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VIA ECFS

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

Re: *Ex Parte* Communication of the American Cable Association; *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59.

Dear Ms. Dortch:

On November 26, 2018, the undersigned and Ross Lieberman, Senior Vice President of Government Affairs, American Cable Association (“ACA”), met with Travis Litman, Chief of Staff and Senior Legal Advisor to Commissioner Jessica Rosenworcel, to discuss ACA’s proposal that the Commission affirm voice providers’ ability to offer robocall blocking tools to their customers on an informed opt-out basis.¹ During that meeting ACA presented, and now underscores, the following points.

First, unwanted calls are “far and away the biggest consumer complaint to the FCC with over 200,000 complaints each year.”² YouMail estimates that American consumers are subjected to *billions* of robocalls each month, many perpetrating scams that can impose serious harms on those they victimize.³ The Commission is right to be focusing its attention on helping to mitigate this problem.

Second, voice customers have the right to block calls they do not want,⁴ and effective tools exist for them to do so. As the Commission, Federal Trade Commission, and others have acknowledged, a

¹ See *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Comments of the American Cable Association (filed Sept 24, 2018) (“ACA Comments”); Reply Comments of the American Cable Association (filed Oct. 9, 2018) (“ACA Reply Comments”).

² See Federal Communications Commission, *The FCC’s Push to Combat Robocalls & Spoofing*, <https://www.fcc.gov/about-fcc/fcc-initiatives/fccs-push-combat-robocalls-spoofing> (last visited Nov. 13, 2018).

³ See, e.g., YouMail Robocall Index, <https://robocallindex.com/> (last visited Nov. 13, 2018).

⁴ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 et al.*, CG Docket No. 02-278 et al., Declaratory Ruling and Order, 30 FCC Rcd 7961, 8030-35, ¶¶ 152-163 (2015) (“2015 Declaratory Ruling”).

wide variety of tools are available today that can help consumers block unwanted robocalls.⁵ Consumer advocates have observed in this proceeding that “[such] advanced call-blocking tools have been shown to provide the consumers who use them with real relief from robocalls.”⁶

Third, voice service providers can help facilitate their customers’ use of robocall blocking tools. As the Commission has explained, “nothing in the Communications Act or [its] rules or orders prohibits carriers or VoIP providers from implementing call-blocking technology that can help consumers who choose to use such technology to stop unwanted robocalls.”⁷ Moreover, the Commission has made clear that providers may deploy these tools to their customers on an opt-in basis.⁸

Fourth, relatively few customers take advantage of advanced call-blocking tools when they are offered by voice service provider on an opt-in basis.⁹ While this discrepancy may seem surprising given how much consumers complain about unwanted calls, it is well known that inertia can suppress opt-in participation rates.¹⁰

⁵ See, e.g., ACA Comments at 2-3, n.6.

⁶ See *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Comments of Consumers Union, National Consumer Law Center on-behalf of its low-income clients, and Consumer Federation of America at 5 (filed Aug. 20, 2018) (“Consumer Commenters Aug. 20, 2018 Comments”).

⁷ 2015 Declaratory Ruling, ¶ 152. The Commission has distinguished consumer use of call-blocking technologies from blocking performed by a provider at the network level “without customer opt-in or consent.” See *Consumer and Governmental Affairs Bureau Seeks to Refresh the Record on Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Public Notice, DA 18-842 at n.1 (CGB rel. Aug. 10, 2018). ACA’s proposal concerns only the former, so granting the proposal would have no effect on providers’ ability to block unlawful calls at the network level consistent with Commission rules.

⁸ See 2015 Declaratory Ruling, ¶ 154 (finding that “there is no legal barrier to stop [voice providers] from implementing call-blocking technology and offering consumers the choice, through an informed opt-in process, to use such technology to block individual calls or categories of incoming calls”).

⁹ See Consumer Commenters Aug. 20, 2018 Comments at 5.

¹⁰ See, e.g., Richard Thaler, *Improving Retirement Saving Using Behavioral Economics*, available at <https://assets.aspeninstitute.org/content/uploads/files/content/upload/Thaler%20Aspen%20Secure%20Choice%2020.pdf> (last visited Nov. 13, 2018).

In light of these points, and the significant public benefit that would come from increasing consumer adoption of robocall blocking technologies, ACA requests that the Commission promptly issue a declaratory ruling that affirms voice providers' ability to offer robocall blocking tools to their customers on an informed an opt-out basis.¹¹

Empowering voice providers to offer robocall-blocking tools on an opt-out basis, so long as such tools are made available for free,¹² would encourage providers to offer such tools more widely to their customers than they do today— it would be a major win for consumers and this Commission.¹³ ACA notes that no actual legal restriction on voice providers offering these tools on this basis exists today. Indeed, one provider does.¹⁴ However, voice carriers who are ACA members are generally risk averse. There is interest among ACA members in deploying robocall blocking tools on an opt-out basis,¹⁵ but also reluctance to make the sizable investments necessary to do so without the same legal clarity that the Commission has afforded providers who offer these tools on an opt-in basis.

Moreover, as consumer advocates agree,¹⁶ robocall blocking can be implemented on an opt-out basis in a manner that upholds customer choice.¹⁷ The strongest incentives for a provider to offer free robocall blocking to customers on an opt-out basis are to improve the customer experience and help bolster the reputation of its voice product. A provider can realize these goals only if it provides robocall blocking that actually meets the needs of its customers. Nevertheless, providers should be expected to give adequate and timely disclosures as part of any robocall blocking performed on an opt-out basis so that customers can make informed decisions whether to use the call blocking.

¹¹ Such ruling should expand upon, not replace, the 2015 Declaratory Ruling. Providers should retain the flexibility to offer robocall-blocking tools on an opt-in basis.

¹² In other words, the provider would not charge its customers different prices for service based on whether a customer uses the robocall-blocking tool or opts out.

¹³ See ACA Comments at 4-6.

¹⁴ See *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Comments of Consumers Union, National Consumer Law Center on-behalf of its low-income clients, Consumer Federation of America, Consumer Action, National Association of Consumer Advocates, Public Citizen and Public Knowledge at 8 (filed Sept. 24, 2018) (“Consumer Commenters Sept. 24 Comments”) (“Sonic, a voice service provider in California, offers Nomorobo on the network level as an opt-out feature.”).

¹⁵ See ACA Comments at 5, n.13 (noting ACA member WOW’s interest in providing its customers a free robocall blocking tool on an opt-out basis).

¹⁶ See Consumer Commenters Sept. 24 Comments at 8 (urging the Commission to “encourage phone companies to consider opt-out call mitigation mechanisms”); see also ACA Reply Comments.

¹⁷ See ACA Comments at 6-8. The Commission has recognized in other contexts that customer approval may be obtained through opt-out mechanisms. See, e.g., 47 C.F.R. 64.2007(b) (permitting carriers to use an opt-out process to secure customer approval for use of proprietary customer data in marketing communications-related services to a customer).

This letter is being filed electronically pursuant to section 1.1206 of the Commission's rules. Please address to the undersigned any questions regarding this filing.

Sincerely,



Brian Hurley

cc: Travis Litman