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SMALL ENTITY COMPLIANCE GUIDE
Advanced Methods to Target and Eliminate Unlawful Robocalls
FCC 20-187
CG Docket No. 17-59
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This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties, or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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TABLE OF CONTENTS

I. OBJECTIVES OF THE PROCEEDING1

II. COMPLIANCE REQUIREMENTS2

III. RECORDKEEPING AND REPORTING REQUIREMENTS4

IV. IMPLEMENTATION DATE5

V. INTERNET LINKS5

I. OBJECTIVES OF THE PROCEEDING

In this *Fourth Report and Order*, the Commission takes important steps in the fight against illegal robocalls.¹ First, the Commission requires voice service providers to take certain affirmative steps to prevent illegal calls.² Next, the *Fourth Report and Order* expands the existing call blocking safe harbor to include network-based blocking based on reasonable analytics that incorporate caller ID authentication information designed to identify calls that are highly likely to be illegal, if this blocking is managed with human oversight and network monitoring sufficient to ensure that blocking is working as intended.³ Finally, the *Fourth Report and Order* takes steps to implement the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act by ensuring that both callers and consumers are provided with transparency and effective redress.⁴ Taken together, these steps will provide greater protection to consumers and increase trust in the telephone system while ensuring that consumers continue to receive the calls they want.

Affirmative Obligations for Voice Service Providers. The *Fourth Report and Order* establishes three affirmative obligations for all voice service providers.⁵ First, all voice service providers must respond to traceback requests from the Commission, civil and criminal law enforcement, or the Industry Traceback Consortium (Consortium).⁶ Second, all voice service providers must take steps to effectively mitigate suspected illegal traffic when notified of such traffic by the Commission through its Enforcement Bureau.⁷ The notified voice service provider must investigate the suspected illegal traffic and report to the Enforcement Bureau regarding the results of that investigation, including whether the calls came from another voice service provider with direct access to the U.S. public switched telephone network, and any mitigation steps taken. Finally, all voice service providers must take affirmative, effective steps to prevent new and renewing customers from using their networks to originate illegal calls.⁸

Expanding the Safe Harbor Based on Reasonable Analytics to Network-Based Blocking. The *Fourth Report and Order* expands the existing safe harbor for blocking based on reasonable analytics to cover network-based blocking of calls that are highly likely to be illegal, without consumer opt in or opt out. The analytics must incorporate caller ID authentication information where available.⁹ The blocking must be managed with sufficient human oversight and network monitoring to ensure that blocking is working as intended. For purposes of the safe harbor, the *Fourth Report and Order* makes clear that a voice service provider must have a process in place to reasonably determine that a call pattern is highly likely to be illegal prior to initiating blocking without consumer consent, and must cease blocking when the voice service provider learns that calls are likely lawful. The Commission does not specify what the process must be.

Enhanced Transparency and Redress. The *Fourth Report and Order* establishes several requirements to implement the TRACED Act and ensure that both callers and consumers are provided with transparency and effective redress.¹⁰ First, voice service providers that block calls must provide an immediate notification to the caller through a Session Initiation Protocol (SIP) or ISDN User Part (ISUP) code as

¹ *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Fourth Report and Order, 35 FCC Rcd 15221 (Dec. 2020) (*Fourth Report and Order*).

² *Id.* at 15227-34, paras. 14-38.

³ *Id.* at 15234-38, paras. 39-47.

⁴ *Id.* at 15238-47, paras. 48-78.

⁵ *Id.* at 15227-34, paras. 14-38.

⁶ *Id.* at 15227-29, paras. 15-21.

⁷ *Id.* at 15229-32, paras. 22-31.

⁸ *Id.* at 15232-33, paras. 32-36.

⁹ *Id.* at 15234-38, paras. 39-47.

¹⁰ *Id.* at 15238-47, paras. 48-78.

appropriate.¹¹ In order to ensure that these codes reach the origination point of the call, all voice service providers must make all necessary software upgrades and configuration changes to ensure that these codes translate properly when a call moves between Time-Division Multiplexing (TDM) and Internet Protocol (IP) based networks. Providers must comply with this requirement by January 1, 2022. Second, voice service providers that block on an opt-in or opt-out basis must provide to the subscriber of a particular number, on their request, a list of all calls intended for that number that the provider has blocked.¹² Voice service providers have three days to provide the list and the list should include all calls blocked on an opt-in or opt-out basis within the 28 days prior to the request. Third, voice service providers that block calls must respond to any blocking dispute within 24 hours, either with a status update or a resolution.¹³ Finally, consistent with the TRACED Act, the *Fourth Report and Order* requires that the point of contact previously established to handle blocking disputes also be prepared to handle contacts from callers seeking to verify the authenticity of their calls.¹⁴ Any terminating voice service provider that does not block calls, and takes into account attestation information in determining how to deliver calls, must provide to the public a point of contact to receive caller complaints regarding caller ID authentication, consistent with the rules established in the *Fourth Report and Order* and elsewhere in the rules.¹⁵

II. COMPLIANCE REQUIREMENTS

The *Fourth Report and Order* makes rule changes to sections 0.111 and 64.1200; it requires voice service providers to meet certain affirmative obligations, expands the Commission's existing safe harbor for the blocking of calls, and ensures transparency and effective redress for both consumers and callers.

Affirmative Obligations for Voice Service Providers (47 CFR § 0.111(a)(27), 47 CFR § 64.1200(n))

- Section 0.111(a)(27) delegates permanent authority to the Commission's Enforcement Bureau to notify a voice service provider of suspected illegal traffic on its network and require compliance with section 64.1200(n)(2), discussed further below. This notification must be in writing and must identify the traffic, cite the statutes or regulations the traffic appears to violate, provide the basis for the Enforcement Bureau's belief that the traffic is illegal, and state that the voice service provider must comply with section 64.1200(n)(2).
- Under section 64.1200(n)(1), all voice service providers must respond fully to traceback requests from the Commission, civil or criminal law enforcement, and the industry traceback consortium. These responses must be made in a timely manner.
- Under section 64.1200(n)(2), voice service providers, upon receipt of the notification described above under section 0.111(a)(27), must take steps to effectively mitigate the illegal traffic identified in that notice. Section 64.1200(n)(2) requires the notified voice service provider to promptly investigate the identified traffic and report to the Commission's Enforcement Bureau as follows:

¹¹ *Id.* at 15239-42, paras. 52-61.

¹² *Id.* at 15242-45, paras. 62-70.

¹³ *Id.* at 15245-46, paras. 71-73.

¹⁴ *Id.* at 15245-47, paras. 74-78. The Commission established the general point of contact requirement in an Order adopted in July 2020. *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Third Report and Order, Order on Reconsideration, and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 7614, 7634-35, paras. 54-57 (2020) (*Third Call Blocking Order*).

¹⁵ See *Third Call Blocking Order*, 35 FCC Rcd at 7634-35, paras. 54-57; 47 CFR § 64.1200(k)(8).

- If the voice service provider determines that the identified traffic is not illegal, the report must include an explanation as to how the voice service provider reached this conclusion, including the steps it took in its investigation;
- If the voice service provider determines that the identified traffic came from another voice service provider with direct access to the United States public switched telephone network, the report must identify that voice service provider and the notified voice service provider should take mitigation steps if possible; or
- If the voice service provider does not reach either of these conclusions, the report must include any steps the voice service provider has taken to effectively mitigate this traffic.
- Under section 64.1200(n)(3), all voice service providers must take affirmative, effective measures to prevent new and renewing customers from using their network to originate illegal calls. A voice service provider must know its customers and exercise due diligence to prevent the origination of illegal traffic.

Expansion of Call Blocking Safe Harbor (47 CFR § 64.1200(k)(11))

- Under section 64.1200(k)(11), voice service providers are protected from liability under the Communications Act and the Commission's rules if they block calls at the network level, without allowing consumers to opt out, so long as they meet certain criteria:
 - First, the voice service provider must determine that the calls are part of a call pattern that is highly likely to be illegal. This determination must be based on reasonable analytics, which must incorporate caller ID authentication information where available.
 - Second, the blocking must be managed with sufficient human oversight and network monitoring to ensure that blocking is working as intended. Specifically, this must include a process that determines that the particular call pattern is highly likely to be illegal before blocking any calls that are part of that pattern.
 - Third, the voice service provider must disclose to consumers that it is engaging in this sort of blocking.
 - Fourth, analytics must be applied in a non-discriminatory, competitively neutral manner.
 - Fifth, this blocking must be provided without a line item charge to consumers.
 - Finally, the voice service provider must meet all transparency and redress requirements the Commission has adopted for blocking.

Transparency and Redress Requirements (47 CFR §§ 64.1200(k)(5)-(6), (8)-(10))

- Section 64.1200(k)(5) is not a new rule. It prohibits voice service providers from blocking emergency calls to 911. This rule now applies to blocking consistent with the expanded safe harbor described under section 64.1200(k)(11).
- Section 64.1299(k)(6) is not a new rule. It requires all voice service providers that block calls consistent with this section to make all reasonable efforts to ensure that calls from public safety answering points and government emergency numbers are not blocked. This rule now applies to blocking consistent with the expanded safe harbor described under section 64.1200(k)(11).
- Section 64.1200(k)(8) has been revised. The rule now requires that all terminating voice service providers that either block calls or use caller ID authentication information in determining how to deliver calls have a single point of contact for resolving disputes. Should the voice service provider determine that calls should not have been blocked or that other call treatment was inappropriate, it must immediately cease that blocking or call treatment. The voice service

provider may not charge the caller for reporting, investigating, or resolving these disputes so long as the complaint is made in good faith. The point of contact must:

- Be readily available on the voice service provider's public-facing website;
 - Be prepared to handle blocking disputes;
 - Be prepared to handle issues regarding verifying the authenticity of calls that are adversely affected by caller ID authentication information;
 - Resolve dispute in a reasonable amount of time; and
 - Provide a status update on disputes to the party that brought the dispute within 24 hours.
- Under section 64.1200(k)(9), voice service providers that block calls must return an appropriate response code. Additionally, all voice service providers must ensure that the code, or its equivalent, is passed back down the call path to the origination point. An appropriate response code includes:
 - Session Initiation Protocol (SIP) Code 607 or 608, where the call terminates on an IP network; or
 - ISDN User Part (ISUP) code 21 with cause location "user," where the call terminates on a non-IP network.
 - These codes must appropriately map to each other in the network to ensure that, as a call moves from an IP network to a non-IP network, the code is properly translated and not lost.
 - Under section 64.1200(k)(10), any voice service provider that blocks on an opt-in or opt-out basis must provide a list of blocked calls that were intended for a specific number at the request of the subscriber to that number. This list must:
 - Be provided within 3 business days of the request;
 - Include the previous 28 days of blocked calls; and
 - Include the date, time, and calling number of every blocked call within that time frame.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The *Fourth Report and Order* contains new information collection requirements for the effective mitigation requirement and the blocked calls list requirement.

- Requirement to Effectively Mitigate Illegal Traffic Upon Notification (47 CFR § 64.1200(n)(2))
 - Voice service providers must, after taking steps to investigate and mitigate illegal traffic following notification by the Commission's Enforcement Bureau, report to the Enforcement Bureau regarding the result of that investigation and any mitigation steps taken.
 - Responses must be made promptly following any such notification by the Enforcement Bureau.
- Blocked Calls list Requirement (47 CFR § 64.1200(k)(10))
 - Voice service providers that block calls on an opt-in or opt-out basis must, at the request of the subscriber to a particular number, provide a list of all calls intended for that number that have been blocked on an opt-in or opt-out basis in the prior 28 days.
 - This list must be provided within 3 business days; it can be provided through any reasonable means.

IV. IMPLEMENTATION DATE

The rules in the *Fourth Report and Order* shall become effective 30 days after publication of the text or a summary thereof in the Federal Register, with the exception of sections 64.1200(k)(9), 64.1200(k)(10), and 64.1200(n)(2).

The following rules require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act: 47 CFR 64.1200(k)(10) and 47 CFR 64.1200(n)(2). These rules shall become effective after the Commission publishes a notice in the Federal Register announcing OMB approval and the relevant effective date.

47 CFR 64.1200(k)(9) shall be effective January 1, 2022.

V. INTERNET LINKS

A copy of the *Fourth Report and Order* is available at: <https://docs.fcc.gov/public/attachments/FCC-20-187A1.pdf>.