

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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| In the Matter of |) | |
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| Advanced Methods to Target and Eliminate Unlawful |) | CG Docket No. 17-59 |
| Robocalls |) | FCC 17-151 |
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To: The Federal Communications Commission
Date: January 23, 2018

Comment of the Federal Trade Commission’s Staff¹

INTRODUCTION

In the spring of 2017, the FCC issued a Notice of Proposed Rulemaking that sought to expand the categories of calls that voice service providers are authorized to block and a Notice of Inquiry inviting comment on the types of standards that should govern if the FCC authorized providers to block “presumptively illegal calls.”² In November 2017, the FCC issued a Report and Order that enabled voice service providers to block certain categories of calls before they reach consumers’ phones as proposed by the Notice of Proposed Rulemaking.³ To date, the FCC has not yet taken further public action regarding the Notice of Inquiry’s consideration of authorizing providers to block “presumptively illegal calls.”

The FCC’s Report and Order authorized two categories of provider-based call blocking proposed by the Notice of Proposed Rulemaking: 1) when the subscriber to a particular telephone number requests that telecommunications providers block calls originating from that number; and 2) when the originating number is invalid, unallocated, or unassigned.⁴ This step is one of many in a concerted effort by government and industry to help curb the flood of unwanted

¹ These comments represent the views of the staff of the Federal Trade Commission’s Bureau of Consumer Protection. The letter does not necessarily represent the views of the Federal Trade Commission or of any individual Commissioner. The Commission has, however, voted to authorize staff’s submission of these comments.

² See Advanced Methods to Target and Eliminate Unlawful Robocalls, Notice of Proposed Rulemaking and Notice of Inquiry, CG Docket No. 17-59, FCC 17-23 (released Mar. 23, 2017), *published in* 82 Fed. Reg. 22625 (May 17, 2017)[hereinafter “*Robocall NPRM & NOI*”].

³ See Advanced Methods to Target and Eliminate Unlawful Robocalls, Report and Order and Further Notice of Proposed Rulemaking, CG Docket No. 17-59, FCC 17-151 (released Nov. 17, 2017) [hereinafter “*Robocall Further Notice*”].

⁴ *Id.*

and illegal telemarketing calls to American consumers. The Federal Trade Commission (“FTC”) supported the FCC’s efforts to expand provider-based call blocking and continues to encourage the development and widespread deployment of call-blocking technology.⁵

As part of the final Report and Order, the FCC included a Further Notice of Proposed Rulemaking seeking further comment on issues “related to the rules” adopted by the Report and Order, including potential mechanisms to quickly address erroneously blocked calls without undue harm to callers and consumers.⁶ FTC staff agrees with the FCC that this is an important question to consider, particularly as call-blocking solutions become available to more consumers.

Mitigation for Erroneously Blocked Calls

The FCC’s Report and Order encourages providers who block calls under the new authority to identify and quickly rectify any erroneous blocking.⁷ The FTC supported these efforts in its initial comment⁸ and continues to do so. The Further Notice seeks comment on whether the FCC should also *require* providers who block calls to provide a formal challenge mechanism. The type of call-blocking authorized by the Report and Order, however, is limited in scope and it is not clear to FTC staff, based on the current record, that there is a need to

⁵ See Comment of the FTC to the Federal Communications Commission, Advanced Methods to Target and Eliminate Unlawful Robocalls, Notice of Proposed Rulemaking and Notice of Inquiry, CG Docket No. 17-59, FCC 17-23 (July 3, 2017) [hereinafter *FTC July 2017 Comment*], available at https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-federal-communications-commission-supporting-fccs-proposed-expansion-provider/ftc_comment_to_fcc_re_nprm_noi_call_blocking_07032017.pdf.

⁶ The FCC also seeks comment on ways to measure the effectiveness of the efforts taken by the FCC and industry to reduce the number of illegal robocalls reaching consumers. *Robocall Further Notice* at ¶ 59. As part of this discussion, the FCC seeks comment on the use of “data from the FCC’s Consumer Complaint Data Center as a benchmark for determining the effectiveness of FCC and industry efforts.” *Id.* FTC staff has no comment at this time on the general topic of effective measurements of robocall reduction, other than to urge caution when looking to increases or decreases in consumer complaint volumes as a measure of progress in this area. Consumer complaints volumes are a relevant piece of data, but they are also an imperfect and incomplete measure of the number of illegal calls consumers receive and may be influenced by a number of factors beyond an actual increase or decrease in the number of illegal calls. Based on our general law enforcement experience, staff can observe both an increase in complaints following law enforcement efforts owing to increased publicity, as well as a decrease owing to a shutdown of major scammers. Notably, each year, the FTC publishes the *National Do Not Call Registry Data Book*, which contains statistical data about phone numbers on the Registry, telemarketers and sellers accessing phone numbers on the Registry, and complaints consumers submit to the FTC about telemarketers allegedly violating the Do Not Call rules. As the report makes clear, each year the total number of robocall complaints has increased significantly, for example, going from approximately 3.4 million in 2016 to 4.5 million complaints in 2017, notwithstanding sustained law enforcement efforts and expanded call-blocking technologies. *Id.*

⁷ *Robocall Further Notice* at ¶ 54.

⁸ *FTC July 2017 Comment* at 9 (“The FTC supports requiring providers to develop clear and specific procedures to address complaints from individuals and businesses whose calls are inadvertently blocked.”)

require a formal challenge mechanism for errors resulting from provider-based call blocking authorized by this Report and Order.⁹

1. Call-Blocking Authorized by the Report and Order

The Report and Order authorizes voice service providers to block a relatively discrete universe of calls: (1) when the subscriber to a particular telephone number requests blocking of calls appearing to be from that number, commonly referred to as “Do-Not-Originate” or “DNO” requests; and (2) calls in which the Caller ID number is invalid, the number has not been allocated to a provider, or the number has been allocated to a provider, but is not currently in use. Given the limited nature of these categories, it appears unlikely that there will be a significant risk of erroneous blocking arising from providers taking advantage of the authority granted by the Report and Order.¹⁰

The error rate from blocking calls pursuant to a DNO request and blocking calls with an invalid number should be relatively small and easy to verify and correct. In the case of a DNO request, the block can only occur if a subscriber makes the request. For calls presenting invalid numbers, providers need only verify whether the Caller ID number is valid and the Report and Order notes that industry is confident that it has access to the information required to conduct this type of verification.¹¹ Blocking unallocated and unassigned numbers may present a higher

⁹ The Further Notice seeks comments on issues “related to the rules we adopt today.” *Robocall Further Notice* at ¶ 57. Thus, FTC staff understands the Further Notice to be seeking comment on calls blocked erroneously by providers acting under the authority granted by the Report and Order. As the Report and Order makes clear, lawful provider-based blocking without subscriber opt-in is still quite limited. Expanding provider-based call-blocking authority to presumptively illegal calls as contemplated in the NOI would change the landscape and certainly heighten the risk for more errors at the provider level. FTC staff suggests that assessing the need for requiring provider-based mechanisms to mitigate erroneously blocked calls might best be done when and if the FCC considers further expansion of provider-based call blocking authority.

As a related point, FTC staff has also encountered considerable confusion among subscribers and marketers about the amount and type of call-blocking occurring at the provider level. Many call-blocking solutions are provided by third-parties and not by voice service providers. Some voice service providers simply connect their subscribers with third-party solutions that are compatible with the type of service offered by the provider. Other providers may provide call-labeling services to their subscribers, but will require subscribers to opt-in for call-blocking services. Still other providers focus on blocking fraud calls, but allow for subscribers to opt-in for call-blocking or labeling services beyond fraud—such as telemarketing sales calls. Accordingly, FTC staff also recommends that any inquiry into requiring a challenge mechanism for erroneously blocked calls first define the type of call-blocking it is seeking to address.

¹⁰ Although FTC staff believes there is a low risk of erroneous call blocking arising from blocking authorized by the Report and Order, FTC staff does not have empirical data to support that conclusion. FTC staff bases its conclusions upon the record associated with the Robocall NPRM & NOI, law enforcement experience in this area, and information gleaned from entities involved in call-blocking.

¹¹ *Robocall Further Notice* at ¶ 22. One commenter to the Robocall NPRM & NOI suggested that there could be significant possibilities of false positives from blocking invalid numbers because some private branch exchanges (PBXs) are not properly configured to display accurate Caller ID information. *Robocall Further Notice* at ¶ 21. The FCC, however, rejected this suggestion and found that the record demonstrated that the risk of erroneously blocking invalid numbers is very low and that the responsibility to properly configure PBX equipment lies with the owner and caller. *Id.*

chance of error due to the larger volume of numbers and the speed with which these numbers can change status unless and until a more comprehensive and accurate database of unallocated and unassigned numbers is established.¹² However, the FCC already cautions providers about blocking these two categories of numbers without careful verification of status and warns providers that erroneous blocking may lead to liability for violating call completion rules.¹³ The FCC also limits the scope of the rule to allow providers to block calls purporting to originate from an unused number, only so long as the provider blocking the call either (1) is the allocatee of the number and has confirmed the number is unused, or (2) has verified the unused status of the number with the allocatee at the time of the blocking.¹⁴ In light of the practical limitations on blocking unallocated and unassigned numbers, it is unlikely that providers will block such numbers without a high degree of certainty about their status, diminishing the risk of erroneous blocking.

Though the risk of erroneous blocking authorized by the Report and Order is likely low, it is not zero. Errors in implementation can occur and a legitimate call with a legitimate telephone number could be blocked inadvertently. As noted above, a legitimate caller could be using a newly assigned or newly allocated number and that number may be blocked inadvertently by providers if their information is not complete and up-to-date. This type of implementation error could potentially affect any type of call.

Considering the comments in response to the Notice of Proposed Rulemaking and the limited categories of calls providers may block under the Report and Order, FTC staff does not see an immediate need to require providers to establish a formal challenge mechanism for calls blocked erroneously based on the authority granted by the Report and Order. As noted above, however, FTC staff also recognizes that there is some risk that legitimate calls may be erroneously blocked and continues to support encouraging providers to offer a clear and quick way to resolve such errors.

2. Protections for Legitimate Callers and Subscribers

Even without a formal dispute mechanism, FTC staff continues to support encouraging all entities that engage in call blocking, particularly voice service providers, to offer protections

¹² See Comments of the USTelecom Association to the Federal Communications Commission, Advanced Methods to Target and Eliminate Unlawful Robocalls, Notice of Proposed Rulemaking and Notice of Inquiry, CG Docket No. 17-59, FCC 17-23 (July 3, 2017) at 11-12 [hereinafter *USTelecom July 2017 Comment*] available at <https://www.ustelecom.org/news/filings/ustelecom-comments-blocking-unlawful-robocalls>.

¹³ See *Robocall Further Notice* at ¶¶ 31, 40.

¹⁴ *Id.* at ¶ 38.

for legitimate callers and subscribers impacted by increased call-blocking.¹⁵ To that end, FTC staff recommends that all entities engaged in call blocking consider engaging in practices to reduce the potential for erroneous blocking or filtering such as: communicating clearly to subscribers the types of calls that are being blocked, using plain and reasonably specific terms to label calls, and providing designated points of contact for subscribers and callers alike to address potentially erroneously blocked or labeled calls. Such practices appear to be beneficial without imposing unnecessary or undue costs. FTC staff recommends caution, however, in establishing centralized “white lists”—lists of numbers that will not be blocked—to protect legitimate outbound callers.

*Clear Communication About Call-Blocking and Call-Labeling Services
Regarding Unwanted Calls*

FTC staff supports encouraging all providers of call-blocking or call-filtering services to consider describing plainly to consumers what types of unwanted calls¹⁶ will be blocked or flagged. Further, when flagging or labeling a call, providers should consider using plain and reasonably specific terms to describe the type of incoming call to the consumer receiving the call. In addition, blocking providers that receive feedback about incoming calls from their subscribers should consider providing clear and reasonably specific labels for their subscribers to use to describe the unwanted call they received. Improving descriptions should help prevent instances of erroneous blocking and labeling and ensure that consumers understand the types of calls they may be missing. Finally, providers of call blocking services should consider developing clear and specific procedures to address complaints of erroneous blocking and provide a designated point of contact to assist callers and subscribers that experience potentially erroneous blocking.

Risks Posed By White Lists

While FTC staff supports requiring providers to develop clear and specific procedures to address complaints from individuals and businesses whose calls are inadvertently blocked, including designated points of contact, we continue to urge the FCC to use caution in requiring

¹⁵ As the FTC noted in its July 2017 Comment, one additional area of concern is protecting individuals and businesses from harm arising from increased Caller ID spoofing. *FTC July 2017 Comment* at 7. Increased blocking of invalid, unallocated and unassigned numbers may result in increased spoofing of valid telephone numbers. The FTC continues to urge providers to provide assistance to individuals and businesses whose telephone numbers may be unlawfully spoofed by providing clear guidance regarding what to do if this happens and prompt action to resolve the issue, such as temporarily blocking calls purporting to originate from the subscriber’s number or blocking calls that appear to originate from the subscriber’s number that do not originate from the subscriber’s carrier.

¹⁶ FTC staff notes that some call-blocking or call-filtering services focus on blocking plainly illegal calls such as the types of calls the Report and Order addresses, fraudulent calls, or high-volume telemarketing sales robocalls. The need for explicit explanations about blocking illegal calls is low—consumers do not want illegal calls. Many call-blocking providers, however, offer to block or flag calls that may be legal, but that a subscriber does not wish to receive, such as lawful debt collection calls or political robocalls. This category of potentially unwanted but legal calls is an area in which clear communication and meaningful choice for subscribers is critical.

or encouraging the establishment of formal centralized mechanisms, such as a white list.¹⁷ FTC staff agrees with the concerns raised by USTelecom about centralized white lists creating “a substantial security risk should it fall into the hands of even a single robocaller” and serving as a “de facto master key” that would provide robocallers with the ability to override all of the efforts painstakingly developed to thwart them.¹⁸ Even without a security compromise, illegal robocallers will make every effort to infiltrate white lists to enable their calls to go through. FTC staff recommends that centralized white lists be avoided, lest they undermine the significant progress call-blocking providers have made in reducing the number of illegal calls.

CONCLUSION

FTC staff supports the FCC’s inquiry into how best to balance the long-overdue progress in developing call-blocking and call-filtering solutions to protect consumers from illegal and unwanted calls and the interests of subscribers and legitimate callers that could be harmed by erroneously blocked calls. The FTC stands ready to provide further information and assistance as needed.

¹⁷ The FCC’s *Robocall NPRM & NOI* posed a number of questions regarding the use of a “white list” to mitigate potential concerns regarding erroneous blocking. The *Robocall NPRM & NOI* defined a “white list” as “a list of numbers that will not be blocked.” *Robocall NPRM & NOI* ¶ 37 n. 57. The *Robocall NPRM & NOI* sought input regarding a number of question related to the implementation of a white list to protect legitimate outbound callers:

First, we seek comment on establishing a mechanism, such as a white list, to enable legitimate callers to proactively avoid having their calls blocked. Should we specify the mechanism or mechanisms to be used or administrative details, such as the type of evidence providers might require of such legitimate callers? If so, what should we require? Should we specify a timeframe within which providers must add a legitimate caller to its white list? How should white list information be shared by providers? Is there anything the Commission can do to ensure that white list information is shared in a timely fashion such that legitimate callers need not contact each and every provider separately? Is Commission action needed to guard against white lists being accessed or obtained by makers of illegal robocalls? What is the risk that a caller could circumvent efforts to block illegal robocalls by spoofing numbers on the white list?

Robocall NPRM & NOI ¶ 37 n. 57. In response, the FTC, as well as a number of other commenters, raised concerns about requiring the establishment of such a white list. See, e.g., *FTC July 2017 Comment* at 9 and *infra* note 16.

¹⁸ *USTelecom July 2017 Comment* at 18. FTC staff shares the practical concerns raised by USTelecom about the “abysmal options” providers would have to respond to any kind of breach of a centralized white list: “Should the white listed numbers now be blacklisted in order to stop the robocalls? Should the potentially tens of thousands of white list subscribers have new numbers assigned to them? Should those numbers now be added to an updated white list?” *Id.* at 18-19. See also Comments of Neustar Inc., to the Federal Communications Commission, Advanced Methods to Target and Eliminate Unlawful Robocalls, Notice of Proposed Rulemaking and Notice of Inquiry, CG Docket No. 17-59, FCC 17-23 (July 3, 2017) at 18-19 (“... creating and managing whitelists (or blacklists) for purposes of provider-initiated blocking decisions is risky and problematic. These problems include: the criteria for getting on or off a list; the means for distributing and sharing such lists with service providers; and the consumer harm associated with delay in getting off the list or inadvertent disclosure of the list. Further, the ongoing management of such lists is likely to become unwieldy and add administrative costs.”); Reply Comments of CTIA to the Federal Communications Commission, Advanced Methods to Target and Eliminate Unlawful Robocalls, Notice of Proposed Rulemaking and Notice of Inquiry, CG Docket No. 17-59, FCC 17-23 (July 31, 2017) at 7 (urging FCC to reject calls for a white-listing solution to protect legitimate callers).