

ALERT

FCC Robocall Action Adopts Key Safe Harbors and Seeks Input on TRACED Act Implementation

July 20, 2020

On July 16, 2020, the Federal Communications Commission (FCC or Commission) adopted the Third Report and Order (Report and Order) in its *Advanced Methods to Target and Eliminate Unlawful Robocalls* docket. The Report and Order establishes two safe harbors from liability for voice service providers working to block illegal or unwanted robocalls; it also establishes redress and other requirements to protect against erroneous blocking. Accompanying the Report and Order is an Order on Reconsideration in which the Commission declines requests to reconsider its 2019 Declaratory Ruling making clear that voice service providers may offer call blocking services on an opt-out basis. Finally, the Commission adopted a Fourth Further Notice of Proposed Rulemaking (FNPRM) to further build upon its robocall mitigation efforts and implement the TRACED Act.

Wiley's summary of the draft Report and Order and FNPRM released on June 25, 2020 can be found [here](#), and the FCC's changes to its adopted item mainly addressed redress requirements and the scope of the safe harbor. The full item can be found [here](#), and a brief summary of the Report and Order and FNPRM is below.

Report and Order: Establishes Two Safe Harbors and Requirements to Safeguard Against Erroneous Blocking

The Report and Order established two distinct safe harbors: (1) "a safe harbor from liability under the Communications Act and [the FCC's] rules for terminating voice service providers that block calls based on reasonable analytics designed to identify unwanted calls,

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so long as those take into account information provided by STIR/SHAKEN (or, for non-IP based calls, any other effective call authentication framework that satisfies the TRACED Act) when such information is available for a particular call” and (2) a “safe harbor enabling voice service providers to block traffic from bad-actor upstream voice service providers that continue to allow unwanted calls to traverse their networks.” ¶ 19.

The Report and Order also imposes obligations to protect against erroneous blocking. For emergency calls, it requires that “all voice service providers must make all reasonable efforts to ensure that calls from [Public Safety Answering Points] PSAPs and government outbound emergency numbers are not blocked” and makes clear that calls to PSAPs via 911 “should never be blocked unless the voice service provider knows without a doubt that the calls are unlawful.” ¶¶ 52-53. In the Report and Order, the Commission also declines to adopt a Critical Calls List at this time. ¶ 58.

Finally, the Report and Order adopts various redress requirements. Specifically:

- “any voice service provider that blocks calls must designate a single point of contact for callers, as well as other voice service providers, to report blocking errors at no charge to callers or other voice service providers;”
- “[b]locking providers must investigate and resolve these blocking disputes in a reasonable amount of time and at no cost to the caller, so long as the complaint is made in good faith;”
- “[b]locking providers must also publish contact information clearly and conspicuously on their public-facing websites;” and
- “when a caller makes a credible claim of erroneous blocking and the voice service provider determines that the calls should not have been blocked, a voice service provider must promptly cease blocking calls from that number unless circumstances change.”

The Report and Order also “confirm[s] that implementation of these redress mechanisms is a condition of obtaining the protections of the [above] safe harbors.” ¶¶ 54-55.

FNPRM: Seeks Comment on a Network-Level Blocking Safe Harbor and Expanded Redress Requirements, Among Other Things

The FNPRM seeks comment on proposed rules that would further implement certain portions of the TRACED Act, place affirmative obligations on voice service providers in the context of traceback and robocall mitigation, extend the safe harbor to network-level blocking, expand redress requirements to safeguard against erroneous blocking, and provide transparency to consumers by requiring voice service providers to identify a list of blocked calls.

First, the FNPRM seeks comment on implementing various rules required under Sections 4, 7, and 10 of the TRACED Act. For example, with respect to Section 4, the FNPRM seeks comment on other instances where voice service providers should be permitted to block based in whole or in part on caller ID authentication information and on extending the safe harbor to cover such blocking. With respect to Section 7 of the TRACED Act, the FNPRM seeks comment on protecting subscribers from receiving unwanted calls or text messages

from a caller using an unauthenticated number. The item also seeks comment on the Section 10 directive to ensure that robocall-blocking services provided on an opt-out or opt-in basis are “provided with transparency and effective redress options” for consumers and callers with no line-item charge for consumers or additional charge for callers. ¶ 91. The FNPRM also asks about “other steps [the Commission] should take to ensure that emergency public safety calls are not blocked.” ¶¶ 81-94.

Second, the draft FNPRM proposes to establish an affirmative obligation for voice service providers to respond to certain traceback requests, mitigate bad traffic, and take affirmative measures to prevent customers from originating illegal calls. With respect to traceback requests, the Commission proposes to “affirmatively require all voice service providers to respond to traceback requests from the Commission, law enforcement, or the Traceback Consortium.” The FNPRM also proposes to require all voice service providers to “take effective steps to mitigate bad traffic when notified of that traffic by the Commission.” It would also propose requiring voice service providers to “take affirmative, effective measures to prevent new and renewing customers from using their networks to originate illegal calls.” ¶¶ 95-103.

Third, the Commission proposes “to extend [its] safe harbor to cover network-based blocking, which providers would do on behalf of their customers without those customers having to opt in or out, based on reasonable analytics that incorporate caller ID authentication information, so long as the blocking is specifically designed to block calls that are highly likely to be illegal and is managed with sufficient human oversight and network monitoring to ensure that blocking is working as intended.” It seeks comment on this proposal, including “on how to ensure that network-based blocking based on reasonable analytics without any consumer consent option but with human oversight and network monitoring is used only to block calls that are highly likely to be illegal.” ¶¶ 104-106.

Fourth, the Commission proposes expanding redress requirements. The Commission seeks comment on whether to require blocking notifications and setting a timeline for providers to respond to erroneous blocking disputes. The Commission also asks whether it “should address the issue of mislabeling of calls and, if so, how?” ¶¶ 107-109.

Fifth and finally, the FNPRM proposes to require terminating voice service providers that block calls to provide a list of blocked calls to their customers on request and at no additional charge. It seeks comment on what information should be included on such a list and any technical challenges associated with maintaining and offering such a list. ¶¶ 110-112.

Comments and reply comments are due 30 and 60 days, respectively, from date of publication in the Federal Register.