



November 26, 2018

The Honorable Jerry Moran  
Chairman  
Subcommittee on Consumer Protection,  
Product Safety, Insurance, and Data Security  
United States Senate  
Washington, DC 20515

The Honorable Richard Blumenthal  
Ranking Member  
Subcommittee on Consumer Protection,  
Product Safety, Insurance, and Data Security  
United States Senate  
Washington, DC 20515

Dear Chairman Moran and Ranking Member Blumenthal:

On behalf of ACA International, I am writing regarding the hearing titled “Oversight of the Federal Trade Commission.” ACA International is the leading trade association for the accounts receivable management industry 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. We respectfully request that you accept this letter for the record.

The accounts receivable management 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, their chances improve of resolving that matter in the most favorable way.

Despite that our industry is highly regulated and making non-telemarketing, informational calls, not subject to the Do Not Call List, many debt collection calls have been blocked or impeded by technologies allegedly targeting robocalls. Some of the FTC efforts in this area should be commended concerning the focus on bad actors making illegal and abusive calls. However, going forward it is imperative that the FTC further consider how legitimate calls are being impacted. This should include an analysis of how best to develop protocols and/or a regulatory framework for call blocking and labeling apps to require differentiation between legal informational calls and illegal robocallers.

Over the past few years, the FTC has awarded grants to, and otherwise encouraged, third party app providers to block and label robocalls as part of efforts such as its Robocall Challenge.

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Although the FTC encourages these technologies, neither it nor the Federal Communications Commission (FCC) has developed a regulatory framework for this specialized industry. Despite good intentions, this has led to the de facto approved use of faulty analytics by these third party app providers, resulting in blocked calls made by legitimate businesses and industries. The FTC notes in regards to its Robocall Challenge, “The FTC isn’t endorsing any particular products or services. Before implementing any service involving personal information, companies should conduct a thorough privacy review and must consider and comply with the federal and state privacy, consumer protection, and other laws that may apply.” However, since third party apps are not regulated, it is unclear what protection such a statement provides to consumers and legal businesses. Plainly stated, the FTC encourages and in some cases pays for these robocall blocking apps, but then washes its hands of the process by providing no rules, guidelines, or compliance exams to follow. Additionally, there appear to be no consequences for using faulty analytics or blocking or mislabeling legal calls. Ultimately, legitimate businesses and industries are left with no recourse when their legitimate calls are blocked or mislabeled.

While in some instances consumers may have provided blanket consent to allow third party app providers to block and label calls, in most circumstances they are not provided disclosures or information regarding the circumstances when legitimate calls may not get through. As a result, it is far from clear whether consumers understand they may be inadvertently blocking calls that contain important financial or other exigent information from legal callers. As outlined below the accounts receivable management industry has significant evidence that legitimate calls are being blocked and mislabeled, and multiple other industries have highlighted similar concerns to the FCC through formal comments. Yet, there has been little recognition or corrective action from the FTC, and arguably the FCC, about this serious problem.

It is indisputable that illegal robocalls and scam calls harm consumers and efforts by the FCC and the FTC to stop them should be applauded. However, throwing the baby out with the bath water and ignoring that important, legitimate informational calls are being swept up in this effort could be extremely harmful to consumers when they do not receive critical information about their financial health, safety, and perhaps just for everyday convenience. As such, ACA encourages the Committee to examine this important issue as it conducts its oversight of the FTC.

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

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. Third party apps should not be enabled 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 federal consumer protection laws such as the Fair Debt Collection Practices Act (FDCPA) and a myriad of other consumer financial protection laws. These mobile applications should not unfairly mislabel, erroneously block, or create fake busy signals for highly legal calls made for informational and legitimate business purposes. Moreover,

even if they are accidentally doing so based on faulty analytics, there must be greater consequences for this harmful activity and recourse for the caller.

Our concerns fall into the following categories:

#### 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 level of concern recently when ACA became aware of call labeling which identified legal collection calls as “extortion.” This has prompted misguided complaints against the industry about legitimate call attempts, and worse, has caused reputational harm because calls are labeled with these confusing and sometimes slanderous labels. Moreover, the inability to communicate with consumers about their debt has forced creditors to resort to instead file lawsuits and obtain default judgments without ever having the ability to communicate with consumers to work out terms and conditions of repayment that may be more favorable or preferable to them.

#### B. Erroneously Blocked Calls

When legal collection calls are erroneously blocked, there must be more responsibility to identify this mistake and alert callers to it sooner. As the FCC considers longer term solutions to the problem of illegal robocalls, such as SHAKEN/STIR, the FTC and FCC should immediately address current problems that erroneously blocked calls are causing, including but not limited to, outlining how carriers or third party apps should remediate their mistakes and protocols for doing so.

#### C. 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 main focus of the FCC and FTC should be on narrowly targeting these illegal actors through enforcement actions and appropriately tailored technological solutions.

#### D. 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 violations.<sup>1</sup> 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 a cell phone. Yet, the FDCPA does not allow disclosure of debts to third parties. The debt collection industry is already subject to voluminous, often frivolous, litigation in this area, so unknown threats like labeling, which are beyond a credit and collection professionals control, are very concerning. A different, but just as pressing, concern in the case

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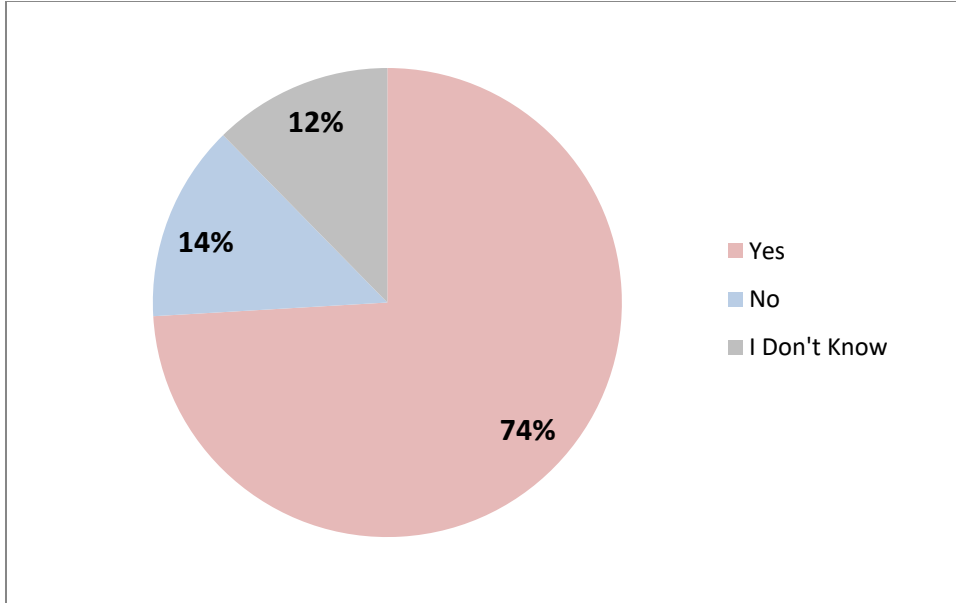
<sup>1</sup> 15 U.S. Code § 1692c (b).

of collection agencies is if no name or identification is provided during labeling, making it less likely for a consumer to trust or answer the unknown call.

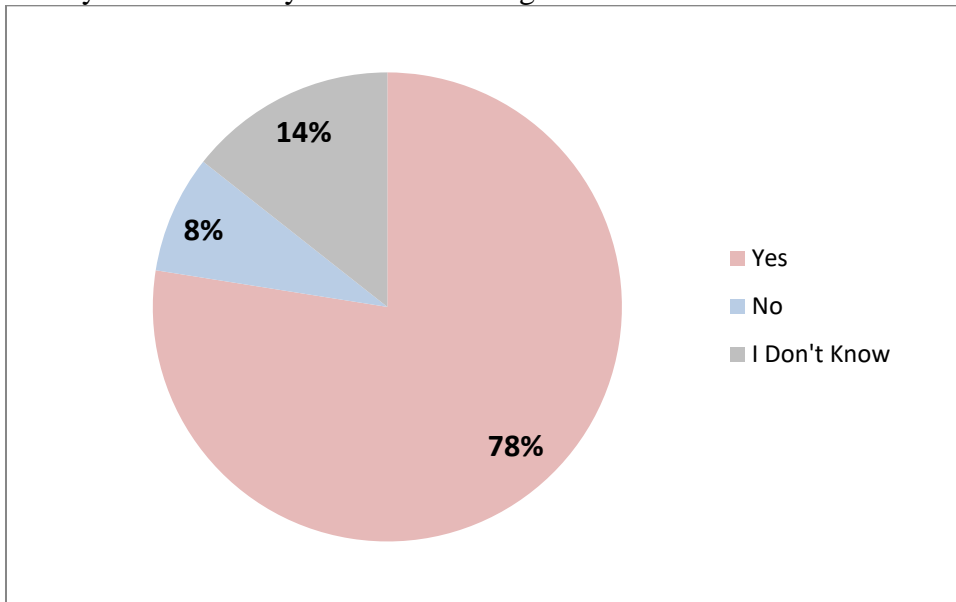
## II. ACA Member Survey Results for Call Blocking and Labeling

The data below highlights how ACA members are being harmed by faulty call blocking and labeling.

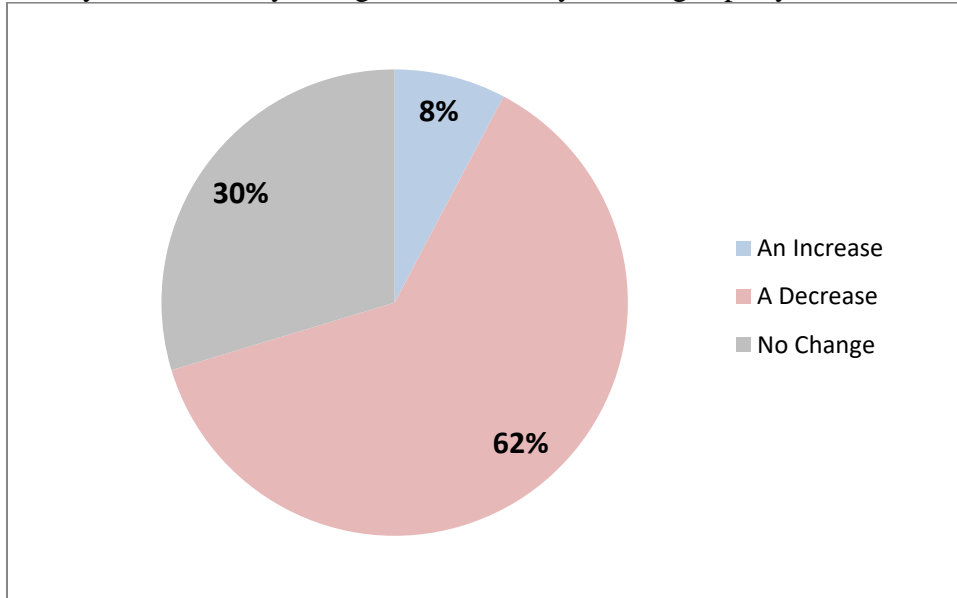
Have you discovered your calls are being mistakenly labeled as “scam” or “fraud” (or some other improper label)?



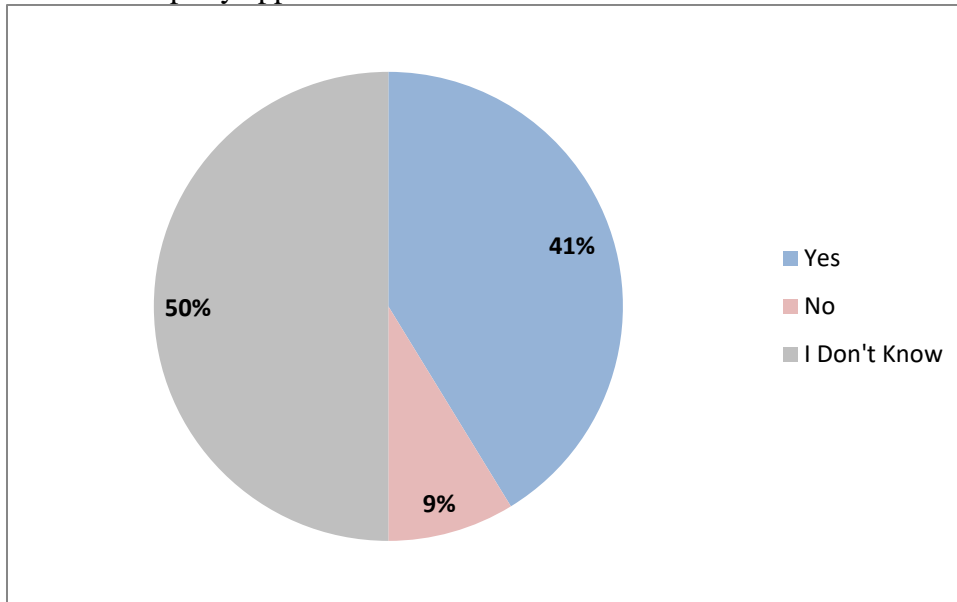
Have you discovered your calls are being blocked?



Have you noticed any change over the last year in right-party contacts?



In making calls to consumers, have you ever received a busy signal that you believe originated from a third-party application?



### **III. Consumers Benefit when they can Communicate with the Accounts Receivable Management Industry and Other Legitimate Business.**

Multiple regulatory agencies have recognized, some as recently as the past few months, the value to consumers of open communications with credit and collection professionals. As the U.S. Department of Treasury acknowledged in a July 2018 report, “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.” Similarly, the Small Business

Administration Office of Advocacy recognized the issues surrounding the Telephone Consumer Protection Act (“TCPA”) when communicating with consumers is so critical stating, “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.” Furthermore, the Bureau of Consumer Financial Protection recently emphasized “consumers benefit from communications with consumer financial products providers in many contexts, including receiving offers of goods and services and notifications about their accounts.” Now, the FTC must also recognize and appreciate that communication with consumers, especially for the accounts receivable management industry, is vital for consumer protection.

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, Congress should encourage the FTC to draw clear distinctions between communications that are illegal and abusive, and promote those that are highly legal and needed.

Thank you for your leadership in holding this hearing and your attention to these important matters.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Neeb', with a stylized flourish at the end.

Mark Neeb  
Chief Executive Officer