

Concerns for the Accounts Receivable Management Industry on FCC Call Blocking and Labeling Efforts

The FCC released a draft Declaratory Ruling and Further Notice of Proposed Rulemaking (FNPRM) May 16, 2019.

What Would the Declaratory Ruling Do?

- Clarify that voice service providers may, as the default, block calls based on call analytics that target unwanted calls, if their customers are informed and can opt out of the blocking.
- Clarify that voice service providers may offer customers the option to block calls from any number that does not appear on a customer's "white list" or contacts list on an opt-in basis.

Why is this Concerning?

- Before 2017, the FCC permitted network-based blocking only in "specific, well-defined circumstances" and reserved the option for consumers if they would like to block unwanted calls from certain numbers. The term "unwanted" is subjective and broad. Yet, the draft FNPRM clearly sweeps in "unwanted calls" mentioning them numerous times in the document.
- Under most call blocking technologies, consumers currently have to opt-in to use these services, not opt-out. Thus, the FNPRM essentially means many more calls would be blocked, often without a consumer even knowing they are being blocked or having a strong understanding about what these technologies do.
- This means that when seeking to contact a consumer, the phone might not even ring at all or the call could be sent to a voicemail. In some instances callers experience fake busy signals. The FCC is strongly encouraging carriers to offer these services for free immediately.
- Throughout the entire draft order, the FCC makes little or no distinction between fraudulent calls and "unwanted calls" even from legal and regulated businesses.
- This is giving unprecedented authority for voice service providers to pick winners and losers in the marketplace – similar to tactics used under Operation Choke Point. Providers should be required to have disclosures about the types of calls blocked, risks of not receiving needed information, and other information about unblocking calls and opting out.
- Certain advocacy groups have also questioned whether these costs for call blocking will ultimately be passed on to consumers, even though they are not affirmatively opting-in.

What Does the FCC Consider Reasonable Analytics for Blocking Calls?

The draft order states:

- "For example, a call-blocking program might block calls based on large bursts of calls in a short timeframe; low average call duration; low call completion ratios; invalid numbers placing a large volume of calls; common Caller ID Name (CNAM)

values across voice service providers; a large volume of complaints related to a suspect line; sequential dialing patterns; neighbor spoofing patterns; patterns that indicate TCPA or other contract violations; correlation of network data with data from regulators, consumers, and other carriers; and comparison of dialed numbers to the National Do Not Call Registry.”

- “Similarly, a call-blocking program might be designed to block callers engaged in war dialing, unlawful foreign-based spoofing, or one-ring scams and might be designed to incorporate information about the originating provider, such as whether it has been a consistent source of unwanted robocalls and whether it appropriately signs calls under the SHAKEN/STIR framework. Although we suggest these as examples of potentially effective opt-out call-blocking programs, this list is not exhaustive.”
- Many legitimate calls can fall into these categories and there are multiple legal and necessary reasons to make calls that could be swept into these categories.

What is the Plan for Erroneously Blocked Calls?

- Under the FNPRM, the FCC does not impose any specific requirements or mechanism to remedy inadvertently or mistakenly blocked calls in any way. This is what ACA International has been working closely with the Senate Commerce Committee to do for the TRACED Act.
- It is seeking comment on the following, “Are there any particular protections we should establish for a safe harbor to ensure that wanted calls are not blocked? We further seek comment on whether to require voice service providers seeking a safe harbor to provide a mechanism for identifying and remedying the blocking of wanted calls. Is such a mechanism necessary?”
- The rule seeks feedback on a white list. It says, “Does our proposal capture the most important numbers to avoid blocking? We recognize that other calls are important to consumers. For example, we know consumers value calls from schools, doctors, local governments, and alarm companies, as well as fraud and weather alerts, and TNS adds to the list calls from recall centers, hospitals, and flight alerts. Should we expand the scope of the Critical Calls List to include any or all of these categories (or any others)? How can we do so in an administratively feasible manner?”

What’s Next?

- The full FCC will consider this draft order at its June 6, 2019, open meeting. In the next few weeks other commissioners can weigh in with the chairman’s office about suggested changes to the draft order.