

**Calendar No. 585**

116TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ 116-292

DATA ANALYTICS ROBOCALL TECHNOLOGY  
ACT OF 2019

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R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 2204



NOVEMBER 16, 2020.—Ordered to be printed

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U.S. GOVERNMENT PUBLISHING OFFICE

19-010

WASHINGTON : 2020

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

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### DATA ANALYTICS ROBOCALL TECHNOLOGY ACT OF 2019

NOVEMBER 16, 2020.—Ordered to be printed

Mr. WICKER, from the Committee on Commerce, Science, and  
Transportation, submitted the following

### R E P O R T

[To accompany S. 2204]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2204) to allow the Federal Communications Commission to carry out a pilot program under which voice service providers could block certain automated calls, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

#### PURPOSE OF THE BILL

S. 2204 as reported by the Committee would require the Federal Communications Commission (FCC or Commission) to begin a rulemaking to consider establishing a process to maintain a list of numbers that are not eligible for call blocking by a voice service provider. It also would direct the FCC to prepare a report on the effectiveness of various call blocking tools.

#### BACKGROUND AND NEEDS

Consumers are plagued by illegal robocalls. In 2018, it was projected that in 2019, nearly 50 percent of all calls to mobile phones would be scam robocalls.<sup>1</sup> Another report estimates that robocalls contacted Americans' phones almost 5 billion times in January

<sup>1</sup>First Orion, "Nearly 50% of U.S. Mobile Traffic Will be Scam Calls by 2019," Sep. 12, 2018 (<https://firstorion.com/nearly-50-of-u-s-mobile-traffic-will-be-scam-calls-by-2019/>) (accessed May 13, 2020).

2020, amounting to almost 2,000 calls per second.<sup>2</sup> Unfortunately, the bad actors behind these calls are finding new ways to place these nuisance calls. For example, scammers often falsify (or spoof) the caller ID that appears on a call recipient’s phone. A number is spoofed when the caller ID information is manipulated or altered to display anything other than the originating telephone number.<sup>3</sup> Under Federal law, spoofing is illegal if done “with the intent to defraud, cause harm, or wrongfully obtain anything of value.”<sup>4</sup> As technology has progressed, it has allowed malicious and illegal robocallers to dramatically increase their ability to target consumers.<sup>5</sup> In December 2019, President Trump signed S. 151, the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act,<sup>6</sup> to address illegal robocalls and spoofing. The TRACED Act mandates the adoption of caller ID authentication technology and, in appropriate circumstances, allows a voice service provider to block calls it cannot adequately authenticate. Call authentication technology verifies that the calling number is accurate and not spoofed.

Despite the relief call authentication and call blocking may provide consumers, stakeholders fear that some legitimate calls could be inadvertently blocked, including calls from public safety organizations, the government, and schools.<sup>7</sup> These groups have argued for the development of one or more lists of telephone numbers that should be exempt from blocking by call blocking and call authentication systems. The FCC sought comment on the implementation of a “critical calls list” containing such numbers in a June 2019 Further Notice of Proposed Rulemaking (FNPRM).<sup>8</sup> It also sought comment from the public about the types of numbers that should be included on that list.<sup>9</sup>

The term “Critical Calls List” refers to a list of phone numbers that would be exempt from call blocking. A Critical Call List differs from other call lists, such as white lists. White lists permit a consumer to specify the telephone numbers from which they wish to receive calls, making call blocking the default.<sup>10</sup> But such lists “create[] a risk that illegal callers will obtain those numbers and spoof them in order to reach consumers,”<sup>11</sup> making them less attractive. A Critical Calls List has a limited set of telephone num-

<sup>2</sup>YouMail, “January 2020 Nationwide Robocall Data” (<https://robocallindex.com/2020/january>) (accessed May 13, 2020).

<sup>3</sup>See *Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, WC Docket No. 11–39, Report and Order, 26 FCC Rcd 9114, 9115, para. 1 (2011) (stating that spoofing may also involve manipulating or altering the caller ID to display a name or other text (i.e., anything other than the originating number)).

<sup>4</sup>Truth in Caller ID Act; 15 U.S.C. 227(e).

<sup>5</sup>Sometimes spoofing is used legitimately to protect the caller or show affiliation with a specific entity. For example, a battered women’s shelter might disguise its telephone number to protect the shelter’s true number, which could be tracked and used to locate the center. A doctor calling patients from her cellphone may spoof her office number to help her patients know who is calling and to avoid giving out personal contact information. See Sarah Krouse, “Stop Robocalling Me!; I Didn’t!”, *The Wall Street Journal*, Jan. 1, 2019 (<https://www.wsj.com/articles/stop-robocalling-me-i-didnt-11546261200>) (accessed May 13, 2020).

<sup>6</sup>Pub. L. 116–105.

<sup>7</sup>See *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17–59, WC Docket No. 17–97, Declaratory Ruling and Third Further Notice of Proposed Rulemaking, 34 FCC Rcd 4876, para. 63 (2019) (Call Blocking Declaratory Ruling and Third FNPRM).

<sup>8</sup>Id. at paras. 63–70.

<sup>9</sup>Id. at paras. 63–68.

<sup>10</sup>Id. at para. 43.

<sup>11</sup>Id. at para. 64.

bers, making it more manageable, and would be maintained solely by the Commission.

Debate continues about who should be responsible for the collection and maintenance of a Critical Calls List or similar directory of telephone numbers that should be exempt from blocking of illegal robocalls. The FCC's FNPRM suggested that it should be the responsibility of the voice service providers utilizing call blocking and call authentication to develop and maintain such lists. Others have suggested that the FCC should be responsible for developing and maintaining the list.<sup>12</sup> Stakeholders supporting this approach argue that the FCC is best positioned to determine the types of numbers that should be included on a list and to ensure that any numbers added to the list are verified, updated, secure, and available to all voice service providers. They also suggest that a list maintained by the FCC would also reduce the burden on individual voice service providers from having to perform such functions.

S. 2204, as amended, would direct the FCC to begin a rule-making to specifically consider whether the Commission should directly maintain a list of telephone numbers that cannot be blocked, and what categories of numbers should be included on that list. At the same time, it expressly would not prevent the FCC from moving forward on the pending FNPRM.

Separately, the FCC's Call Blocking Declaratory Ruling and Third FNPRM directs the agency's Consumer and Governmental Affairs Bureau (CGB) to collect information and prepare reports on the effectiveness of call blocking and caller ID authentication technologies.<sup>13</sup> However, those reports are not required to be submitted to Congress.

#### LEGISLATIVE HISTORY

S. 2204, the Data Analytics Robocall Technology Act of 2019, was introduced on July 23, 2019, by Senator Crapo (for himself and Senator Klobuchar) and was referred to the Committee on Commerce, Science, and Transportation of the Senate. On December 11, 2019, the Committee met in open Executive Session and, by voice vote, ordered S. 2204 reported favorably with an amendment (in the nature of a substitute).

#### ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

<sup>12</sup>Id. at para. 63 ("Accordingly, we here consider requiring any voice service provider that offers call-blocking to maintain a 'Critical Calls List' of numbers it may not block.")

<sup>13</sup>Id. at paras. 87–90.

| <b>S. 2204, DART Act of 2019</b>  |      |                                     |                      |
|---|------|-------------------------------------|----------------------|
| As ordered reported by the Senate Committee on Commerce, Science, and Transportation on December 11, 2019 |      |                                     |                      |
| By Fiscal Year, Millions of Dollars   | 2020 | 2020-2025                           | 2020-2030            |
| Direct Spending (Outlays)   | 0    | 0                                   | 0                    |
| Revenues  | 0    | 0                                   | 0                    |
| Increase or Decrease (-) in the Deficit   | 0    | 0                                   | 0                    |
| Spending Subject to Appropriation (Outlays)   | *    | *                                   | not estimated        |
| Statutory pay-as-you-go procedures apply?   | No   | <b>Mandate Effects</b>              |                      |
| Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?            | No   | Contains intergovernmental mandate? | No                   |
|   |      | Contains private-sector mandate?    | Yes, Under Threshold |
| * = between zero and \$500,000.   |      |                                     |                      |

S. 2204 would require the Federal Communications Commission (FCC) to initiate a rulemaking related to maintaining a list of numbers that may not be blocked by a voice service provider. Such a list could include numbers associated with public safety facilities, government entities, or schools. In addition, the bill would require the FCC to submit to the Congress an analysis of the effectiveness of various tools to block robocalls.

CBO assumes that S. 2204 would be enacted in fiscal year 2020. Using information from the FCC, CBO expects the commission would require four attorneys for less than a full year at an annual average cost of \$210,000 each to implement the bill. In total, CBO estimates that implementing S. 2204 would cost less than \$500,000. However, under current law the FCC is authorized to collect fees sufficient to offset the appropriated costs of its regulatory activities each year; therefore, CBO estimates that the net effect on spending subject to appropriation would be negligible, assuming appropriation actions consistent with that authority.

If the FCC increases annual fee collections to offset the costs of implementing provisions in the bill, S. 2204 would increase the cost of an existing private-sector mandate on entities required to pay those fees. Using information from the FCC, CBO estimates that the incremental cost of the mandate would be small and would fall well below the annual threshold established in the Unfunded Mandates Reform Act (UMRA) for private-sector mandates (\$168 million in 2020, adjusted annually for inflation).

S. 2204 contains no intergovernmental mandates as defined in UMRA.

The CBO staff contacts for this estimate are David Hughes (for federal costs) and Rachel Austin (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

#### REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

*Number of Persons Covered*

S. 2204 would direct the FCC to consider developing a process whereby the FCC would maintain a list of telephone numbers that cannot be blocked by voice service providers. The bill affects entities already subject to FCC rules and regulations, and therefore the number of persons covered should be consistent with current levels.

*Economic Impact*

S. 2204 is not expected to have an adverse impact on the Nation's economy.

*Privacy*

S. 2204 is not expected to have an adverse impact on the personal privacy of individuals.

*Paperwork*

S. 2204 would not increase paperwork requirements for private individuals or businesses. The bill would direct the FCC to prepare a report to Congress related to its findings on the effectiveness of various categories of call blocking technologies.

## CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title.*

This section would provide that the bill may be cited as the "Data Analytics Robocall Technology Act of 2019" or as the "DART Act of 2019".

*Section 2. Definitions.*

This section would define four terms used throughout the bill. The definitions of the terms "covered ruling"<sup>14</sup> and "voice service"<sup>15</sup> are of particular importance.

*Section 3. Rulemaking.*

Section 3 would direct the Commission, not later than 18 months after enactment of the Act, to initiate a rulemaking to consider establishing a process under which the Commission would maintain a list of numbers not eligible to be blocked by a voice service provider. The section further provides that the list of numbers that are not eligible to be blocked may include the following: (1) numbers used for outgoing calls by a public safety answering point or similar facility; (2) numbers used to originate calls from a government entity, such as a call generated during an emergency; (3) numbers used by a school or similar institution to provide school-related notifications, such as for weather-related closures or for the existence of an emergency affecting a school or students; and (4) numbers

<sup>14</sup>FCC 19-51; CG Docket No. 17-59.

<sup>15</sup>47 U.S.C. 251(c)(1).

used for similar or emergency purposes, as determined appropriate by the FCC. The Committee intends that the FCC use any and all information collected to date related to creation and maintenance of a list of numbers not eligible to be blocked to inform this rule-making, including from the covered ruling.

*Section 4. Reports on deployment and implementation of call blocking and caller ID authentication.*

Section 4 would require that the FCC submit to appropriate congressional committees an analysis of the following: (1) the effectiveness of various categories of call blocking tools; and (2) any related legislative recommendations reached by the FCC. This report to Congress would be due not later than 180 days after the FCC receives any report under paragraph 90 of the covered ruling. The Committee notes that the covered ruling directs CGB to prepare two reports on the effectiveness of call blocking technologies. Accordingly, the Committee intends for the FCC to submit to Congress two separate reports pursuant to this section containing the necessary information required under this section. The Committee also intends that for purposes of the reports, the judgment of the FCC on the effectiveness of call blocking technologies shall include, at a minimum, the information the Commission has directed CGB to include in the reports required by the covered ruling.

*Section 5. Rule of construction.*

Section 5 sets forth a rule of construction for the Act stating that nothing in the Act may be construed to impede or delay the FCC's analysis of the most effective means to maintain and administer a list of numbers that may not be blocked (referred to as the Critical Calls List in the covered ruling) under the covered ruling. The Committee therefore intends that this Act be supplementary to the FCC's continued work on the Critical Calls List pursuant to the covered ruling, and should not be used by the Commission to delay that work.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.