



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 02-278, 21-402; FCC 23-107; FR ID 194251]

Targeting and Eliminating Unlawful Text Messages; Implementation of the Telephone Consumer Protection Act of 1991

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on several issues. First, the Commission proposes a text blocking requirement following Commission notification and seeks comment on other options for requiring providers to block unwanted or illegal texts. Second, the Commission seeks further comment on text message authentication, including the status of any industry standards in development. Finally, the Commission proposes to require providers to make email-to-text services opt in.

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 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by CG Docket Nos. 02-278 and 21-402, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <https://apps.fcc.gov/ecfs/>.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent 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 45 L Street NE, 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, 35 FCC Rcd 2788 (OMD 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>. In the event that the Commission announces the lifting of COVID-19 restrictions, a filing window will be opened at the Commission's office located at 9050 Junction Drive, Annapolis, MD 20701.

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 or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice).

FOR FURTHER INFORMATION CONTACT: Jerusha Burnett of the Consumer Policy Division, Consumer and Governmental Affairs Bureau, at jerusha.burnett@fcc.gov, 202 418-0526 or Mika Savir of the Consumer Policy Division, Consumer and Governmental Affairs Bureau, at mika.savir@fcc.gov or (202) 418-0384.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Further Notice of Proposed Rulemaking (*Second FNPRM*), in CG Docket Nos. 02-278 and 21-402; FCC 23-107, adopted on December 13, 2023, and released on December 18, 2023. The full text of this document is available online at <https://docs.fcc.gov/public/attachments/FCC-23-107A1.pdf>.

This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. 47 CFR 1.1200 through 1.1216. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. *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 *Second FNPRM* may contain proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on any information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how to further reduce the information collection burden for small business concerns with fewer than 25 employees.

Providing Accountability Through Transparency Act

The Providing Accountability Through Transparency Act, Public Law 118-9, requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule. The required summary of the *Second NPRM* is available at <https://www.fcc.gov/proposed-rulemakings>.

Synopsis

1. *Text Blocking.* The Commission proposes and seeks comment on additional text blocking options to better protect consumers from illegal texts. Specifically, the Commission proposes and seeks comment on extending the text blocking requirement to include originating providers, and to require all immediate downstream providers to block the texts from providers that fail to block after Commission notification. The Commission also seeks additional comment on whether to require this blocking to be based on number, source, the substantially similar traffic standard, or some other standard. Next the Commission seeks comment on requiring providers to block texts based on content-neutral reasonable analytics. Third, the Commission seeks comment on traceback for text messaging, including whether to adopt a traceback response requirement for text messaging. Fourth, the Commission seeks comment on any other rules to effectively protect consumers from illegal texts. Finally, the Commission seeks comment on any additional protections that may be necessary in case of erroneous blocking.

2. *Expanding the Mandatory Text Blocking Requirement to Originating Providers and Adding a Downstream Provider Blocking Requirement.* The Commission proposes and seeks comment on extending the requirement to block following Commission notification of illegal texts to other

providers generally, and originating providers specifically. The Commission believes that originating providers are similar to gateway or originating voice service providers in that they are the first U.S.-based provider in the text path and that applying an analogous rule to originating providers could help ensure that these providers are properly incentivized to stop illegal texts even before the Commission sends any notice. The Commission seeks comment on this view.

3. The Commission seeks comment on whether and, if so, how to define originating providers here. Is the originating provider the first provider in the text path, and therefore in a similar position to a gateway or originating voice service provider? Are there other providers in the path that are more similar to a gateway provider? Alternatively, should the Commission apply these rules to some other entity in the chain to better protect consumers? The call blocking rules help hold bad-actor voice service providers responsible for the calls they allow onto the network by denying those voice service providers access to the network entirely when they have demonstrated noncompliance. Is there a particular type of entity in the texting ecosystem that is more likely to either intentionally or negligently shield those sending illegal texts?

4. The Commission proposes and seeks comment on requiring originating providers to block all texts from a particular source following Commission notification. Is this an appropriate standard for blocking? How might originating providers determine the source of a particular text or texts in order to comply with this rule? Alternatively, should the Commission require blocking based on the number or numbers, as the Commission does for terminating providers? If so, how effective is such a requirement? If not, should the Commission also change the standard for terminating providers to match the standard for originating providers, or do originating providers have access to more information, making a broader requirement to block based on source appropriate?

5. Should the Commission limit the length of time for which blocking is required? If so, how long should the Commission require providers to block? Alternatively, should the Commission require originating and/or terminating providers to block using the substantially similar standard applied in the call blocking rules? The Commission believes that texting may present concerns unique from calling that justify a different standard, or require additional guidance for compliance. For example, while a voice service provider will not have the content of a particular call prior to that call reaching the

recipient, a texting provider likely does have access to this information. Given that, should the Commission require that blocking be content as well as competitively neutral? Are there any other standards the Commission should consider?

6. The Commission seek comment on whether the process for voice service providers should be applied here to texting. The current rules for call blocking lay out a detailed process that must be followed before requiring all immediate downstream providers to block all of an identified voice service provider's traffic. Is this process appropriate for the texting environment, or are there differences between texting and calling that justify modifications? Several commenters expressed concerns about the delays inherent in this process. While the process works well for calling, delays may have different consequences in the texting context. Is a delay particularly significant when dealing with texts compared to calls? Why or why not? If so, are there changes the Commission could make to address this issue while still ensuring that providers are afforded sufficient due process? For example, should the Commission, as is done in the calling context, allow 14 days for the originating provider to investigate and respond following the Notification of Suspected Illegal Texts or should it change that time frame? Should the Commission establish a different docket for text blocking Orders, or use the same docket used for call blocking?

7. *Requiring Blocking of Texts Based on Reasonable Analytics.* The Commission seeks comment on requiring or incentivizing providers to block texts based on reasonable analytics. The call blocking rules provide a safe harbor for the blocking of unwanted calls based on reasonable analytics on an opt-out basis. In addition, the call blocking rules provide a safe harbor for the blocking of calls without consumers' consent and calls that are highly likely to be illegal based on reasonable analytics. In both cases, the Commission requires that analytics are applied in a non-discriminatory, competitively neutral manner. The Commission also recently sought comment on requiring terminating voice service providers to offer opt-out blocking services for calls that are highly likely to be illegal. The Commission has not yet addressed text blocking based on reasonable analytics.

8. The Commission seeks comment on whether and how to define reasonable analytics for this purpose. The record indicates that many providers already make use of analytics or other techniques to block illegal texts. What analytics do providers use to identify unwanted or illegal texts? If providers

are reluctant to share specifics to avoid tipping off bad actors, the Commission seeks comment on broad criteria that providers may use. For example, a call-blocking program might block calls based on a combination of factors, such as: large bursts of calls in a short timeframe, low average call duration, low call completion ratios, invalid numbers placing a large volume of calls.

9. The Commission seeks comment on whether, and to what extent, providers use volumetric triggers to identify bad traffic. Do any of the call-blocking reasonable analytics factors apply to text and, if so, which ones? Are there other content-neutral factors that are more likely to indicate that a text is illegal that do not apply in the calling context? If the Commission adopts such a rule, are there any necessary modifications the Commission should make to accommodate small businesses? As noted above, the content of a text is available to the provider at the time that blocking occurs, which is not generally true for calls. If the Commission requires providers to block based on reasonable analytics, should the Commission require that these analytics be content-neutral? Should the Commission also require that the blocking be non-discriminatory and competitively neutral? Alternatively, are there ways the Commission could encourage this blocking without requiring it? Are there any other issues the Commission should consider?

10. Because texting is currently classified as an information service, the Commission does not believe that providers need safe harbor protections to engage in this type of blocking. The Commission seeks comment on this belief. Do providers risk liability when they block erroneously? If so, what can the Commission do to reduce that risk while still ensuring that wanted, lawful texts reach consumers?

11. *Alternative Approaches.* The Commission seeks comment on alternative blocking or mitigation rules the Commission could adopt to target unwanted and illegal texts and better protect consumers. Are there approaches the Commission has not considered here that would stop illegal texts and protect consumers? What can the Commission do to encourage or require providers to adopt these approaches? For example, can the Commission take steps to encourage information sharing between providers?

12. *Protections Against Erroneous Blocking.* If the Commission adopts additional text blocking requirements, should the Commission also adopt additional protections against erroneous text

blocking? The rules already require providers to provide a point of contact for blocking issues.

Considering that providers can and do block texts, is this sufficient, or are other protections necessary? If so, what protections should the Commission adopt? For example, should the Commission create a white list for “legitimate research organizations and/or research campaigns” or other entities, or would doing so raise legal or policy concerns? Similarly, should the Commission require some form of notification when texts are blocked, similar to the requirement when calls are blocked based on reasonable analytics? If so, how can providers send a notification, technically? Should the Commission require notification only to certain categories of blocking? Or, should the Commission require providers to give advance notice when a number is flagged as suspicious and may be blocked along with several other protections?

Alternatively, should the Commission adopt the same protections already in place for erroneous blocking of calls? What are the risks and benefits of each approach?

13. *Text Message Authentication.* The Commission seeks additional comment on text message authentication and spoofing. The Commission has so far declined to adopt authentication requirements for texting. The record thus far is mixed on the feasibility of such a requirement, with commenters noting that the STIR/SHAKEN caller ID authentication system is designed to work only on Internet Protocol (IP) networks. Further, the record indicates that number spoofing is comparatively rare in SMS and MMS. The Commission believes it is important to continue to build a record on these issues and ensure awareness of any new developments or concerns. The Commission therefore seeks further comment on the need for and feasibility of text authentication. In particular, commenters should address whether number spoofing is an issue in text messaging and, if so, the extent of the problem. If number spoofing is uncommon, are there steps the Commission can take to ensure that it remains the exception rather than the rule? Do bad actors use other spoofing techniques, such as identity spoofing? If so, what can the Commission do to address this problem? Commenters should also discuss any new or in-process technical standards for authentication in text messaging, including their current status and any timelines for development. What issues will these new tools address? If the new technical standards are designed to prevent number spoofing, is this evidence of a more significant spoofing issue than commenters acknowledged in response to the *Second FNPRM*? If so, should the Commission act more quickly in this area, rather than waiting for the standards bodies to finish their work?

14. The Commission seeks comment on whether it should require industry to regularly provide updates with its progress on text authentication. The Commission believes doing so would ensure that the Commission has the most up-to-date information available without having to adopt further notices of proposed rulemaking covering this topic. Is this belief correct? If so, how often should the Commission require industry to provide updates and how should the Commission determine when further updates are no longer required? For example, should the Commission set a six-month cycle for updates over the next two years? Or should the Commission require some other update cycle and endpoint?

15. *Traceback.* Traceback has been a key part of the Commission's strategy for combating illegal calls. The Commission seeks comment on whether it should require a response to traceback requests for texting. The Commission seeks comment on requiring providers to respond to traceback requests from the Commission, civil or criminal law enforcement within 24 hours, consistent with the existing rule for gateway voice service providers and the recently adopted rule for all voice service providers that took effect on January 8, 2024, see 88 FR 43446-01 (July 10, 2023). Should the Commission also include the industry traceback consortium as an entity authorized to conduct traceback of texts, or is there some other entity that should be included? Is traceback for texting similar enough to traceback for calls for such a requirement to be effective? Are there any changes the Commission should make to the rule to ensure that traceback works for texts? How should the Commission handle aggregators and cloud platforms? Are there industry efforts that are already in operation, such as CTIA--The Wireless Association's Secure Messaging Initiative, that could replace or complement a traceback requirement? Are there other issues the Commission should consider in adopting a traceback requirement?

16. The Commission seeks comment on the specifics of the traceback process for texts, as well as any obstacles to industry-led traceback efforts that may work alongside or in place of rules the Commission may establish. Are tracebacks typically conducted for texting? If so, what does the process look like? Are there types of providers that are routinely reluctant to respond to these requests? Is information from traceback processes shared and then incorporated into blocking decisions? Are there network modifications, standards, or changes to software or hardware that would enable efficient texting traceback? If the Commission adopts a traceback requirement for texting, are there any necessary

modifications the Commission should make to accommodate small business? Is there anything else the Commission should know about traceback for texting?

17. *E-Mail-to-Text Messages.* The Commission proposes to require providers to make email-to-text an opt in service, so that subscribers wishing to receive these types of messages would first have to opt in to the service. Would such a rule reduce the quantity of fraudulent text messages consumers receive? Does the anonymity of email-to-text make it more attractive to fraudulent texters? Commenters should discuss any drawbacks to requiring providers to block such messages if the consumer has not opted in to such service. For example, would this result in blocking important or urgent messages? If so, how could the Commission reduce this risk? Are there alternatives to making this service opt in that would have a similar effect? If so, what are they and how would they compare? Commenters should discuss how the Commission should define “email-to-text service.” Are there analogous services that should be covered, e.g., voicemail-to-text? The Commission seeks comment on the details of any opt-in requirement and if the opt-in should be in writing. Must it be stand-alone and conspicuous? Will providers have the burden of demonstrating opt-in decisions? Are there any other issues the Commission should consider in adopting a rule?

18. *Further Efforts to Assist Small Businesses with Compliance.* The Commission seeks further comment on how the Commission can refine and expand its efforts to assist businesses, particularly small businesses, in complying with the one-to-one consent requirement. The Commission has determined based on the record that prior express written consent required under the Telephone Consumers Protection Act (TCPA) must be given to one seller at a time. Some commenters raised concerns that this requirement will increase costs or otherwise disadvantage small business lead generators and/or small business lead buyers. The Commission, therefore, is committed to monitoring the impact that the rule has on these businesses and to assist small businesses with complying with the one-to-one consent rule. The Commission seeks comment on whether and how it can further minimize any potential economic impact on small businesses in complying with the one-to-one consent requirement for prior express written consent under the TCPA. Are there ways to further clarify or refine this requirement to further minimize any compliance costs? What impact would such refinements have on consumers? Are there further outreach efforts or other ways the Commission can assist small businesses in complying

with the one-to-one consent rule?

19. *Benefits and Costs.* The Commission estimates that the total harm of unwanted and illegal texts is at least \$16.5 billion. Assuming a nuisance harm of five cents per spam text, the Commission estimates total nuisance harm to be \$11.3 billion (i.e., five cents multiplied by 225.7 billion spam texts). Further, the Commission estimates that an additional \$5.3 billion of harm occurs annually due to fraud. Previously, the Commission estimated the harm due to fraud from scam texts at \$2 billion. The Commission revised this figure upward in proportion with the increase in spam texts, resulting in an estimate of \$5.3 billion. The Commission seeks comment on these estimates of harm and on the costs of the proposals to reduce the harm of unwanted and illegal texts. The Commission will analyze any detailed cost data received in comments.

20. *Digital Equity and Inclusion.* The Commission, as part of its continuing effort to advance digital equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, the Commission seeks comment on how the proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility.

21. *Legal Authority.* The Commission seeks comment on its authority to adopt several issues: (i) additional blocking requirements and related approaches to protect consumers from illegal texts; (ii) text message authentication; and (iii) whether to make email-to-text an opt-in service. The Commission has authority to regulate certain text messages under the TCPA, particularly with regard to messages sent using an autodialer and without the consent of the called party. The Commission seeks comment on whether it has legal authority to adopt rules addressing these issues under the TCPA or the TRACED Act. For example, is the Commission's TCPA jurisdiction sufficient to support the blocking proposals, and does the TRACED Act provide the Commission with additional authority to adopt these rules?

22. Similarly, does the TCPA grant the Commission sufficient authority to adopt the rules regarding requiring email-to-text to be an opt-out service? Commenters should also discuss whether the Commission has authority for the proposals under section 251(e) of the Communications Act, which

provides the Commission with “exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States,” particularly to adopt any authentication, traceback, or blocking requirements. The Commission found authority to implement STIR/SHAKEN for voice service providers under section 251(e) of the Act in order to prevent the fraudulent exploitation of numbering resources. Does section 251(e) of the Act grant the Commission authority to adopt implementation of authentication for text messages?

23. The Commission seeks comment on the authority under the Truth in Caller ID Act for these proposals. The Commission found that it has authority under this statute to adopt a blocking requirement in the Text Blocking Order, 88 FR 21497 (April 11, 2023), and FNPRM, 88 FR 20800 (April 7, 2023). The Commission also found authority under this provision to mandate STIR/SHAKEN implementation, explaining that it was “necessary to enable voice service providers to help prevent these unlawful acts and to protect voice service subscribers from scammers and bad actors.” The Commission seeks comment on whether that same reasoning applies here. The Commission also seeks comment on whether it has authority for these proposals under Title III of the Act. Are there any other sources of authority the Commission could rely on to adopt any of the rules discussed in the *Second FNPRM*?

Initial Regulatory Flexibility Analysis

24. As required by the Regulatory Flexibility Act of 1980, as amended (RFA) the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies proposed in the *Second FNPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments in the *Second FNPRM*. The Commission will send a copy of the entire *Second FNPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *Second FNPRM* and the IRFA (or summaries thereof) will be published in the Federal Register.

25. *Need for, and Objectives of, the Proposed Rules.* In the *Second FNPRM*, the Commission proposes additional action to stop unwanted and illegal text messages that may harass and defraud consumers. Specifically, the Commission proposes extending the call blocking requirements to require all downstream providers to block the texts from upstream providers that fail to block after

Commission notification. The Commission also seeks comment on requiring providers to block texts based on content-neutral analytics, and on whether it is appropriate to adopt a 24-hour traceback response requirement for text messaging. The *Second FNPRM* also requests comment on alternative approaches to protect consumers from unwanted texts, and any additional protections that may be necessary in case of erroneous blocking. In addition, the Commission seeks comment on the viability of text authentication, and whether it should require industry updates on its feasibility. Finally, the Commission proposes requiring providers to make email-to-text an opt-in service.

26. *Legal Basis.* The proposed action is authorized pursuant to sections 4(i), 4(j), 227, 301, 303, 307, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 227, 301, 303, 307, and 316.

27. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

28. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission’s actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.

29. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” The

Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

30. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2017 Census of Governments indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,931 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, the Commission estimates that at least 48,971 entities fall into the category of “small governmental jurisdictions.”

31. *Wireless Carriers and Service Providers.* Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to these service providers. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees. Consequently, using the SBA’s small business size standard, most of these providers can be considered small entities.

32. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial

systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of Internet services (e.g., dial-up ISPs) or Voice over Internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than \$25 million. Based on this data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

33. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The *Second FNPRM* includes proposals that may alter the Commission’s current information collection, reporting, recordkeeping, or compliance requirements for small entities. Specifically, the proposal to extend call blocking mandates to require all downstream providers to block the texts from upstream providers that fail to block after Commission notification, and requiring providers to block texts based on content-neutral analytics would create new obligations for small entities and other providers. Similarly, establishing a 24-hour traceback response requirement for text messaging and requiring providers to make email-to-text an opt in service would also impose new compliance obligations on all providers, including small businesses. Additional blocking requirements, if adopted, such as requiring originating providers to block texts after notification from the Commission that the texts are likely to be illegal should not be a burden for small entities due to the fact that mobile wireless providers are currently blocking texts that are likely to be illegal. The Commission anticipates that the information it will receive relating to cost and benefit analyses will help identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from the proposals and inquiries we make in the *Second FNPRM*.

34. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its 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 such small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for such small entities.” In the *Second FNPRM* the Commission considered and seeks comment on several alternatives that may significantly impact small entities. As the Commission evaluates additional blocking requirements to protect consumers from illegal texts, the Commission seeks comment on how to define originating providers, and whether it should apply these rules to some other entity in the chain to better protect consumers. The Commission proposes blocking messages based on their source, but considers alternatively whether they should be blocked on other criteria such as traffic that is “substantially similar” to blocked texts. In addition, the Commission seeks comment on alternatives to requiring providers to block texts based on content-neutral reasonable analytics. The Commission also requests comment on alternatives to the proposed blocking or mitigation rules that would help to protect consumers from unwanted and illegal texts. The Commission expects to fully consider whether any of the costs associated with the proposed text blocking requirements can be alleviated for small entities and any alternatives to minimize the economic impact for small entities following the review of comments filed in response to the *Second FNPRM*.

35. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.* None.

List of Subjects in 47 CFR Part 64

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

Marlene Dortch,
Secretary

Proposed Rules

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

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 617, 620, 1401-1473, unless otherwise noted; Pub. L. 115-141, Div. P, sec. 503, 132 Stat. 348, 1091.

Subpart L—Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising

2. Amend § 64.1200 by adding paragraph (s) to read as follows:

§ 64.1200 Delivery restrictions.

* * * * *

- (s) A mobile wireless provider must:

- (1) A terminating mobile wireless provider must, upon receipt of a Notification of Illegal Texts from the Commission through its Enforcement Bureau, take the actions described in this paragraph (s)(1), including, when required, blocking all texts from the identified number or numbers. The Enforcement Bureau will issue a Notification of Illegal Texts that identifies the number(s) used and the date(s) the texts were sent or received; provide the basis for the Enforcement Bureau's determination that the identified texts are unlawful; cite the statutory or regulatory provisions the identified texts violate; direct the provider receiving the notice that it must comply with this section; and provide a point of contact to be used by a subscriber to a listed number to dispute blocking. The Enforcement Bureau's Notification of Illegal Texts shall give the identified provider a reasonable amount of time to comply with the notice. The Enforcement Bureau shall make the Notification of Illegal Texts in EB Docket No. 23-418 available at <https://www.fcc.gov/ecfs/search/search-filings>. The provider must include a certification that it is blocking all texts from the number or numbers and will continue to do so unless the provider learns that the number has been reassigned, in which case the provider shall promptly notify the Enforcement Bureau of this fact and include any information it has obtained that demonstrates that the number has been reassigned. If, at any time in the future, the provider determines that the number has been reassigned, it

shall notify the Enforcement Bureau and cease blocking. The provider is not required to monitor for number reassignments.

(2) If an originating provider, upon receipt of a Notification of Suspected Illegal Texts from the Commission through its Enforcement Bureau, take the actions described in this paragraph (s)(2), including, when required, blocking all texts from the source. The Enforcement Bureau will issue a Notification of Suspected Illegal Texts that identifies with as much particularity as possible the suspected illegal texts including the number(s) used and the date(s) the texts were sent or received; provides the basis for the Enforcement Bureau's reasonable belief that the identified texts are unlawful; cites the statutory or regulatory provisions the identified texts appear to violate; and directs the provider receiving the notice that it must comply with this section. The Enforcement Bureau's Notification of Suspected Illegal Texts shall give the identified provider a minimum of 14 days to comply with the notice. Each notified provider must promptly investigate the identified texts and report the results of that investigation to the Enforcement Bureau within the timeframe specified in the Notification of Suspected Illegal Texts.

(i) The provider must include a certification that it is blocking all texts from the source, and will continue to do so unless:

(A) The provider determines that the identified texts are not illegal, in which case it shall provide an explanation as to why the provider reasonably concluded that the identified texts are not illegal and what steps it took to reach that conclusion; or

(B) The provider learns that the number has been reassigned and the source cannot be otherwise identified in a content-neutral and competitively-neutral manner, in which case the provider shall promptly notify the Enforcement Bureau of this fact and include any information it has obtained that demonstrates that the number has been reassigned. If, at any time in the future, the provider determines that the number has been reassigned, it should notify the Enforcement Bureau and cease blocking unless further blocking of the source can be done in a content-neutral and competitively neutral manner.

(ii) If an originating mobile wireless provider fails to respond to the Notification of Suspected Illegal Texts, the Enforcement Bureau determines that the response is insufficient, the Enforcement Bureau determines that the provider is continuing to originate texts from the same source that could be blocked after the timeframe specified in the Notification of Suspected Illegal Texts, or the Enforcement

Bureau determines based on the evidence that the texts are illegal despite the provider's assertions, the Enforcement Bureau may issue an Initial Determination Order to the provider stating the Bureau's initial determination that the provider is not in compliance with this section. The Initial Determination Order shall include the Enforcement Bureau's reasoning for its determination and give the provider a minimum of 14 days to provide a final response prior to the Enforcement Bureau making a final determination on whether the provider is in compliance with this section.

(A) If an originating mobile wireless provider does not provide an adequate response to the Initial Determination Order within the timeframe permitted in that Order or continues to originate texts from the same source onto the U.S. network, the Enforcement Bureau may issue a Final Determination Order finding that the provider is not in compliance with this section. The Final Determination Order shall be made available in EB Docket No. 22-174 at <https://www.fcc.gov/ecfs/search/search-filings>. A Final Determination Order may be issued up to one year after the release date of the Initial Determination Order and may be based on either an immediate failure to comply with this rule or a determination that the provider has failed to meet its ongoing obligation under this rule to block all texts from the identified source.

(B) When notified by the Commission through its Enforcement Bureau that a Final Determination Order has been issued finding that an originating mobile wireless provider has failed to block as required under paragraph (s)(1) of this section, block and cease accepting all texts received directly from the identified originating provider beginning 30 days after the release date of the Final Determination Order. This paragraph (s)(2) applies to any provider immediately downstream from the originating provider. The Enforcement Bureau shall provide notification by making the Final Determination Order in EB Docket No. 22-418 available at <https://www.fcc.gov/ecfs/search/search-filings>. Providers must monitor EB Docket No. 22-174 and initiate blocking no later than 30 days from the release date of the Final Determination Order.