



# PUBLIC NOTICE

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DA 14-1700

Released: November 24, 2014

## CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON ROBOCALLS AND CALL-BLOCKING ISSUES RAISED BY THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL ON BEHALF OF THIRTY-NINE ATTORNEYS GENERAL

CG Docket No. 02-278  
WC Docket No. 07-135

Comment Date: December 24, 2014

Reply Comment Date: January 8, 2015

In a letter from the National Association of Attorneys General, thirty-nine Attorneys General writing “on behalf of the millions of Americans regularly receiving unwanted and harassing telemarketing calls,” ask the Commission for an opinion on three issues regarding telephone providers’ legal ability to implement call-blocking technology as a means of addressing unwanted telemarketing calls.<sup>1</sup> With this Public Notice, we seek comment on the issues raised by the Attorneys General.

Specifically, the Attorneys General request a formal Commission opinion on three categories of questions:<sup>2</sup>

1) What legal and/or regulatory prohibitions, if any, prevent telephone carriers<sup>3</sup> from implementing call-blocking technology?<sup>4</sup> Does the answer change if the telephone

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<sup>1</sup> Letter from Indiana Attorney General Greg Zoeller *et al.* to Tom Wheeler, Chairman, Federal Communications Commission (Sept. 9, 2014) (Letter) (additional signatories include Attorneys General from Alaska, Arizona, Arkansas, Colorado, Connecticut, District of Columbia, Florida, Guam, Hawaii, Idaho, Illinois, Iowa, Kentucky, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, and Wyoming).

<sup>2</sup> *Id.* at 2-3.

<sup>3</sup> While the Attorneys General use the term “telephone carriers,” we note that the Commission has determined that prohibition on call blocking also extends to VoIP service providers. See *Rural Call Completion*, WC Docket No. 13-39, 28 FCC Rcd 16154, \*6, para. 18 (2013) (*citing Connect America Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 18028-29, para. 973-74 (2011) (*2011 Report and Order*)) (stating that interconnected and one-way VoIP service providers may violate the prohibition on call blocking).

<sup>4</sup> The Attorneys General, in their letter, list three particular call-blocking technologies: Nomorobo, Call Control, and Telemarketing Guard. *Id.* at 2. We do not limit our inquiry to these technologies, however.

companies' customers affirmatively "opt into" the call-blocking technology (either for a fee or as a free service)?

2) US Telecom claims that telephone carriers "can and do block harassing and annoying telephone traffic at their end-user customer's request," but only for a "discrete set of specific phone numbers." At a customer's request, can telephone carriers legally block certain types of calls (e.g., telemarketing calls) if technology is able to identify incoming calls as originating or probably originating from a telemarketer?

3) US Telecom describes the FCC's position as "strict oversight in ensuring the unimpeded delivery of telecommunications traffic." Is US Telecom's characterization of the FCC's position accurate? If so, upon what basis does the FCC claim that telephone carriers may not "block, choke, reduce or restrict telecommunications traffic in any way"?

The Attorneys General note that at a July 2013 hearing before the U.S. Senate Subcommittee on Consumer Protection, Product Safety, and Insurance, representatives from US Telecom Association and CTIA-The Wireless Association (CTIA), testified that "legal barriers prevent[] carriers from implementing advanced call-blocking technology to reduce the number of unwanted telemarketing calls."<sup>5</sup> We seek comment on these questions and related issues.

By way of background, the Commission has long prohibited call blocking in particular contexts pursuant to its authority under the Communications Act of 1934, as amended. For example, it has prohibited carriers from blocking calls handled by other carriers for abusive or anticompetitive reasons,<sup>6</sup> in part because such conduct can harm consumers. We seek comment generally on whether there are additional sources of Commission authority to prohibit call blocking, and on the scope of that authority. We also seek comment on whether and to what extent our prior precedent and applicable statutory provisions regarding call blocking applies to call blocking technologies now on the market or under development.

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<sup>5</sup> Letter at 1. The Attorneys General note that, subsequent to the hearing, Senator Claire McCaskill sent a letter to US Telecom and CTIA asking for a "complete analysis of the challenges your industry foresees in implementing' call-blocking technologies." *Id.* at 2. According to the Attorneys General, US Telecom stated in its response to Senator McCaskill that "the [Commission] has concluded that call blocking is an unjust and unreasonable practice under section 201(b) of the Communications Act of 1934." *Id.*

<sup>6</sup> See *2011 Report and Order*, 26 FCC Rcd at 17903, para. 734 (reiterating that call blocking is impermissible in intercarrier compensation disputes); *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, Declaratory Ruling, 27 FCC Rcd 1351, 1354, para. 9 (WCB 2012) (*2012 Declaratory Ruling*) (discussing call blocking in rural call completion context); *Establishing Just and Reasonable Rates for Local Exchange Carriers; Call Blocking by Carriers*, WC Docket No. 07-135, Declaratory Ruling and Order, 22 FCC Rcd 11629, 11629-31, paras. 1, 6 (WCB 2007) (*2007 Declaratory Ruling*) (reiterating that call blocking is impermissible as a self-help measure to address intercarrier compensation dispute); see also *Blocking Interstate Traffic in Iowa*, Memorandum Opinion and Order, 2 FCC Rcd 2692 (1987) (denying application for review of Bureau order, which required petitioners to interconnect their facilities with those of an interexchange carrier in order to permit the completion of interstate calls over certain facilities).

While the Commission has stated that, “except in rare circumstances,” it “does not allow carriers to engage in call blocking,”<sup>7</sup> it has not directly held that blocking calls upon customer request is unlawful. Indeed, the Commission has recognized “the right of individual end users to choose to block incoming calls from unwanted callers.”<sup>8</sup> For example, in 2004, the Commission stated that telecommunications relay services (TRS) providers “are capable of providing anonymous call rejection . . . as long as the TRS consumer seeking to use these features, whether the calling party or called party, subscribes to the service.”<sup>9</sup> In 1996, addressing a type of toll fraud faced by aggregator telephones,<sup>10</sup> the Commission required local exchange carriers to “provide international blocking services to business customers, where technically feasible and economically reasonable.”<sup>11</sup> That call blocking service allowed a customer to “decline to accept collect or third-party billed calls on its line.”<sup>12</sup> In these specific contexts, the Commission has recognized that call-blocking services, including those provided by common carriers, are lawful. We seek comment on the extent to which such precedent provides a basis for addressing the questions raised by the Attorneys General.

As the Commission considers the questions posed by the Attorneys General, we seek comment on what call-blocking technologies are available or under development in the United States and internationally, how they work, how those details should inform the Commission’s analysis, and whether differences in how specific technologies work produce different outcomes under the law. How effective are the different services in blocking calls that consumers do not want? To what extent do the technologies produce “false positives” (*i.e.*, block numbers that should not have been blocked) or “false negatives” (*i.e.*, fail to block numbers that should have been blocked)? If the technologies produce “false positives” or “false negatives,” what percentage or number of false positives or false negatives may be sufficiently high to warrant a finding that a blocking service offered by a carrier resulted in the “impairment” of common carrier service to a “community, or part of a community,” in violation of section 214(a) of the Communications Act of 1934, as amended? Does it make a difference if the consumer is informed prior to purchase of the rate of false positives and false negatives, and therefore that legitimate or desired calls may be blocked? What is the consumer demand for the different call-blocking services, whether offered by a carrier or third party? To what extent do carriers seek to offer these

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<sup>7</sup> *2011 Report and Order*, 26 FCC Rcd at 18029, para. 973 n.2038 (2011) (quoting *2007 Declaratory Ruling*, 22 FCC Rcd at 11632, para. 7 & n.21).

<sup>8</sup> *2007 Declaratory Ruling*, 22 FCC Rcd at 11632, para. 7 n.21.

<sup>9</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 90-571, 98-67, 03-123, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, 12508, para. 74 (2004).

<sup>10</sup> For a detailed description of the problem, see *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, CG Docket No. 91-35, Third Report and Order, 11 FCC Rcd 17021, 17023-24, para. 3 (1996) (*1996 Report and Order*).

<sup>11</sup> *Id.* at 17045, para. 44; see also *Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (D/B/A Verizon Long Distance), NYNEX Long Distance Company (D/B/A Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, Interlata Services in New Jersey*, WC Docket No. 02-67, Memorandum Opinion and Order, 17 FCC Rcd 12275, 12355-56, paras. 161-163 (2002); *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, CG Docket No. 91-35, Report and Order and Further Notice of Proposed Rule Making, 6 FCC Rcd 4736, 4741, para. 15 (1991).

<sup>12</sup> *1996 Report and Order*, 11 FCC Rcd at 17044, para. 41.

services? What other collateral legal issues may be raised by such blocking services, and does it matter who offers them or how they operate?

Are the legal issues raised by these call blocking services different from the legal issues raised by vertical service codes for call blocking, such as \*60, which allows the subscriber to have incoming calls from a limited number of calling parties rejected by the terminating switching system, or \*64, which provides the subscriber the ability to block calls from all but a predetermined list of directory numbers specified by the subscriber?<sup>13</sup> If so, how are the legal issues different?

One available technology appears to allow at least one ring to the consumer's telephone before a call is blocked.<sup>14</sup> To the extent such technologies allow a robocall to ring a consumer's phone,<sup>15</sup> does that mean that the call is completed for purposes of a common carrier's obligation to complete calls under section 201(b) of the Communications Act of 1934, as amended?<sup>16</sup> How should the Commission reconcile the obligation of voice providers to complete calls with protecting consumers from unwanted calls under the Telephone Consumer Protection Act (TCPA)?<sup>17</sup> Further, to what extent should the consumer's role in designating telephone numbers or categories of callers to be blocked factor into our analysis? How, if at all, should our analysis reflect the different types of potential robocalls? For instance, are there any special considerations that should be given to robocalls made for emergency purposes<sup>18</sup> or to robocalls from charitable organizations?<sup>19</sup> We seek comment on these and any other issues raised by the Attorneys General.

Pursuant to sections 1.415 and 1.419 of the Commission's rules,<sup>20</sup> interested parties may file comments and reply comments on or before the respective dates indicated on the first page of this Notice. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

<sup>13</sup> North American Number Plan Administration, Vertical Service Codes: Code Definitions, *available at* [http://www.nanpa.com/number\\_resource\\_info/vsc\\_definitions.html](http://www.nanpa.com/number_resource_info/vsc_definitions.html) (last visited Oct. 20, 2014).

<sup>14</sup> *See* Nomorobo, *available at* <https://www.nomorobo.com/> (last visited Oct. 8, 2014).

<sup>15</sup> Nomorobo describes its service as allowing unwanted robocalls to ring the subscriber's telephone number once. *See id.*

<sup>16</sup> 47 U.S.C. § 201(b); *see, e.g., 2011 Report and Order*, 26 FCC Rcd at 18029, para. 973 ("As the Commission has long recognized, . . . the refusal to deliver voice telephone traffic . . . risks 'degradation of the country's telecommunications network.'"); *2012 Declaratory Ruling*, 27 FCC Rcd 1351 (determining that certain practices negatively affecting call completion in rural areas may constitute an unjust practice prohibited by section 201(b)); *2007 Declaratory Ruling*, 22 FCC Rcd at 11631, para. 6 (stating that "the Commission has previously held that alternative operator service providers' blocking of their customers' attempts to dial around to their preferred long distance provider violated the Act").

<sup>17</sup> *See* 47 U.S.C. § 227.

<sup>18</sup> "Emergency purposes" means "calls made necessary in any situation affecting the health and safety of consumers." 47 C.F.R. § 64.1200(f)(4); *see also Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 92-90, Report and Order, 7 FCC Rcd 8752, 8777-78, paras. 49-51 (1992).

<sup>19</sup> *See* 47 U.S.C. § 227(b)(1)(A); 47 C.F.R. §§ 64.1200(a)(1), (a)(2), (a)(3).

<sup>20</sup> 47 C.F.R. §§ 1.415, 1.419.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>21</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

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<sup>21</sup> 47 C.F.R. §§ 1.1200 *et seq.*

**FOR FURTHER INFORMATION CONTACT:** Kristi Lemoine, Consumer and Governmental Affairs Bureau, Federal Communications Commission, 202-418-2467, and [kristi.lemoine@fcc.gov](mailto:kristi.lemoine@fcc.gov).

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