



pulse

Unsettled: Caller ID Blocking

If you're using caller ID blocking, you should be aware of potential compliance concerns that may arise under federal case law.

By Colin Winkler

This spring, during an episode of ACA International's Daily Huddle online conference series on call labeling and blocking, a member raised a question about caller ID blocking (also known as "masking"), which many of us know as *67. Some agencies find the use of *67 appealing, as it can help their calls get through to consumers. The member asked about potential compliance concerns that may arise from the use of *67.

This is a complicated question as the issue intersects with several compliance vectors at the state and federal levels. ACA has long maintained information on this topic in its ACA SearchPoint library, but here we take a more consolidated look at the compliance issues that can arise with this practice under federal case law.

FDCPA and Section 1692E: False Representations and Deceptive Practices?

Using *67 when calling a consumer raises some potential concerns under the Fair Debt Collection Practices Act, although at the time of this writing,

courts had not found a violation arising from *67 caller ID blocking.

At least two federal district courts have suggested that caller ID blocking via *67 could, in theory, constitute a false representation or deceptive practice under Section 1692e(10)—given the right facts.

The district judge in *C.f. Zortman v. J.C. Christensen & Assocs., Inc.*, 870 F. Supp. 2d 694, 702 (D. Minn. 2012) notes, "The propriety of blocking or otherwise preventing disclosure of caller identity is unsettled."

Zortman cites *Jimenez v. Accounts Receivable Mgmt., Inc.*, No. CV 09-9070, 2010 WL 5829206, at *6 (C.D. Cal. Nov. 15, 2010), which states: "[I]t is not impossible to imagine some scenario in which a debt collector's hanging up without leaving any identifying information might entail a violation of the statute [referring to the identification requirement] (for example, if the debt collector used some form of caller identification blocking device)."

To date, however, those "right facts" have not yet been presented to any federal court. The only federal court that has squarely considered this issue on

the merits found that, where a collection agency had used *67 to prevent its number from appearing on the consumer's caller ID, "the display in [the consumer's] caller ID device of the word 'unavailable' was entirely accurate."

[The agency] allegedly acted to make its telephone number unavailable to the caller ID devices of the individuals it telephoned. Such was accurately communicated to [the consumer] when his caller ID device displayed the word 'unavailable.'"

The court in *Glover v. Client Servs., Inc.*, No. 1:07-CV-81, 2007 WL 2902209, (W.D. Mich. Oct. 2, 2007), discerned "nothing false or deceptive about [this]." It cited *Accord Plumb v. Barclays Bank Delaware*, No. CV-11-3090-RMP, 2012 WL 2046506, at *6 (E.D. Wash., June 5, 2012), which noted, "Transmission by a debt collector of 'unavailable' to a caller ID device is not false or deceptive behavior under section 1692d(6) of the FDCPA."

In short, when it comes to caller ID blocking using *67 and compliance with FDCPA Section 1692e(10), the watchword for agency compliance should be "accuracy."

FCC Holds Inaugural Hospital Robocall Protection Group Meeting

Group is tasked with issuing best practices required by the TRACED Act this year.

By Katy Zillmer

The Federal Communications Commission's Hospital Robocall Protection Group met in July for its first meeting and discussion on pending best practices to help health care providers manage unlawful robocalls as well as call blocking and labeling, caller ID authentication and the FCC's robocall enforcement efforts.

"I am all too familiar with the negative impact robocalls have had on health care organizations and their ability to effectively operate and provide care to patients," said Dave Summitt, chief information security officer of Moffitt Cancer Center and chairman of the HPRG.

Through the Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act, Congress asked the group to tackle unlawful robocalls and issue best practices within about six months, FCC Chairman Ajit Pai said in his opening remarks.

The group's three priorities, according to Pai, are to determine:

- How voice service providers and other entities can better combat unlawful robocalls made to hospitals.
- How hospitals can better protect themselves from such calls, including by using unlawful robocall mitigation techniques.
- How the federal government and state governments can help combat these calls.

"These robocalls pose significant risks to and pose significant costs on medical professionals and facilities that rely on robust, ready and resilient voice services to do their job and to help address health crises in their communities every single day," Pai said. Summitt said unlawful robocalls are a "technology epidemic" for every critical infrastructure in the U.S.,

including health care providers.

"Unsolicited, fraudulent and malicious telephone calls are much more than just a nuisance or annoyance. They are disruptive and potentially dangerous or life threatening," he said. "Along with all good technology comes the method of bad actors taking advantage of good technology."

From a health care perspective, Summitt reported three issues/areas of concern:

- Caller ID showed calls coming into Moffitt's Cancer Center as from its own organization.
- Calls placed to individuals across the state and U.S. using the Moffitt Cancer Center name as the calling number.
- Calls to specific individuals inside Moffitt's organization, mainly care providers, to obtain confidential information to carry out further activity.

The care center received over 6,600 calls matching these three criteria.

Additionally, Jerusha Burnett, attorney advisor, FCC Consumer Policy Division, Consumer and Governmental Affairs Bureau, discussed the FCC's rules on call blocking.

"The commission has also shown it wants to exercise caution in call blocking—there are important calls that we don't want to be blocked, particularly if the recipient isn't aware that these calls could be blocked," she said. "In the medical context, these could include things like appointment reminders to ensure patients get the care they need. But this could also be scam calls to a medical provider from a phony patient."

Now that the HPRG is established, it must issue best practices this year regarding how service providers can

combat unlawful robocalls made to hospitals, how hospitals can better protect themselves from such calls, and how federal and state governments can help combat these calls, ACA International previously reported.

Additional TRACED Act deadlines include:

- Dec. 24, 2020: The Hospital Robocall Protection Group must issue best practices regarding to how service providers can combat unlawful robocalls made to hospitals, how hospitals can better protect themselves, and how federal and state governments can help combat these calls.
- Dec. 30, 2020: This is the deadline for multiple requirements, including a report to the House Committee on Energy and Commerce and the Senate Commerce Committee on analysis of the extent to which providers have implemented call authentication frameworks and assessment of the efficacy of call authentication frameworks.
- June 23, 2021: Conclude a proceeding to assess the extent to which the voluntary adoption of the Hospital Robocall Protection Group's suggested best practices can be facilitated to protect hospitals and other institutions.

Katy Zillmer is ACA International's communications manager.

NEWS & NOTES

Unsettled: Caller ID Blocking *cont. from page 1*

FDCPA and Section 1692D: Meaningful Disclosure?

Caller ID blocking via *67 raises additional compliance concerns under FDCPA Section 1692d(6)'s "meaningful disclosure" requirement, which mandates that a collector may not place a telephone call without making a "meaningful disclosure of the caller's identity."

In this vein, however, the *Glover* court held that the "FDCPA does not require debt collectors to identify themselves *twice* during a single telephone call," meaning that if the collector provides meaningful disclosure during the call itself (including via voicemail message, if the collector leaves one), then meaningful disclosure via caller ID would be irrelevant. (Emphasis added.)

Another federal district court has gone further, suggesting that caller ID data could never satisfy the FDCPA's meaningful disclosure requirement and implying that it would be folly for a court to attempt to squeeze the square "caller ID" peg into the round "meaningful disclosure" hole.

In *Cliche v. Receivables Performance Mgmt., LLC*, No. 310CV00019WBHJJB, 2010 WL 11646952, at *7 (N.D. Ga. Nov. 3, 2010), the court noted that from "the allegation Plaintiff provides, it appears that he believes a violation can occur even without a conversation at all, merely by calling from a blocked or private number. *It is difficult to see how this could be so, given the information that must be disclosed.*" (Emphasis added.)

On the opposite end of the spectrum, however, at least one federal district court has suggested—although it did not hold—that under the right fact pattern, caller ID blocking could run afoul of the FDCPA's meaningful disclosure rule. *Isaac v. RMB, Inc.*, No. 2:12-CV-2030-TMP, 2014 WL 1278096, at *8 (n.15) (N.D. Ala., Mar. 27, 2014), *aff'd*, 604 F. App'x 818 (11th Cir. 2015) stated: "The court finds that the disclosure requirement of § 1692d(6) is met as long as the debt collector does not attempt to block caller ID of his call. It is not necessary that the debt collector remain

on the line to disclose his identity further because doing so creates other risks for the debt collector under the FDCPA.

Under § 1692e(11), if the debt collector remains on the call and identifies himself to what is believed to be an answering machine, the message must also disclose that the purpose of the call is to collect a debt. Making that disclosure, however, also runs the risk that someone other than the debtor will hear the message, amounting to communicating with a third person about the debt, potentially in violation of § 1692c(b). As the Eleventh Circuit noted in *Edwards v. Niagara Credit Solutions, Inc.*, 584 F.3d 1350 (11th Cir. 2009), the debt collector may choose not to leave a message."

In sum, when it comes to federal decisional law, if a debt collector contacts a consumer via telephone and uses *67 caller ID blocking, a compliance risk appears to be present only under the most hostile judicial interpretation of the applicable FDCPA requirements and only when the call goes to voicemail and the caller chooses not to leave a voicemail message that complies with either Foti or Zortman. And even there, the compliance risk would appear to be a potential concern only in the 11th Circuit, at least based on judicial decisions issued to date.

Colin Winkler is ACA International's Corporate Counsel.

Read ACA SearchPoint documents #1168 ("Caller ID Issues"); #3067 ("State Caller ID Laws"); and #3066 ("TCPA: Caller ID"). To access ACA SearchPoint, visit acainternational.org/searchpoint.

Transforming Payment Structures for the Health Care Industry

ACA International member company Corporate Advisory Solutions reports health care industry leaders are seeking a wider transformation in payment structures due to the COVID-19 pandemic, according to its Q2 2020 Tech-Enabled OBS M&A Market Report. As many medical practices face the challenge of provider compensation under the fee-for-service model, providers are moving away from fee-for-service reimbursement toward value-based payments. More information: <https://bit.ly/3fq9j7f>

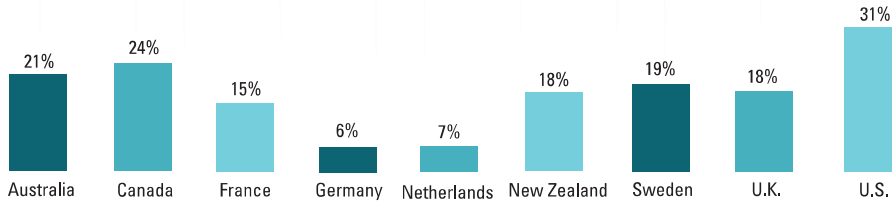
The Impact of COVID-19 on Health Insurance Coverage

According to a study from the Urban Institute, "more than 10 million people are estimated to lose employer-sponsored health insurance as a result of pandemic-related job loss in their household between April and December 2020." Approximately 48 million nonelderly people in the U.S. will be part of a household with someone experiencing job loss due to COVID-19, according to the study. More information: <https://rwjf.ws/2PqXIdi>

For more health care collections news, visit ACA's Health Care Collections page at www.acainternational.org/pulse.

Economic Impact of COVID-19

According to a survey from The Commonwealth Fund, Americans are experiencing more negative economic consequences because of the COVID-19 pandemic than other countries. More than 30 % of respondents in the U.S. said they have been unable to afford basic necessities, spent all their savings or borrowed money, compared to 24 % in Canada and 21 % in Australia.



Source: Reginald D. Williams II et al., Do Americans Face Greater Mental Health and Economic Consequences from COVID-19? Comparing the U.S. with Other High-Income Countries (Commonwealth Fund, August 2020). <https://bit.ly/3fS9t7s>