

ALERT

# FCC Moves to Expand Carrier Authority to Block Robocalls

May 17, 2019

On May 16, 2019, the Federal Communications Commission (FCC or Commission) released a draft Declaratory Ruling and Further Notice of Proposed Rulemaking (FNPRM) that will be considered at its June 6, 2019 Open Meeting. If adopted, the Declaratory Ruling would expand the ability of voice providers to block certain categories of robocalls, while the FNPRM would consider rules governing safe harbors for voice providers engaged in certain types of call blocking, and rules to ensure public safety calls are unimpeded by such blocking. Both the draft Declaratory Ruling and the draft FNPRM may change between now and their presumed adoption on June 6. The following summarizes the current draft of the items released by the FCC.

## The Draft Declaratory Ruling Would Expand Carrier Blocking Authority, But Not Create a Corresponding Safe Harbor.

The FCC's draft Declaratory Ruling would permit (but not require) voice service providers to offer call-blocking tools to subscribers on an opt-out basis. And while it would expand authority for call blocking, it would not establish a safe harbor for such blocking.

In the draft, the FCC notes that while blocking tools are currently available to consumers, they are often provided on an opt-in basis, which it concludes "limit[s] the impact of such programs on consumers." ¶ 27. The FCC also reiterates the absence of any "legal dispute in the record that the Communications Act or Commission rules do not limit consumers' right to block calls, as long as the consumer makes the choice to do so." ¶ 30. It further concludes that "opt-out call-blocking programs are generally just and reasonable practices (not unjust and unreasonable practices) and

## Authors

Megan L. Brown  
Partner  
202.719.7579  
mbrown@wiley.law

Scott D. Delacourt  
Partner  
202.719.7459  
sdelacourt@wiley.law

Kevin G. Rupy  
Partner  
202.719.4510  
krupy@wiley.law

Kathleen E. Scott  
Partner  
202.719.7577  
kscott@wiley.law

## Practice Areas

Telecom, Media & Technology

enhancements of service (not impairments of service).” ¶ 30.

The draft defines the scope of the opt-out blocking portion in four components:

- **First**, it would clarify that voice service providers offering opt-out call-blocking programs should offer sufficient information so that consumers can make an informed choice as to whether they wish to remain in the program or opt out. Examples include messages on a provider’s website, bill inserts, and e-mails. At a minimum, the FCC would expect voice service providers to describe in plain language how it chooses to block certain calls, the risks that it may block calls the consumer may want, and how a consumer may opt out of the service. It also states its expectation that any opt-out process be “simple and straightforward.” ¶ 32.
- **Second**, the FCC would clarify that voice service providers may offer opt-out call-blocking programs based on any “reasonable analytics designed to identify unwanted calls.” ¶ 33. It would also decline to adopt “rigid blocking rules,” since such an approach would be easy for illegal actors to evade, and would impede the development of diverse blocking services. Examples of reasonable analytics include blocking calls based on large bursts of calls in a short timeframe; low average call duration; low call completion ratios; and other criteria.
- **Third**, the FCC proposes to reaffirm its commitment to safeguard calls from emergency numbers and cautions voice service providers to not block calls from “public safety entities, including [Public Safety Answering Points (PSAPs)], emergency operations centers, or law enforcement agencies.” ¶ 35. However, the draft Declaratory Ruling provides no guidance as to how such calls should be identified, or how broadly that term is defined.
- **Fourth**, the FCC would reaffirm its commitment to safeguarding calls to rural areas. The agency does not anticipate that its determination will negatively impact rural call completion rates, since call-blocking programs would be offered by the terminating providers. However, the draft reminds voice service providers that call-blocking programs “may not be used to avoid the effect of our rural call completion rules.” ¶ 36.

Finally, the draft expresses the FCC’s view that the benefit to consumers of voice service providers offering opt-out blocking services will “exceed any costs incurred.” ¶ 37. It anticipates an overall reduction in costs incurred by voice service providers, because illegal and unwanted calls will consume less of their network capacity. It also points to savings through improved customer relations and reduced costs due to fewer customer complaints.

### **The Draft Declaratory Ruling Would Also Permit an Opt-In White List Approach for Call Blocking.**

In addition to permitting robocall blocking on an opt-out basis, the draft Declaratory Ruling would make clear that nothing in the Act or the FCC’s rules “prohibits a voice service provider from offering an opt-in white list program using the consumer’s contact list.” ¶ 44. A white list approach—generally based on the subscriber’s contact list—blocks all calls to the consumer, except for those contained on the customer-defined white list. Such offerings could only be offered on an opt-in basis, and the FCC notes that voice service providers

“should clearly disclose to consumers the risks of blocking wanted calls and the scope of information disclosed in a manner that is clear and easy for a consumer to understand.” ¶ 44.

### **The Draft FNPRM Would Seek Comment on Proposals for Narrow Call Blocking Safe Harbors and Protections for Critical Calls.**

**First**, the draft FNPRM would propose a “narrow safe harbor for blocking in specific instances based on SHAKEN/STIR.” ¶ 46. Specifically, the FCC would propose a safe harbor for voice service providers that “choose to block calls (or a subset of calls) that fail Caller ID authentication under the SHAKEN/STIR framework.” ¶ 48. The draft also notes that “call-blocking programs that consider the degree of attestation (whether full, partial, or gateway attestation) for successfully authenticated calls would not fit within the scope of this safe harbor.” ¶ 50.

**Second**, the FCC would seek comment on whether it should create a safe harbor for blocking unsigned calls from “particular categories of voice service providers.” ¶ 51. Such categories include voice providers participating in the SHAKEN/STIR framework that fail to sign certain calls, as well as certain “larger voice service providers.” ¶ 51. The draft FNPRM asks whether the safe harbor should apply to calls from a large service provider that fails to implement the SHAKEN/STIR standards by a certain timeframe. It would also seek comment on how to define “large voice service provider.” Alternatively, the draft asks whether a safe harbor should target voice service providers that are most likely to facilitate unlawful robocallers. For example, pointing to the USTelecom Industry Traceback Group, it asks whether a safe harbor should target those voice service providers that do not appropriately sign calls and do not participate in the Industry Traceback Group. With respect to smaller providers, the FCC also would seek comment on how it can ensure that any safe harbor does not impose undue costs on eligible telecommunications carriers participating in the agency’s high-cost program.

Additionally, the draft FNPRM would seek comment on whether particular protections should be established for a safe harbor to ensure that wanted calls are not blocked. It asks whether requiring voice service providers seeking a safe harbor to provide a mechanism for identifying and remedying the blocking of wanted calls is necessary. The FCC also would seek comment on how its proposal intersects with the agency’s recently adopted rural call completion rules.

**Third**, the FCC would consider requiring any voice service provider that offers call-blocking to maintain a “Critical Calls List” of numbers it may not block. The draft proposes seeking comment on which numbers should be required on a Critical Calls List (such as PSAPs and government emergency outbound numbers) and whether the list should be expanded to include other organizations such as schools, doctors or local governments. The FCC also would seek comment on:

- whether such a list should be centrally maintained (and if so, by whom), or whether each voice provider should maintain its own list;
- whether the list should be made public, and if not, which entities should be authorized access to the list;

- whether voice providers should ever be permitted to block numbers contained on the list;
- the associated costs and benefits associated with implementing the list; and
- whether mechanisms exist that would enable blocking of illegal spoofed calls to PSAPs without blocking legitimate 911 calls.

Finally, the draft proposes seeking comment on the Commission's legal authority for adopting the proposed rules. It notes that the 2017 *Call Blocking Order* relied on Sections 201(b), 202(a), and 251(e) of the Communications Act to establish those rules, as well as its regulatory authority under the Truth in Caller ID Act. The FCC asks whether these statutory provisions – or any others – provide sufficient authority for it to adopt rules creating a safe harbor and requiring voice service providers that offer call-blocking programs to maintain a Critical Calls List.