



Bureau of Consumer Protection
Bureau of Economics

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

January 23, 2015

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: CG Docket No. 02-278; WC Docket No. 07-135;
Federal Trade Commission Staff's Comments on Public Notice DA
14-1700 Regarding Call Blocking**

Dear Secretary Dortch:

The Federal Trade Commission staff ("FTC staff")¹ appreciates the opportunity to comment on the issues relating to carrier implementation of call-blocking technology, as raised in the September 9, 2014 letter from the National Association of Attorneys General ("NAAG Letter"). The FCC's Notice² seeks comment on whether there are any legal or regulatory prohibitions that prevent telephone carriers from offering consumers call-blocking technology – i.e., technology that can identify unwanted calls and block them from ringing consumers' phones. As discussed in more detail below, it is the FTC staff's view that no legal barriers or policy considerations prevent common carriers from offering technology that allows their customers to block unwanted calls.

American consumers continue to be plagued with unwanted telemarketing calls, which in many cases violate the law. The FTC's extensive study of this problem and its vigorous law enforcement efforts have shown that law enforcement alone cannot solve the problem of illegal calls. Rather, technological solutions are needed, and call-blocking technology is an integral part of those solutions. Congress has long recognized that consumers should be free from abusive

¹ These comments represent the views of the staff of the Federal Trade Commission's Bureau of Consumer Protection, Bureau of Economics, and Office of Policy Planning. The letter does not necessarily represent the views of the Federal Trade Commission or of any individual Commissioner. The Commission has, however, voted to authorize staff's submission of these comments.

² *Consumer and Governmental Affairs Bureau Seeks Comment on Robocalls and Call-Blocking Issues Raised by the National Association of Attorneys General on Behalf of Thirty-Nine Attorneys General*, DA 14-1700 (Nov. 24, 2014) ("FCC/CGB Public Notice").

telephone calls that impinge on consumers' right to privacy,³ and call-blocking technology would satisfy strong consumer demand for a solution that will stop the barrage of unwanted calls.

An FCC ruling affirming that common carriers can offer call-blocking services to their customers without violating their common carriage obligations is likely to make call-blocking technology more widely available to consumers. Such a ruling will allow common carriers to be more responsive to consumer demand and join other entities that already offer these services; will increase the likelihood that major US telephone carriers develop and actively market call-blocking technology to their large customer bases; will allow consumers who value this option to select telephone providers that offer call-blocking services; and will facilitate competition and innovation among carriers, as well as non-carriers, for new and better call-blocking technologies. Ultimately, widespread availability and use of call-blocking technology will substantially reduce the number of unwanted and illegal telemarketing calls received by consumers.

I. Call-Blocking Technology Is Integral To Solving the Problem of Illegal Calls.

The FTC's complaint data indicates that consumers are barraged with a large volume of unwanted telemarketing calls, many of which are calls that deliver a recorded message ("robocalls").⁴ The volume of consumer complaints about illegal telemarketing calls, particularly illegal robocalls, has increased significantly in the past five years.⁵ This increase is largely due to technological advancements. Although new technology has brought consumers lower cost telephone service and more advanced features for their telephones, these same advancements have allowed violators to use the Internet to place large volumes of illegal calls inexpensively, often from overseas, and in a manner that allows them to hide from law enforcement.

The FTC has undertaken vigorous law enforcement efforts against those making illegal calls. To date, the FTC has filed law enforcement actions against more than 600 companies and

³ See 15 U.S.C. 6102(a)(3) (directing the Federal Trade Commission to include in the Telemarketing Sales Rule provisions prohibiting telemarketers from "undertaking a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy").

⁴ From October 2013 to September 2014, the FTC received an average of 261,757 do-not-call complaints per month, of which approximately 55% (144,550 per month) were complaints about robocalls. See National Do Not Call Registry Data Book FY 2014 at 5 (Nov. 2014), available at <http://www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2014/dncdatabookfy2014.pdf>.

⁵ For example, in the fourth quarter of 2009, the FTC received approximately 63,000 complaints about illegal robocalls each month. See National Do Not Call Registry Data Book FY 2010 at 5 (Nov. 2010), available at <http://www.ftc.gov/sites/default/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2010/101206dncdatabook.pdf>. By the fourth quarter of 2012, robocall complaints had peaked at more than 200,000 per month. See National Do Not Call Registry Data Book FY 2012 at 5 (Oct. 2012), available at <http://www.ftc.gov/sites/default/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2012/1210dnc-databook.pdf>.

individuals that were allegedly responsible for placing billions of unwanted telemarketing calls to consumers in violation of the Do-Not-Call provisions of the Telemarketing Sales Rule.⁶ The FTC has obtained more than \$1 billion in judgments against these violators and intends to continue these law enforcement efforts.

Experience has shown, however, that the FTC's law enforcement efforts alone cannot stop the growing problem of illegal telemarketing calls because current technology makes it inexpensive and easy for callers to make lots of calls and effectively hide from law enforcement. Based on FTC staff's extensive study of the problem, the FTC has concluded that technological innovations are a critical component of the long-term solution to protecting consumers from such illegal telemarketing calls. Call-blocking technology – i.e., a “spam filter” for the phone – is an integral part of that technological solution.

In 2012, the FTC hosted a Robocall Summit on the problem of illegal robocalls that brought technical experts together to discuss the challenges and potential solutions to the problem.⁷ To spur innovation and potential technological solutions, the FTC sponsored a Robocall Challenge at the 2012 Summit,⁸ in which the FTC offered prizes to innovators who could develop technology that could analyze and block illegal robocalls. The FTC announced three winners in 2013,⁹ and one of those winners has already launched a service that is providing free call blocking for consumers.¹⁰ The 2012 Robocall Challenge demonstrated that call-blocking technology is viable, scalable, and can work in a real-world setting to protect consumers from unwanted calls.

Consumer demand for call-blocking technology is high. In the past year, the FTC received an average of 261,757 complaints per month about unwanted telephone calls,¹¹ which indicates substantial consumer frustration with the problem. Since launching in October 2013, Nomorobo, one of the winners of our 2012 Robocall Challenge, reports that it already has

⁶ A listing of recent actions the FTC has taken against illegal telemarketers can be found at [http://www.ftc.gov/tips-advice/business-center/legal-resources?title=&type=case&field_consumer_protection_topics_tid=236&field_industry_tid=All&field_date_value\[min\]=&field_date_value\[max\]=&sort_by=field_date_value](http://www.ftc.gov/tips-advice/business-center/legal-resources?title=&type=case&field_consumer_protection_topics_tid=236&field_industry_tid=All&field_date_value[min]=&field_date_value[max]=&sort_by=field_date_value).

⁷ Materials, agendas, and presentations from the 2012 FTC Robocall Summit can be found at <http://www.ftc.gov/news-events/events-calendar/2012/10/robocalls-all-rage-ftc-summit>.

⁸ Press Release, FTC, *FTC Challenges Innovators to Do Battle With Robocallers* (Oct. 18, 2012), available at <http://www.ftc.gov/news-events/press-releases/2012/10/ftc-challenges-innovators-do-battle-robocallers>.

⁹ Press Release, FTC, *FTC Announces Robocall Challenge Winners* (Apr. 2, 2013), available at <http://www.ftc.gov/news-events/press-releases/2013/04/ftc-announces-robocall-challenge-winners>.

¹⁰ See Nomorobo, <http://www.nomorobo.com>.

¹¹ See *supra* note 4.

150,000 subscribers for its free call-blocking service.¹² Primus, a Canadian telephone carrier that offers a free call-blocking service to its customers, reports that the service is extremely popular with its customers and is “one of the leading reasons that customers choose to keep their phone service with Primus.”¹³ Simply put, call blocking is a service consumers want.

The widespread availability of call-blocking technology to consumers will make a significant dent in the problem of unwanted telephone calls. First and foremost, the availability of the technology will give consumers the opportunity to be free from unwanted calls. Consumers have already registered over 217 million telephone numbers on the National Do Not Call Registry and expressed their affirmative choice to stop unsolicited telemarketing calls.¹⁴ Call blocking technology would go further by giving frustrated consumers a technological tool they can use to stop unwanted calls. In addition, call-blocking technology has the potential to drive up costs for illegal telemarketing operations and thus reduce the economic incentive to make illegal calls. Currently, the cost of placing large volumes of calls is so low that illegal calling operations can blast out millions of calls but still make a profit by making sales to the small fraction of call recipients who agree to purchase the goods or services offered. Call-blocking technology, if implemented on a widespread basis, has the potential to drive up costs or reduce revenues for illegal telemarketing operations, which may, in turn, drive some illegal calling operations out of business.¹⁵

¹² Ben Fisher, *Nomorobo: A Tiny Long Island Startup In The Middle Of A Big Fight In Washington*, N.Y. Bus. J., Oct. 2, 2014, <http://www.bizjournals.com/newyork/blog/techflash/2014/10/nomorobo-tiny-long-island-startup-in-the-middle-of.html?page=all>.

¹³ *Stopping Fraudulent Robocall Scams: Can More Be Done?: Hearing Before the Subcomm. on Consumer Protection, Prod. Safety, and Ins. of the S. Comm. on Commerce, Sci, and Transp.*, 113th Cong., S. Hrg. 113-117, at 45 (July 10, 2013) (statement of Matthew Stein, Chief Technology Officer, Primus Telecommunications Inc.) *available at* <http://www.gpo.gov/fdsys/pkg/CHRG-113shrg85765/pdf/CHRG-113shrg85765.pdf>.

¹⁴ *See* National Do Not Call Registry Data Book FY 2014 at 4 (Nov. 2014), *available at* <http://www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2014/dncdatabookfy2014.pdf>.

¹⁵ Call-blocking technology is unlikely to have a material impact on companies that are engaged in legal telemarketing. Currently, call-blocking technology is designed to stop telemarketing robocalls. Under the Telemarketing Sales Rule, however, telemarketing robocalls are illegal unless the company has the consumer’s express written consent to receive robocalls from the caller. 16 C.F.R. § 310.4(b)(1)(v). Because the overwhelming majority of consumers do not knowingly consent to receive robocalls, legitimate telemarketing operations cannot use robocalls on a widespread basis without violating the law.

II. Carriers Can Offer Call-Blocking To Customers Who Request the Service Without Violating Their Common Carriage Obligations.

Despite the strong consumer interest in call-blocking and the promise it shows in combatting the problem of unwanted calls, to date carriers have resisted offering call-blocking services to their large customer bases. As indicated in the NAAG letter, US Telecom, the trade association that represents land-line carriers, has stated in congressional testimony its view that “[t]he current [FCC] legal framework simply does not allow [phone companies] to decide for the consumer which calls should be allowed to go through and which should be blocked,” and that “the FCC has concluded that call blocking is an unjust and unreasonable practice under section 201(b) of the Communications Act of 1934.” FTC staff disagrees with this characterization of the FCC’s rulings. To the contrary and as set forth in the FCC/CGB Public Notice, past FCC rulings “recognize the right of individual end users to block incoming calls from unwanted callers” and acknowledge that “call-blocking services, including those provided by common carriers, are lawful” in some circumstances.¹⁶

The cases relied on by US Telecom address the FCC’s prohibition on a telecommunications common carrier’s blocking traffic to or from *another carrier or service provider* – a practice that results in customers not receiving calls they want to receive. Those cases do not address whether a carrier may block calls *at a consumer’s request*.¹⁷ FTC staff is unaware of any authority that prohibits carriers from blocking unwanted incoming calls at an end user’s request.

To the contrary, numerous authorities recognize a carrier’s ability to block telephone calls at a consumer’s request. For example, as the Public Notice points out, FCC orders addressing improper call blocking have included caveats that those orders have “no effect on the right of individual end users to choose to block incoming calls from unwanted callers.”¹⁸ Moreover, the D.C. Circuit recently noted that an entity subject to common carrier obligations may block unwanted incoming communications “to . . . end users if those end users so desire” without violating the general duty of common carriers not to block traffic.¹⁹ Furthermore, as correctly noted in the FCC Notice, carriers already offer a variety of call-blocking services to

¹⁶ FCC/CGB Public Notice at 3 & n. 7-12.

¹⁷ See, e.g., *Connect America Fund*, FCC 11-161, Report and Order, 26 FCC Rcd 17663, 17903, ¶ 734 (2011), *aff’d*, 753 F.3d 1015 (10th Cir. 2014); *Call Blocking by Carriers*, Declaratory Ruling & Order, 22 FCC Rcd 11629, 11629, ¶ 1 (Wireline Competition Bur. 2007) (“2007 Declaratory Ruling”); *Blocking Interstate Traffic in Iowa*, 2 FCC Rcd 2692 (1987). See generally *Rural Call Completion*, Notice of Proposed Rulemaking, 28 FCC Rcd 1569, 1572-73, ¶¶ 7-11 (2013) (summarizing anti-blocking decisions).

¹⁸ FCC/CGB Public Notice at 3 & n. 7 (citing *2007 Declaratory Ruling*, 22 FCC Rcd at 11632, ¶ 7 & n. 21, and *Connect America Fund*, 26 FCC Rcd at 18029, ¶ 973, n.2038).

¹⁹ *Verizon v. FCC*, 740 F.3d 623, 656-57 (D.C. Cir. 2014) (the fact that the Open Internet rules included “a limited exception permitting *end users* to direct broadband providers to block certain traffic by no means detract[ed] from the common carrier nature of the obligations [improperly] imposed on broadband providers”) (emphasis in original).

their customers, and none of those services have been deemed by the FCC to be unlawful. For example, carriers offer customers “Selective Call Rejection” (*80) to block calls from phone numbers on a customer-specified list; “Anonymous Call Rejection” (*77) to block calls that lack Caller ID identifying information;²⁰ and “Selective Call Acceptance” (*64) to block all calls *except* those from a specified list of phone numbers.²¹ Call-blocking services that block unwanted robocalls at the request of the end-user are analogous to these call-blocking services already offered by carriers, and FTC staff is unaware of any authority holding that any of these services violate common carriage obligations.

In addition, allowing carriers to offer call-blocking services to their customers is consistent with the underlying policies of the Do-Not-Call and robocall regulations set forth in both the FTC’s Telemarketing Sales Rule²² and the FCC’s own Telephone Consumer Protection Act regulations.²³ Both agencies’ Do-Not-Call and robocall regulatory schemes are built on the principle of consumer choice – namely, that consumers should be able to determine who can and cannot contact them by telephone. Call-blocking technologies are simply a tool that gives consumers the means to exercise more effectively their right not to receive certain types of calls.

III. Current Limitations in Call-Blocking Technology Should Not Prevent Consumers From Having Access to Those Services.

Although our 2012 Robocall Challenge demonstrated that call-blocking technology is viable, that technology as it exists today is not perfect. Existing call-blocking technology can potentially block some calls that consumers want to receive or can require legitimate callers to take extra steps²⁴ to connect to a call recipient. In addition, current call-blocking technology

²⁰ See FCC/CGB Public Notice at 3, n. 9 (citing *In re Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 19 FCC Rcd 12475, 12508, ¶ 74 (2004)).

²¹ More information about these codes can be found at the North American Numbering Plan Association’s website. See NANPA Vertical Service Codes – Code Definitions, http://www.nanpa.com/number_resource_info/vsc_definitions.html (last visited Dec. 15, 2014).

²² 16 C.F.R. § 310.4(b)(1)(iii)(B) & (v).

²³ 47 C.F.R. § 64.1200(a) & (c).

²⁴ For example, Nomorobo presents potential robocallers with an audio captcha that requires the caller to enter a two-digit code on their phone to get through to the call recipient. Robocallers are unable to enter the captcha and are therefore blocked, but live callers who get stopped by the Nomorobo call-blocking filter can enter the two-digit code to get through.

Similarly, under Primus’s call-blocking system, callers who are blocked hear a message inviting them to press 1 to record their name, so that their call can be announced to the party they are calling. After the caller records their name, the Primus system calls the call recipient, advises them that they have received a potential telemarketing call, and plays the recording provided by the caller. The customer then has the choice to accept the call, refuse the call, or send the call to voicemail. *Stopping Fraudulent Robocall Scams: Can More Be Done?: Hearing Before the Subcomm. on Consumer Protection, Prod. Safety, and Ins. of the S. Comm. on Commerce, Sci, and Transp.*, 113th Cong., S. Hrg. 113-117, at 45 (July 10, 2013) (statement of Matthew Stein,

typically blocks calls based, in part, on the caller ID information that is presented with the call. Under existing caller ID technology, however, illegal callers can falsify the caller ID number that accompanies their outbound calls in order to bypass call-blocking filters, which allows some unwanted calls to ring consumers' phones even if they are subscribed to a call-blocking service.

The fact that current call-blocking technology is not perfect, however, does not prevent telephone carriers from being able to offer this technology to their customers. Call-blocking solutions can mitigate the risk of missing wanted calls in several ways, such as by allowing blocked callers to leave a voicemail for the call recipient or enter a code on their phone to have their calls go through, or enabling call recipients to specify in advance a list of calling numbers that should not be blocked.²⁵ So long as providers of call-blocking services provide accurate disclosures to consumers when they sign up for these services that certain calls they want to receive may be blocked, consumers can decide for themselves whether to risk the disruption of those calls. Ultimately, if a call-blocking service blocks too many calls consumers want to receive, the market will address the issue as call-blocking providers will either have to improve their technology or risk losing subscribers.

Indeed, the fact that call-blocking technologies in their current form cannot block *all* unwanted calls should not prevent consumers from having the choice to use the technology. Just as an e-mail spam filter does not block all unwanted emails, current call-blocking technology cannot block 100% of unwanted calls either. Nonetheless, current call-blocking technologies have shown the ability to block a significant volume of unwanted calls.²⁶ So long as consumers are given accurate information when they sign up for a carrier's call-blocking service that the service will not stop all unwanted calls, consumers can decide whether they want a service that will block many, but not all, unwanted calls. Given the continued popularity of email spam filters that do not block 100% of all spam emails, it is likely that analogous call-blocking services will similarly be popular with consumers even if they are not immediately perfect. In fact, consumers who use existing call-blocking technologies have indicated their satisfaction with the services, even though they may not block all unwanted calls.²⁷

Finally, it is important to note that call-blocking technology is still in its relative infancy. FTC staff continues to build on the momentum of its 2012 Robocall Challenge and spur

Chief Technology Officer, Primus Telecommunications Inc.) *available at* <http://www.gpo.gov/fdsys/pkg/CHRG-113shrg85765/pdf/CHRG-113shrg85765.pdf>.

²⁵ *See supra* note 24.

²⁶ Since going live on October 1, 2013, Nomorobo reports that it has blocked more than 13 million robocalls. *See* Nomorobo, <https://www.nomorobo.com> (last visited Dec. 15, 2014).

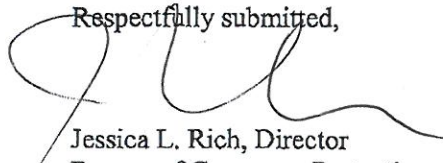
²⁷ For example, Primus reports that its internal surveys of customers who use its call-blocking service indicate that customers are satisfied with the service and the service is one of the leading reasons customers stay with Primus instead of switching to another phone carrier. *See Stopping Fraudulent Robocall Scams: Can More Be Done?: Hearing Before the Subcomm. on Consumer Protection, Prod. Safety, and Ins. of the S. Comm. on Commerce, Sci, and Transp., 113th Cong., S. Hrg. 113-117, at 45 (July 10, 2013) (statement of Matthew Stein, Chief Technology Officer, Primus Telecommunications Inc.) available at* <http://www.gpo.gov/fdsys/pkg/CHRG-113shrg85765/pdf/CHRG-113shrg85765.pdf>.

additional private sector advancements to combat unwanted calls.²⁸ As more research and development occurs in this area, FTC staff is confident that call-blocking technologies will get even better at blocking unwanted calls and allowing wanted calls to go through.²⁹ Moreover, a ruling from the FCC that makes clear that there are no legal impediments to common carriers offering call-blocking services will eliminate any perceived regulatory barrier to common carriers providing such services to their customers. This will likely cause common carriers to be more responsive to consumer demand for call-blocking services, which in turn will promote competition among common carriers to provide such services to their customers and to improve the call-blocking services they offer. In sum, if the FCC affirms that common carriers can compete against other entities that offer call-blocking services to consumers, it ultimately will lead to more consumers having access to better call-blocking technology and will make a significant impact on the problem of illegal calls.


IV. Conclusion

FTC staff appreciates the opportunity to provide its comments on common carriers' ability to offer call-blocking services to their customers. An affirmative statement from the FCC that common carriers can offer call-blocking services to their customers without violating their common carriage obligations would be in the best interest of American consumers.

Respectfully submitted,



Jessica L. Rich, Director
Bureau of Consumer Protection



Francine Lafontaine, Director
Bureau of Economics



Suzanne Munck, Deputy Director
Office of Policy Planning

²⁸ For example, in August 2014, the FTC sponsored its second robocall contest – “Zapping Rachel” – where it challenged information security experts at the annual DEF CON conference to develop more sophisticated telephone honeypot systems that can better analyze and detect illegal calls.

²⁹ For example, a working group of the Internet Engineering Task Force (“IETF”) called “Secure Telephone Identity Revisited” (“STIR”) is currently working to specify changes to existing telephone protocols and processes that would combat the problem of caller ID spoofing that allows illegal callers to change the caller ID number that accompanies their calls easily. See Secure Telephone Identity Revisited Working Group, <https://datatracker.ietf.org/wg/stir/charter> (last visited Dec. 15, 2014).