



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 64**

**[CG Docket No. 17-59; FCC 20-96; FRS 16959]**

**Advanced Methods to Target and Eliminate Unlawful Robocalls**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document the Federal Communications Commission (FCC or Commission) invites comments on proposed revisions to its rules implementing the Telephone Consumer Protection Act and the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act). The Commission proposes: to require voice service providers to respond to certain traceback requests, mitigate bad traffic when notified of such traffic by the Commission, and implement effective measures to prevent new and renewing customers from using its network to originate illegal calls; to extend the safe harbor for blocking based on reasonable analytics including caller ID authentication information to network-based blocking without consumer consent 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; and to require terminating voice service providers to provide a list of individually blocked calls that were placed to a particular number at the request of the subscriber to that number. These proposals, taken together, implement the TRACED Act and continue the Commission's fight against illegal and unwanted robocalls while taking further steps to ensure that wanted calls are protected.

**DATES:** Comments are due on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and reply comments are due on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by CG Docket No. 17-59, by any of the following methods:

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
  - 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.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.
  - **Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (March 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.**

**FOR FURTHER INFORMATION CONTACT:** Jerusha Burnett, Consumer Policy Division, Consumer and Governmental Affairs Bureau, email at [jerusha.burnett@fcc.gov](mailto:jerusha.burnett@fcc.gov) or by phone at (202) 418-0526.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s *Fourth Further Notice of Proposed Rulemaking (FFNPRM)*, in CG Docket No. 17-59, FCC 20-96, adopted on July 16, 2020, and released on July 17, 2020. The *Third Report and Order* that was adopted concurrently with the *FFNPRM* is published elsewhere in this issue of the *Federal Register*. The full text of document FCC 20-96 is available for public inspection and copying via the Commission’s Electronic Comment Filing System (ECFS). 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).

This matter shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. 47 CFR 1.1200 *et seq.* Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substances of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

#### **INITIAL PAPERWORK REDUCTION ACT OF 1995 ANALYSIS**

The *FFNPRM*, FCC 20-96, seeks comment on proposed rule amendments that may result in modified information collection requirements. If the Commission adopts any modified information collection requirements, the Commission will publish another notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act. Pub. L. 104-13; 44 U.S.C. 3501-3520. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. Pub. L. 107-198; 44 U.S.C. 3506(c)(4).

#### **Synopsis**

1. In the *FNPRM*, the Commission seeks comment on how it can build on its prior work and

further implement the TRACED Act. The Commission 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, and proposes to make clear that failure to comply with any of these affirmative obligations is unjust and unreasonable under section 201(b) of the Communications Act. Next, the Commission proposes to extend its safe harbor for blocking of calls based on reasonable analytics to include network-based blocking without consumer opt out. The Commission further seeks comment on additional redress issues. Finally, the Commission proposes to require terminating voice service providers that block calls to provide a list of blocked calls to their customers on demand and at no additional charge.

#### **Section 4 of the TRACED Act**

2. The Commission seeks comment on any other instances where it should allow voice service providers to block based in whole or in part on caller ID authentication information. Are there other appropriate ways to approach blocking in part based on caller ID authentication information beyond incorporating that information into other reasonable analytics? Are there any situations in which blocking based solely on caller ID authentication information would be appropriate, such that the Commission should authorize blocking based “in whole” on caller ID authentication information? Are there any instances where the Commission should permit voice service providers other than terminating voice service providers to block based on caller ID authentication information? The Commission further seeks comment on extending the safe harbor to cover other types of blocking based on caller ID authentication information or the unintended or inadvertent misidentification of the level of trust for individual calls.

3. The Commission seeks comment on establishing a process for a calling party adversely affected by caller ID authentication information to verify the authenticity of their calls. What might this process look like? If a call is adversely affected due to a combination of caller ID authentication information and, for example, consumer complaints or suspect call patterns, should the same process be available? How might a calling party identify that the caller ID authentication information is the cause of

the problem?

4. The Commission seeks comment on any other steps it should take to ensure that voice service providers that are subject to a delay in compliance consistent with the TRACED Act are not unreasonably blocked because they are not able to be authenticated. The Commission tentatively concludes that, because it does not permit blocking based solely on caller ID authentication information, voice service providers subject to a delay in compliance will not be blocked because their calls cannot be authenticated.

5. The Commission seeks comment on any additional steps it should take to ensure that liability is limited based on the extent to which a voice service provider “blocks or identifies calls based, in whole or in part, on” caller ID authentication information and “implemented procedures based, in whole or in part, on” caller ID authentication information. Are there any additional steps the Commission needs to take to ensure the safe harbor considers whether a voice service provider “used reasonable care, including making all reasonable efforts to avoid blocking emergency public safety calls?”

#### **Section 7 of the TRACED Act**

6. The Commission seeks comment on additional steps to protect a subscriber from receiving unwanted calls or text messages from unauthenticated numbers. Wide implementation of STIR/SHAKEN will decrease the amount of calls made by callers using an unauthenticated number, but some callers will still be unable to place calls using an authenticated number. How can the Commission’s rules protect subscribers from receiving unwanted calls from unauthenticated numbers while not disadvantaging callers whose voice service providers are unable to participate in caller ID authentication or whose calls transit non-IP networks?

#### **Section 10 of the TRACED Act**

7. The Commission seeks comment on providing transparency and effective redress options for both consumers and callers. Are the steps the Commission takes in the *Third Report and Order*

sufficient? What further steps might the Commission take to ensure that both consumers and callers are provided with transparency and effective redress options? Are there any steps the Commission can take to ensure that these options protect lawful callers without benefiting illegal callers?

8. The Commission further seeks comment on providing blocking services with no additional line-item charge to consumers and no additional charge to callers for resolving complaints for erroneously blocked calls. What costs does a blocking provider incur when dealing with complaints of erroneous blocking? Are there steps the Commission can take to reduce these costs while still providing transparency and effective redress?

9. The Commission seeks comment on other steps it should take to ensure that emergency public safety calls are not blocked.

#### **Requiring Voice Service Providers to Meet Certain Standards**

10. The Commission seeks comment on affirmatively requiring voice service providers to: (1) respond to traceback requests from the Commission, law enforcement, or the Traceback Consortium; (2) mitigate bad traffic when notified of that traffic by the Commission; and (3) implement effective measures to prevent new and renewing customers from using its network to originate illegal calls.

11. The Commission proposes to affirmatively require all voice service providers to respond to traceback requests from the Commission, law enforcement, or the Traceback Consortium. Traceback provides valuable information regarding the sources of illegal calls. The Commission proposes to sanction the Traceback Consortium to make these requests and seeks comment on this proposal. What other entities, if any, should the Commission sanction to make these requests? What costs would voice service providers likely incur in order to comply with this requirement?

12. The Commission proposes to require all voice service providers to take effective steps to mitigate bad traffic when notified of that traffic by the Commission. Should the Commission require voice service providers to take particular steps to mitigate bad traffic, or should it leave the steps up to the

voice service provider? Should the Commission limit the requirement to notification from one of the mentioned entities? What costs would voice service providers likely incur in order to comply with this requirement?

13. The Commission proposes to require voice service providers to take affirmative, effective measures to prevent new and renewing customers from using their networks to originate illegal calls. What steps might a voice service provider take to ensure its new and renewing customers do not originate bad traffic? Should the Commission require all voice service providers to take specific steps, or should it permit each voice service provider to develop their own plan? What costs would voice service providers likely incur in order to comply with this requirement?

14. The Commission seeks comment on its legal authority to require voice service providers to meet these standards. The Commission tentatively concludes that section 201(b) of the Act provides it with sufficient authority to require common carriers to meet these standards and seeks comment on this conclusion. The Commission further specifically seeks comment on its authority to require non-carrier voice service providers to meet these standards.

### **Extending Safe Harbor Based on Reasonable Analytics to Network-Based Blocking**

15. The Commission proposes to extend its safe harbor to cover network-based blocking, which voice service 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. The Commission seeks comment 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. Should the Commission require that voice service providers that block at the network level take additional more, specific steps to ensure that the calls are highly likely to be illegal?

## **Expanding Redress Requirements**

16. The Commission seeks comment on setting a more concrete timeline for redress options. For example, is immediate notification or notification within a set time period (for example, 24 hours) feasible? Should a caller be required to request such notification or register with a provider to ensure such notification occurs? Or should voice service providers be given flexibility to use SIP codes, ISUP codes, and intercept messages to notify callers? If so, is immediate notification necessary to provide transparency and effective redress?

17. The Commission similarly seeks comment on requiring voice service providers to respond to disputes about erroneous call blocking within a set time period (such as 24 hours or a week). What is the appropriate amount of time? What steps could a voice service provider take to communicate with the party that raised the dispute to ensure that these disputes are being handled as quickly as possible? What steps could a caller take to ensure prompt resolution of call-blocking concerns?

18. The Commission seeks comment on whether it should address the issue of mislabeling of calls and, if so, how. Should the Commission require transparency and effective redress for mislabeled calls in order to prevent potential harm to legitimate callers? If so, what redress should the Commission require? Should the single point of contact required for the resolution of blocking disputes also handle labeling disputes?

## **Blocked Calls Lists**

19. The Commission proposes to require terminating voice service providers to provide a list of individually blocked calls that were placed to a particular number at the request of the subscriber to that number. The Commission further proposes to require that terminating voice service providers offer this service at no additional charge. Would such a list be valuable to consumers? What information should be included on such a list? What costs would terminating voice service providers incur?

## **Initial Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended, the Commission has prepared the Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *FFNPRM*. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *FFNPRM* provided.

### **Need for, and Objectives of, the Proposed Rules**

2. The *FFNPRM* continues a process to prevent unwanted calls from reaching consumers while also ensuring that wanted calls are protected. The *FFNPRM* seeks comment on ways to implement certain provisions of the TRACED Act. The *FFNPRM* proposes rules to make voice service providers responsible for the calls that originate on their network. Next, the *FFNPRM* proposes to extend the reasonable analytics call blocking safe harbor to cover network-based blocking without consumer opt out. The *FFNPRM* seeks comment on whether to adopt more extensive redress requirements, including whether to extend these requirements to erroneously labeled calls. Finally, the *FFNPRM* proposes to require terminating voice service providers that block calls to provide a list of calls blocked on an opt-in or opt-out basis to their customers on demand.

3. The *FFNPRM* proposes to declare particular practices by voice service providers unjust and unreasonable under section 201(b) of the Communications Act. First, the *FFNPRM* proposes to affirmatively require all voice service providers to respond to traceback requests from the Commission, law enforcement, or the Traceback Consortium. Second, the *FFNPRM* proposes to require all voice service providers to take effective steps to mitigate illegal traffic when notified of that traffic by the Commission. Third, the *FFNPRM* proposes to require all voice service providers to take affirmative, effective measures to prevent new customers from using their network to originate illegal calls.

## **Legal Basis**

4. The proposed and anticipated rules are authorized under the TRACED Act, 154(i), 201, 202, 227, 251(e), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 201, 202, 227, 251(e), 403, and section 7 of the Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274.

## **Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

5. As indicated above, the *FFNPRM* seeks comment on proposed rules to: implement the TRACED Act, place affirmative duties on originating and intermediate providers to better police their network, and require terminating providers that block on an opt-in or opt-out basis to provide a list of blocked calls to subscribers on request. Until these requirements are defined in full, it is not possible to predict with certainty whether the costs of compliance will be proportional between small and large voice service providers. In the *FFNPRM*, the Commission seeks to minimize the burden associated with reporting, recordkeeping, and other compliance requirements for the proposed rules, such as modifying software, developing procedures, and training staff.

6. First, under the proposed rules, the Commission tentatively concludes that originating and intermediate providers will need to retain call information in order to respond to traceback requests. They will also need to communicate with other intermediate and terminating providers regarding traceback requests and mitigation of illegal traffic. Additionally, they will need to implement processes to prevent new customers from using their network to originate illegal calls.

7. Second, the Commission tentatively concludes that terminating providers will need to keep records of calls blocked by destination telephone number. In addition, terminating providers will need to provide this information to subscribers on request.

## **Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant**

## **Alternatives Considered**

8. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

9. The Commission's proposed rules allow originating, intermediate, and terminating providers, including small businesses, flexibility in how to comply. Small businesses may reduce compliance costs through their implementation choices. For example, our proposed requirement that blocking voice service providers offer, on demand of the subscriber, a list of calls intended for a particular number, allows for this list to be provided in real-time or on demand, through whichever means is easiest for the terminating provider. In addition, the Commission anticipates that the proposed rules will reduce costs by reducing the amount of illegal traffic on the network, which will both free up network capacity for wanted calls and reduce customer service costs resulting from consumer complaints. However, the Commission intends to craft rules that encourage all carriers, including small businesses, to block such calls; the *FFNPRM*, therefore, seeks comment from small businesses on how to minimize costs associated with implementing the proposed rules. The *FFNPRM* includes specific requests for comment from small businesses regarding how the proposed rules would affect them and what could be done to minimize any disproportionate impact on small businesses.

10. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the *FFNPRM* and the *IRFA*, in reaching its final conclusions and taking action in this proceeding.

## **Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

11. None.

### **List of Subjects**

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

## Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 part 64 as follows:

### **PART 64 - MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

1. The authority citation for part 64 continues to read as follows:

**Authority:** 47 U.S.C. 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 262, 403(b)(2)(B), (c), 616, 620, 1401-1473, unless otherwise noted; Pub. L. 115-141, Div. P, sec. 503, 132 Stat. 348, 1091.

2. Amend § 64.1200 by revising paragraphs (k)(9) and (10) and by adding paragraph (n) to read as follows:

#### **§ 64.1200 Delivery restrictions.**

\* \* \* \* \*

(k) \* \* \*

(9) Any terminating voice service provider that blocks calls on an opt-out or opt-in basis must provide, at the request of the subscriber to a number, a list of calls to the number that were blocked.

(10) A provider may block calls consistent with paragraph (k)(3) of this section, but without giving consumers the opportunity to opt out, so long as:

(i) Those calls are highly likely to be illegal; and

(ii) The blocking is managed by the provider with sufficient human oversight and network monitoring to ensure that blocking is working as the provider intends.

\* \* \* \* \*

(n) Voice service providers must:

(1) Respond to all traceback requests from the Commission, law enforcement, or the Traceback Consortium;

(2) Take effective steps to mitigate illegal traffic when the originating or intermediate provider receives actual notice of that traffic by the Commission; and

(3) Take affirmative, effective measures to prevent new and renewing customers from using their network to originate illegal calls.

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