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FCC Proposes Rules to Fight Fraudulent Robocalling

Unsolicited robocalls are [the top consumer complaint](#) made to the Federal Communications Commission, which receives over 200,000 complaints a year. An estimated [2.5 billion robocalls](#) are being made to consumers each month, costing Americans an estimated [\\$350 million each year](#) in fraud. Stopping fraudulent robocalls is an area of rare bipartisan agreement and cooperation, and the FCC has recently clarified that customers can ask their telecom service providers to provide them with call blocking technology. In addition, FCC Chairman Ajit Pai recently declared robocalls the "[top enforcement priority](#)." Recently the agency imposed its [largest fine ever](#), a \$120 million penalty on a Florida-based robocalling network, which the FCC says made nearly 100 million calls over the last three months of 2016. The agency issued [another fine](#) of \$2.88 million against New Mexico-based Dialing Services, which developed software that was used to make more than 4.7 million robocalls to cell phones in three months.

In addition, the FCC has issued a Notice of Proposed Rulemaking (NPRM) and two Notices of Inquiry (NOIs), proposing to allow the blocking of spoofed calls—calls that are altered and manipulated so that the name or number displayed to the called party no longer matches that of the actual subscriber or originating number. Comments are due late summer and early fall as further discussed below.

Background

In March 2017, the FCC adopted an NPRM and NOI that, if promulgated, would allow carriers to block illegal robocalls by screening calls that originate from invalid or unassigned phone numbers—establishing that such blocking would not constitute an unjust and unreasonable practice. Additionally, in July, the FCC issued a Second NOI seeking comment on how carriers can create a comprehensive database of phone numbers that have been reassigned. A comprehensive database of reassigned phone numbers would help businesses identify telephone numbers that have been reassigned from a consumer who has consented to receive calls to a consumer who has not consented to such calls.

Key Aspects of the FCC's Proposals

The FCC proposes that providers may block calls when:

1. the subscriber to a particular telephone number requests that calls originating from that number be blocked;
2. calls originate from numbers that are not valid under the North American Number Plan Administration (NANPA, which administers the numbering plan for the United States, Canada and its territories);
3. calls originate from numbers that are valid but have not yet been allocated by NANPA or the National Number Pooling Administration to any telecom service provider; or
4. calls originate from numbers that have been allocated to a provider but are not assigned to a subscriber at the time of the call.

The FCC proposes not to require providers to obtain an opt-in from subscribers in order to block such calls.

In the Second NOI, the FCC requests comments on the best ways for service providers to report information about reassigned numbers, and how that information can be made available to robocallers in the most effective way. The FCC specifically seeks comment on four alternatives that represent a range of options of varying degrees of FCC involvement in the establishment and operation of a database or other mechanism.

The FCC also inquires as to the applicability of its rules in special cases, such as, (1) whether they should consider granting a safe harbor from TCPA violations for robocallers who use the comprehensive reassigned number database; (2) whether the reporting requirement should apply to all voice service providers, or whether it should apply only to wireless providers, or should include interconnected VoIP providers and Mobile Virtual Network Operators (MNVOs, i.e., wireless resellers); and (3) the costs and benefits of voice service providers reporting reassigned number information.

FCC Next Steps

Reply Comments to the NPRM are due Monday, July 31, 2017. Comments to the Second NOI are due August 28, 2017, and Reply Comments are due September 26, 2017.

The FCC has already received some comments on the proposed rules. The Federal Trade Commission, which also receives millions of complaints from consumers about robocalls each year, praised the plan as effective and efficient. Industry players also offered support for stopping unwanted calls, but cautioned the FCC to consider the costs associated with the rule and encouraged allowing carriers flexibility in how they implement the rule. Carriers want to be sure they are not blocking legitimate automated communications such as weather alerts or calls from schools.

Although the NPRM and NOI received unanimous approval, the final rules won't be adopted without a careful internal review. Republican Commissioner [Michael O'Rielly warned](#) that it may not be the FCC's role to force service providers to use certain technology for call authentication. He also said any rulemaking should take into account the fact that not all robocalls are malicious or unsolicited. Nonetheless, while the final rules will not be adopted for at least several months, they are likely to be adopted with uncommon support from both consumers and the industry.

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