

FCC Mandates Blocking of Certain Text Messages; Seeks Comment on Proposals Targeting Text Messages

On March 17, 2023, the Federal Communications Commission [released](#) a report and order (“Order”) and further notice of proposed rulemaking (“Further NPRM”) adopting new rules and proposals regulating illegal text messages. The Order mandates the blocking of illegal robotexts and requires point of contact designations. The Further NPRM seeks comment on four proposals that are aimed at protecting consumers from illegal text messages.

Final Rules

The Order adopts two new rules.

First, the Order adopts a **mandatory blocking rule** that requires mobile wireless providers, at the network level (i.e., without any opt-in or opt-out from the recipient), to block texts that purport to be from numbers appearing on a reasonable “Do-Not-Originate” (“DNO”) list created by the provider.

- The rule applies to text messages that are routed through wireless mobile provider networks. The rule does not require mobile wireless providers to block messages from short codes or over the top (“OTT”) applications.
- A provider’s DNO list must include NANP numbers that are invalid, unallocated, or unused, as well as NANP numbers for which the number’s subscriber has requested blocking of texts purporting to originate from the number. The FCC determined that no reasonable consumer would wish to receive these texts because they are “highly likely to be illegal.” *Targeting and Eliminating Unlawful Text Messages*, Report and Order and Further Notice of Proposed Rulemaking, FCC-23-21, CG Docket No. 21-402, 02-278, 16 (rel. Mar. 17, 2023).
- The FCC acknowledged that entities other than mobile wireless providers, such as aggregators or contractors, could be responsible for blocking.

The FCC determined that mandatory blocking of texts from a reasonable DNO list is warranted, in part, because the texts from numbers on such a list are likely to be illegal, and the volume of illegal text messages has increased. It concluded that a mandatory—as opposed to a permissive—blocking requirement—is warranted due to concerns that text messages are a vehicle for malware and because texting is a more trusted form of communication than calling.

Second, the Order adopts a **point of contact rule** that requires mobile wireless providers to establish—or require their aggregator partners or blocking contractors to establish—a point of contact for documented complaints of unwarranted blocking. This requirement is intended to enable the swift resolution of complaints regarding unwarranted blocking of text messages and allow a legitimate sender of text messages with “documented, objective evidence of blocking” to quickly and easily contact the entity responsible for that blocking to resolve the dispute. *Id.* at ¶ 28. Providers, aggregators, and contractors are expected to respond appropriately.

In adopting these new regulations, the FCC relies on its authority to regulate texts under the Telephone Consumer Protection Act and spoofing under the Truth in Caller ID Act and to impose regulations on wireless service providers that are necessary to protect the public from illegal text messages under Title III of the Communications Act.

These rules will become effective no sooner than six months after the Office of Management and Budget completes its Paperwork Reduction Act review.

Additional Proposals

The Further NPRM makes several proposals aimed at providing additional protections for consumers against illegal robotexts.

First, the Further NPRM proposes to require mobile wireless providers to block illegal text messages when notified of such traffic by the Enforcement Bureau—modeled on the requirements currently in place for gateway providers with respect to voice calls. Once notified, providers would be required to comply by a specified date with a minimum of 14 days to comply, promptly investigate the identified traffic, and either block the identified traffic and substantially similar traffic on an ongoing basis or inform the FCC that the provider has a reasonable basis for concluding that the identified texts are not illegal. If a notified provider fails to comply, the Enforcement Bureau can require all providers immediately downstream to block all traffic from that provider.

Second, while the FCC declined to adopt text message authentication requirements in the Order, the Further NPRM seeks comment on other solutions that are better targeted to address the problem of spoofed text messages.

Third, the Further NPRM states that “[t]o the extent it remains unclear, we propose to clarify that National DNC Registry protections apply to text messages as well as voice calls and to codify this clarification in our rules.” *Id.* at ¶ 55. Citing only a 2018 Enforcement Bureau citation that did not result in a fine, the Further NPRM further states the FCC “has previously taken the position that the National DNC Registry protects consumers from unwanted text messages that contain marketing when the consumer has placed their number on the National DNC Registry.” *Id.* at n. 155. The Further NPRM asks whether codifying the requirement will further protect consumers from unwanted marketing text messages, noting that the DNC protections do not depend on whether the caller uses an autodialer.

Fourth, the Further NPRM proposes to ban “the lead generator loophole,” i.e., the practice of obtaining a single consumer consent as grounds for delivering calls and text messages from multiple marketers on subjects beyond the scope of the original consent. *Id.* at 22. The Further NPRM seeks comment on amending the FCC’s TCPA consent requirements to require that consent be granted only to callers logically and topically associated with the website that solicits consent and whose names are clearly disclosed on the same web page.

Comments on the Further NPRM will be due 30 days after publication of the item in the Federal Register; reply comments will be due 60 days after such publication.

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HWG LLP’s cross-disciplinary TCPA practice advises clients on Federal and state legislative and regulatory proceedings, company compliance, and related litigation matters. Please contact [Jennifer Bagg](#), [Walter Anderson](#), [Amy Richardson](#), and [Alex Tate](#) for more information.

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