

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 64**

[CG Docket No. 17–59, WC Docket No. 17–97; FCC 19–51]

Advanced Methods To Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor

AGENCY: Federal Communications Commission.

ACTION: Declaratory ruling.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) clarifies that voice service providers may offer consumers programs to block unwanted calls through analytics (call-blocking programs) on an informed opt-out basis and may block calls from numbers not in a consumer's contact list (white-list programs). The Commission also reminds voice service providers that protecting emergency communications is paramount. Finally, the Commission directs the Consumer and Governmental Affairs Bureau (CGB), in consultation with the Wireline Competition Bureau (WCB) and Public Safety and Homeland Security Bureau (PSHSB), to prepare two reports on the state of deployment of advanced methods and tools to eliminate such calls.

DATES: This declaratory ruling is effective June 7, 2019.

FOR FURTHER INFORMATION CONTACT: Jerusha Burnett, Consumer Policy Division, CGB, at (202) 418–0526, email: Jerusha.Burnett@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Declaratory Ruling*, in CG Docket No. 17–59, WC Docket No. 17–97; FCC 19–51, adopted on June 6, 2019 and released on June 7, 2019. The *Third Further Notice of Proposed Rulemaking (FNPRM)* that was adopted concurrently with the *Declaratory Ruling* is published elsewhere in this issue of the **Federal Register**.

Congressional Review Act

The Commission will not send a copy of the *Declaratory Ruling* pursuant to the Congressional Review Act, because the Commission adopted no rules therein. See 5 U.S.C. 801(a)(1)(A).

Synopsis

1. The Commission believes the clarification it makes that voice service providers may immediately start offering call-blocking services by default—while giving consumers the choice to opt out—is essential to curtail illegal calls.

2. The Commission has repeatedly stated that offering call-blocking services does not violate voice service providers' call completion obligations under section 201(b) of the Communications Act of 1934, as amended (the Act), and that consumers have a right to block calls. Nonetheless, uncertainty regarding when voice service providers may implement call-blocking programs remains. The Commission issues the *Declaratory Ruling* to resolve uncertainty and make clear the call-blocking tools that voice service providers can offer.

Call-Blocking Programs

3. Call-blocking programs have become more prevalent over the past several years. But many voice service providers appear to offer call-blocking programs only on an opt-in basis—limiting the impact of such programs on consumers. Setting a call-blocking program as the default can significantly increase consumer participation while maintaining consumer choice.

4. Inertia may be an obstacle for consumers who might otherwise participate in a call-blocking program, and convincing consumers to affirmatively sign up for a call-blocking program (rather than offering it as the default) can be costly, especially for smaller providers.

5. Against this background, the Commission again reiterates that “there appears to be no 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.” Nor has the Commission identified any provision of the Communications Act or any Commission rule that would limit consumers to exercising such consent on an opt-in basis. Although the Commission's 2015 declaratory ruling on robocalls and call blocking (*2015 TCPA Order*), published at 80 FR 61129, October 9, 2015, in a single sentence, referred to opt-in call-blocking programs, it did not suggest that such a narrow ruling was required, nor did it claim to prohibit opt-out call-blocking programs. Accordingly, the Commission clarifies that voice service providers may offer consumers call blocking through an opt-out process. Or to use the language of the Act, the Commission finds that opt-out call-blocking programs are generally just and reasonable practices (not unjust and unreasonable practices) and enhancements of service (not impairments of service).

6. The Commission believes consumers would welcome this blocking choice and that it should

therefore be offered to existing subscribers of a given voice service provider, rather than only new subscribers. The Commission encourages voice service providers to offer these tools immediately to their customers, and where they already provide opt-in call-blocking programs, to make them the default for all consumers. The Commission encourages voice service providers to make consumers aware of the programs' availability and, for that limited subset of consumers who do not want to participate, make the opt-out process simple and easily accessible.

7. The Commission next turns to the scope of this declaration. *First*, the Commission clarifies that voice service providers offering opt-out call-blocking programs must offer sufficient information so that consumers can make an informed choice as to whether they wish to remain in the program or opt out. Voice service providers should clearly disclose to consumers what types of calls may be blocked and the risks of blocking wanted calls, and they should do so in a manner that is clear and easy for a consumer to understand. At a minimum, the Commission would expect each voice service provider to describe in plain language how the call-blocking program makes the determination 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.

8. *Second*, the Commission clarifies that voice service providers may offer opt-out call-blocking programs based on any reasonable analytics designed to identify unwanted calls. The Commission recognizes that limiting opt-out call-blocking programs to rigid blocking rules that prescribe in detail when a voice service provider may block is unnecessary when consumers have the option to opt out, could enable callers to evade blocking, and could impede the ability of voice service providers to develop dynamic blocking schemes that evolve with calling patterns. And to the extent certain callers claim that consumers do indeed want to receive calls from them, the Commission believes the ability for consumers to opt out of call-blocking programs adequately addresses such concerns.

9. In line with the record, the Commission notes several examples of call-blocking programs that may be effective and would be based on reasonable analytics designed to identify unwanted calls. 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; 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 the Commission suggests these as examples of potentially effective opt-out call-blocking programs, this list is not exhaustive. To be reasonable, however, such analytics must be applied in a non-discriminatory, competitively neutral manner.

10. *Third*, the Commission reaffirms its commitment to safeguarding calls from emergency numbers. The Commission cautions voice service providers using call blocking tools by default to avoid blocking calls from “public safety entities, including PSAPs, emergency operations centers, or law enforcement agencies.” The Commission emphasizes that voice service providers should make all feasible efforts for those tools to avoid blocking emergency calls.

11. *Fourth*, the Commission reaffirms its commitment to safeguarding calls to rural areas. The Commission does not expect that this holding will have any negative impact on rural call completion rates given that opt-out call-blocking programs would be offered by terminating providers (*i.e.*, those with a direct relationship to the called party). But the Commission nonetheless reminds all voice service providers that call-blocking programs may not be used to avoid the effect of the rural call completion rules.

12. *Fifth*, while some parties have expressed concern about blocking of calls required for compliance with other laws, rules, or policy considerations, the Commission believes that a reasonable call-blocking program instituted by default would include a point of contact for legitimate callers to report what they believe to be erroneous blocking as well as a mechanism for such complaints to be resolved. Further, callers who believe

their calls have been unfairly blocked may seek review of a call-blocking program they believe to be unreasonable by filing a petition for declaratory ruling with the Commission. The Commission also encourages voice service providers that block calls to develop a mechanism for notifying callers that their calls have been blocked. The Commission notes that industry has been active in developing solutions that allow callers to communicate with voice service providers and analytics companies to identify themselves and share their call patterns that might otherwise seem to indicate illegal call activity. Moreover, the Commission believes that reducing the number of unwanted calls that consumers receive will make it more likely that they will answer their phones, thus making it easier for legitimate callers to reach people. Thus, the *Declaratory Ruling* will ultimately increase call completion rates for legitimate callers.

13. The Commission believes that the benefit to consumers of voice service providers offering opt-out blocking services will exceed any costs incurred. Indeed, the Commission expects these blocking services will yield an overall reduction in costs incurred by voice service providers as illegal and unwanted calls will consume less of their network capacity, which can then be devoted more fully to calls and other services that consumers value.

14. The Commission also believes that the costs to the voice service provider, for its own analytics program or one outsourced, if amortized against a large percentage of their customer base, is far less expensive than the costs of allowing unwanted calls to bother its subscribers. The record to date also indicates that voice service providers believe a critical mass of served consumers would subscribe to call blocking services on an opt-out basis.

15. Finally, the Commission understands the cost of handling customer service calls from consumers annoyed by illegal robocalls can be more than ten dollars per consumer call. Further, the Commission anticipates that the authorization of opt-out blocking would impose no mandatory costs on voice service providers because implementation is voluntary, not required. As such, the Commission would expect voice service providers to offer an opt-out service for free, as many already do, with no line-item charge.

White-List Programs

16. As with the call-blocking programs discussed above, white-list blocking stops unwanted calls on the voice service provider’s network before

the calls reach the consumer’s phone, providing an added level of protection from unwanted calls and the frustrations that go with them. But unlike one-ring and analytics programs, a white-list program requires consumers to specify the telephone numbers from which they wish to receive calls.

17. The Commission notes that some voice service providers already offer similar services. To ensure that regulatory uncertainty does not deter such offerings, the Commission makes clear that nothing in the Act nor the Commission’s rules prohibits a voice service provider from offering an opt-in white list program using the consumer’s contact list. Note that the Commission is in no way limiting the consumer’s ability to use phone-based applications installed, for example, by the consumer, the phone manufacturer, or bundled by the service provider where the data in the consumer’s contact list never leaves the device. For a whitelist program that transfers the consumer’s contact list to a service provider, provides access to the contact list by the service provider, or otherwise stores the consumer’s contacts with the service provider or its designees, consumers need to understand they are disclosing the telephone numbers contained in their phone’s contact lists with their voice service providers. The Commission limits this Declaratory Ruling to white-list programs requiring informed, opt-in consent. Voice service providers should disclose 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.

Legal Authority

18. The Commission believes that it has ample legal authority to issue the *Declaratory Ruling*. Section 554(e) of the Administrative Procedure Act authorizes the Commission to issue a declaratory ruling to terminate a controversy or remove uncertainty. And § 1.2 of the Commission’s rules provides that “The Commission may . . . on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.” In issuing the *Declaratory Ruling*, the Commission notes that a necessary corollary of permitting consumer-driven call blocking is that such blocking must be consistent with provisions in Title II, including section 201(b) and section 214(a) of the Act. As explained above, the Commission has previously held that consumers have a right to block certain calls and that offering call-blocking services to consumers is a just and reasonable practice under section 201(b) of the Act. The Commission also

finds that consumer-driven call blocking is an enhancement of service, not a discontinuance or impairment of “service” to a “community, or part of a community,” within the meaning of section 214(a) of the Act. In any event, because the Commission’s discussion in the *2015 TCPA Order* focusing on opt-in call blocking programs created uncertainty as to the call-blocking tools that voice service providers can offer their customers, the Commission is expressly authorized to issue a declaratory ruling here to clarify that voice service providers’ long-recognized ability to block unlawful calls encompasses the right to block calls where the customer chooses on an informed opt-out basis. In short, as stated above, the Commission finds that opt-out call-blocking programs are generally just and reasonable practices (not unjust and unreasonable practices) under section 201 of the Act and enhancements of service (not impairments of service) under section 214 of the Act.

Reports on Deployment and Implementation of Call Blocking and Caller ID Authentication

19. In order to measure the effectiveness of efforts of the Commission and industry to thwart illegal robocalls and empower consumers, the Commission directs CGB, in consultation with WCB and PSHSB, to prepare two reports on the state of deployment of advanced methods and tools to eliminate such calls, including the impact of call blocking on 911 and public safety. The reports shall be submitted to the Commission no later than June 23, 2020, for the first report, and no later than June 23, 2021, for the second report.

20. Specifically, the Commission adopts the recommendation of its Consumer Advisory Committee dated September 18, 2017, to study the implementation and effectiveness of blocking measures, to include:

[T]he availability to consumers of call blocking solutions; the fees charged, if any, for call blocking tools available to consumers; the proportion of subscribers whose providers offer and/or enable call blocking tools; the effectiveness of various categories of call blocking tools; and an assessment of the number of subscribers availing themselves of available call blocking tools.

21. The Commission recognizes that to determine the “effectiveness of various categories of call blocking tools,” as the Consumer Advisory Committee recommended, it may be necessary for CGB to collect additional

information and data from voice service providers. The Commission explicitly delegates authority to CGB, in consultation with WCB and PSHSB, to collect any and all relevant information and data from voice service providers necessary to complete these reports. Following delivery of the first report, the Commission will assess whether, contrary to expectation, consumers are being charged and, if so, the Commission will seek comment on rules requiring providers that offer these services to do so for free.

Ordering Clause

22. Pursuant to sections 4(i), 4(j), 201, and 214 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201, 214, and §§ 1.2 and 64.1200 of the Commission’s rules, 47 CFR 1.2, 64.1200, the *Declaratory Ruling* in CG Docket No. 17–59 is adopted.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

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DEPARTMENT OF VETERANS AFFAIRS

48 CFR Part 808

[Docket VA–2019–VACO–0018]

Issuance of Class Deviation From VA Acquisition Regulation (VAAR) Part 808—Required Sources of Supplies and Services and Conforming Amendments

AGENCY: Department of Veterans Affairs (VA).

ACTION: Temporary rule; request for comments.

SUMMARY: VA provides notification that the agency has issued a class deviation from VA Acquisition Regulation (VAAR) Part 808—Required Sources of Supplies and Services. VA is amending the VAAR to implement the Federal Circuit’s mandate. VA has determined that publication of this notification in the *Federal Register* would be beneficial to both the agency’s acquisition workforce and industry stakeholders. The class deviation, which is effective May 20, 2019, was issued to immediately implement the Federal Circuit’s mandate, and this publication is to further notify the public in order to avoid confusion regarding applicable policy and to make conforming amendments to the CFR. The public is invited to submit comments on VA’s approach to implementing the Federal

Circuit mandate, as set forth in the class deviation and the conforming amendments to the CFR set forth in this publication.

DATES: The rule is effective June 24, 2019 through July 1, 2021. The class deviation is effective as of May 20, 2019. Comments: Interested parties are invited to submit comments in writing by July 24, 2019.

ADDRESSES: Written comments may be submitted through <http://www.regulations.gov>; by mail or hand delivery to the Director, Office of Regulation Policy and Management (OOREG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1064, Washington DC 20420; or by fax to 202–273–9026. Comments should indicate that they are submitted in response to Docket #VA–2019–VACO–0018, titled—“Issuance of Class Deviation from VA Acquisition Regulation (VAAR) Part 808 — Required Sources of Supplies and Services.” During the comment period, comments may also be viewed online through the Federal Docket Management System at www.regulations.gov. The full class deviation text is available at: <https://www.va.gov/oal/docs/business/pps/deviationVaar20190520.PDF>.

FOR FURTHER INFORMATION CONTACT: Sheila P. Darrell, Ph.D., CFCM, Office of Acquisition and Logistics (003A), Procurement Policy and Warrant Management Service (003A2A) via email at VA.Procurement.Policy@va.gov or (202) 632–5288. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On October 17, 2018, the Federal Circuit, which has nationwide appellate jurisdiction over challenges to federal agency procurement decisions, issued a decision in *PDS Consultants, Inc., v. The United States, Winston-Salem Industries for the Blind* (PDS Consultants), 907 F.3d 1345 (Fed. Cir. 2018). In the decision, the Federal Circuit noted that in 2016 the United States Supreme Court, in its decision in *Kingdomware Technologies, Inc. v. United States*, held that, “[e]xcept when the [VA] uses the noncompetitive and sole-source contracting procedures in subsections (b) and (c), § 8127(d) requires the [VA] to use the Rule of Two before awarding a contract to another supplier.” However, the Federal Circuit acknowledged that *Kingdomware* did not directly address the interaction between 38 U.S.C. 8127 and the Javits-Wagner O’Day Act (JWOD), 41 U.S.C. 8504, and, instead focused on whether VA had the discretion to place orders under a preexisting Federal Supply