al.*, CG Docket No. 17-59 et al., Declaratory Ruling and Third Further Notice of Proposed Rulemaking, FCC-CIRC1906-01 (rel. May 16, 2019) (“Public Draft”).

³ See *id.*, ¶ 2.

14,700 victims collectively losing more than \$72 million since October 2013,” and bad actors continually devise new schemes to defraud consumers. ACA Connects thus applauds the Commission for its efforts on many fronts to address this urgent problem, including in the draft declaratory ruling.

As ACA Connects has explained in previous filings, this ruling will encourage voice service providers to protect far more of their customers from nuisance calls and scams, while preserving the right of each customer to make an informed choice.⁴ Indeed, several ACA Connects members, including some using VoIP technology and others TDM and some serving urban areas and others rural, recently submitted a joint letter explaining how the ruling would empower them “to do more to shield our customers from the ceaseless torrent of robocalls.”⁵ The ruling is also consistent with the Commission’s prior guidance on consumer call-blocking tools.⁶

In its meetings, ACA Connects also explained that voice service providers have a strong incentive to provide call blocking tools that improve the customer experience and that minimize blocking of calls that customers want, so it is reasonable to expect the call-blocking programs that providers deploy on an opt-out basis to be welcomed by customers. Indeed, we would expect providers to deploy on an opt-out basis the same tools that are popular today among customers that use them on an opt-in basis. Those customers who are less technologically savvy—and may be among those most vulnerable to robocall scams—are the ones most likely to benefit from having tools available on an opt-out basis, without any need to sign up. Moreover, as the Public Draft and Commission precedent make clear, those providers offering call blocking on an opt-out basis will need to give customers sufficient information to make an informed choice whether to take the call blocking or opt out.⁷

⁴ See Comments of ACA in CG Docket No. 17-59 (filed Sept. 24, 2018); Reply Comments of ACA in CG Docket No. 17-59 (filed Oct. 9, 2018); Letter From Brian Hurley, ACA, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 17-59 (filed Nov. 13, 2018).

⁵ See Letter from Eight Small and Medium-Sized Voice Service Providers to Marlene H. Dortch, Secretary, FCC, CG Dockets No. 17-59 and 17-97 (filed May 29, 2019).

⁶ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, WC Docket No. 07-135, Declaratory Ruling and Order, 30 FCC Rcd 7961, 8035-36, para. 156 (2015) (*2015 TCPA Order*), vacated in part, aff’d in part, *ACA Int’l et al. v. FCC*, 885 F.3d 687 (D.C. Cir. 2018) (“[T]here appears to be no legal dispute in the record that the Communications Act or Commission rules do not limit consumers’ right to block calls, as long as the consumer makes the choice to do so.”); Public Draft, ¶ 36 (“Although the *2015 TCPA Order*, in a single sentence, referred to opt-in call-blocking programs, it did not suggest that such a narrow ruling was required, nor did it claim to prohibit opt-out call-blocking programs. Accordingly, we clarify that voice service providers may offer consumers call blocking through an opt-out process.”).

⁷ See Public Draft, ¶ 32; see also *2015 TCPA Order*, n.514. Contrary to the assertions of some commenters, the draft ruling would authorize service providers to offer call-blocking programs only if they give customers “enough information to know their right to opt out.” See, e.g., Letter from Todd Lane to Marlene H. Dortch, Secretary, FCC, CG Dockets No. 17-59 and 17-97 at 1 (filed May 29, 2019).

We appreciate that any call-blocking program carries some risk of blocking wanted calls, and we would be concerned if a call-blocking program was found to block such calls at higher levels than they do today or used “analytics” that resulted in disproportionate blocking of legitimate calls from certain classes of residential telephone customers.⁸ As noted above, ACA Connects members, like other voice providers, have strong incentives to avoid call-blocking technologies that suffer from such defects. In the absence of evidence that any particular call-blocking program is defective, the Commission should declare its intent to monitor the marketplace and to intervene as necessary to ensure that opt-out call-blocking programs are being implemented in a manner that is consistent with the pro-consumer intent of the declaratory ruling. In the meantime, we support the approach of the Public Draft not to impose prescriptive requirements or conditions on opt-out call-blocking programs, as doing so could inadvertently undermine the effectiveness of existing programs, or “impede the ability of voice service providers to develop dynamic blocking schemes that evolve with calling patterns.”⁹ These outcomes could deter voice service providers from offering them in the first place or expanding existing ones. As the old adage goes, “if it ain’t broke, don’t fix it.”

Finally, ACA Connects proposed a revision to the text of the Public Draft to affirm the clear intent of the ruling that call-blocking programs may employ third-party call-blocking technologies.¹⁰ In particular, ACA Connects recommends modifying the second-to-last sentence of paragraph 32 of the Public Draft to read as follows (emphasis added to highlight the revised language):

“At a minimum, we would expect each voice service provider to describe in plain language how *the call-blocking program* chooses to block certain calls...”¹¹

This revision would make clear that the guidance being conveyed in paragraph 32 applies to call-blocking programs in general, including ones that employ third-party robocall blocking technologies.

* * *

⁸ For instance, we would find it unreasonable for a call-blocking program to use an “analytic” that resulted in indiscriminate blocking of calls originating from rural telephone carriers. See Letter From Brian Ford, NTCA, to Marlene H. Dortch, Secretary, FCC, CG Dockets No. 17-59 and 17-97 (filed May 24, 2019). Other commenters also raise concerns about the potential for over-blocking. See, e.g., Letter From Mark Brennan, Counsel to the American Association of Healthcare Administrative Management to Marlene H. Dortch, Secretary, FCC, CG Dockets No. 17-59 and 17-97 (filed May 28, 2019).

⁹ Public Draft, ¶ 33. We have no objection to the Commission working collaboratively with voice service providers, technology vendors, consumer advocates and other parties on best practices or other voluntary measures aimed at increasing the value to consumers of call-blocking programs.

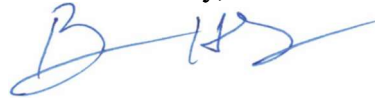
¹⁰ See *id.*, ¶ 26 (noting that “Nomorobo is a widely available call-blocking program” that “[n]early 40 voice service providers offer . . . to their VoIP customers”).

¹¹ The passage now reads: “At a minimum, we would expect each voice service provider to describe in plain language how *it* chooses to block certain calls...” See *id.*, ¶ 32 (emphasis added).

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I have filed this letter electronically pursuant to section 1.1206 of the Commission's rules.

Sincerely,

A handwritten signature in blue ink, appearing to read "B Hurley", with a long horizontal flourish extending to the right.

Brian Hurley

cc: Zenji Nakazawa
Karen Schroeder
Arielle Roth
Travis Litman
Michael Scurato