

TCPA Update: FCC Seeks Guidance on Proposed Robocall-Blocking Rule

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Under new Chairman Ajit Pai's leadership, the Federal Communications Commission (the "Commission") is taking its first steps toward reforming its rules interpreting the Telephone Consumer Protection Act ("TCPA"). On Wednesday, May 17, the Commission published a Notice of Proposed Rulemaking ("NPRM") for a proposed rule that would allow all voice service providers – including wireless providers and VoIP providers – to block illegal robocalls before they reach consumers. Comments on the NPRM are due by July 3, 2017, and Reply Comments are due by July 31, 2017.

The proposed rule would allow providers of telephony services to block calls: (i) upon request of the subscriber to the originating number, on the presumption that such a call is "spoofed"; (ii) from invalid numbers; (iii) from numbers that are not allocated to any voice service provider; and (iv) from numbers that are allocated to a provider, but have not been assigned to any subscriber.

The rule would help prevent fraudulent calls from callers who "spoof" a legitimate number – that is, manipulate incoming Caller ID information so that a call appears to be coming from the legitimate number when in fact it originates with the fraudulent caller. It would also prevent them from shielding their actual number with an invalid number (for instance, a number using an unassigned area code) or an unassigned number that cannot be called back or traced.

In recognition of the Commission's general policy that providers may block calls only in "rare and limited circumstances," the Commission proposes to exclude calls validly blocked under the proposed rule from providers' call completion rates, ensuring that providers do not violate the call completion rules when they block harmful calls from reaching their customers. The Commission seeks comment on whether a broader safe harbor is needed to protect providers that block calls.

The NPRM also seeks comment on the feasibility of determining whether a number is unassigned, and guidance as to whether there are other criteria that voice providers should use to identify with "a reasonably high degree of certainty" when a call is illegal and should be blocked.

The Commission also seeks comment on how it should define “illegal robocalls” for purposes of any new call-blocking rule. It currently proposes to include calls that are banned under the TCPA or the Truth in Caller ID Act, but seeks input on whether this definition would exclude any legitimate callers. Finally, it seeks comment on whether legitimate calls may be blocked under the proposed rule, and if so, how the Commission can revise the rule to ensure that they are not blocked (for instance, by establishing a “white list” of permissible callers that may spoof invalid or unassigned numbers).

This proposed rule was prompted by consumer complaints relating to recent phone scams, often involving spoofed numbers. One recent scam tricked the called party into saying the word “yes,” then used this response to claim that the called party authorized fraudulent charges; another involved a caller claiming to be a representative of the IRS and requesting payment of back taxes owed by the called party.

The D.C. Circuit Court of Appeals has not yet decided *ACA International v. FCC*, in which a broad group of petitioners challenged the Commission’s 2015 TCPA Order on a number of grounds. In his dissenting statement to the Order, then-Commissioner Pai opposed broad interpretations of the TCPA rules that open the door to class actions against legitimate businesses, and opined that the Commission should instead turn its focus toward aggressively targeting actual scammers and fraudulent callers. With this proposed rule, Chairman Pai is moving away from broad restrictions on legitimate calls to focus on narrower enforcement objectives more in line with the TCPA’s historic objectives.

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National Law Review, Volume VII, Number 139

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