

FCC Continues Uphill Battle Against Unwanted Robocalls

The Federal Communications Commission recently adopted new measures to combat unwanted robocalls in a unanimous [Declaratory Ruling and Further Notice of Proposed Rulemaking](#). The Declaratory Ruling clarifies that carriers can block robocalls on an opt-out basis and allows carriers to block calls that originate from numbers not on a customer-contact whitelist. The FNPRM in turn seeks comment on additional proposed rules to protect consumers from robocalls and ensure the effectiveness and integrity of the FCC's Caller ID authentication framework.

By one estimate, consumers receive 29.3 billion illegal robocalls a year.[1] The FCC received 232,000 complaints related to robocalls last year alone, far more than the agency receives on any other topic. The problem has become so widespread that many Americans receive unwanted and disruptive robocalls multiple times a day.

One tool the FCC encouraged carriers to use is call blocking technology. The FCC previously stated that offering call-blocking services to customers does not violate voice service providers' call completion obligations under Section 201(b) of the Communications Act of 1934, as amended (the Act), and that consumers have a right to block calls. The FCC has also allowed voice service providers to block calls that are "highly likely to be illegitimate" without violating call completion rules.

Despite these recent FCC reassurances, carriers have expressed continued uncertainty over whether they could offer call-blocking services on an opt-out basis, rather than an opt-in basis. The FCC's 2015 Telephone Consumer Protection Act Order explicitly endorsed call blocking "through an informed opt-in process," but gave no indication on the legality of an opt-out process.[2]

In the recent Declaratory Ruling, the FCC found that opt-out call-blocking programs are generally just and reasonable practices and considered enhancements of service, and that opt-out call-blocking programs "should therefore be offered to [new and] existing subscribers of a given voice service provider." [3] The Declaratory Ruling further endorsed new white-list blocking methods, which let a consumer receive calls only if the originating number is in the consumer's smart phone contact list. The FCC also clarified that nothing in the Act or its rules prohibit voice providers from offering new and innovative call-blocking solutions, as long as these solutions do not impede public safety and the FCC's other goals such as ensuring high rural call completion rates.

The FNPRM also includes recommendations for additional robocall rules. Among other things, the FNPRM proposes to create a safe harbor for voice service providers that block calls that fail Caller ID authentication and for blocking unsigned calls from particular categories of voice service providers. In addition, the FNPRM proposes that video service providers that offer call blocking nevertheless be required to maintain a "Critical Calls List" of emergency numbers that they may not block. The FNPRM also seeks comment on protections and remedies for callers whose calls are erroneously blocked. These proposals should afford carriers with additional protections and guidance in the ongoing struggle against unwanted robocalls, but interested parties are encouraged to comment in response to the FNPRM. Comments on the FNPRM are due on July 24, 2019, and reply comments must be submitted by August 23, 2019.

ENDNOTES

[1] Declaratory Ruling ¶ 40 n.86.

[2] 2015 TCPA Order, 30 FCC Rcd at 8034, para. 154.

[3] Declaratory Ruling ¶ 32.

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