

# FCC Plans to Classify Texting as an Information Service, Take Action on Robocalls, Spectrum, and Rural Broadband at December Meeting

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The FCC plans to take aim [again](#) at unwanted texts and robocalls at its [next meeting](#) scheduled for December 12, 2018. Unwanted robocalls and texting consistently top the list of complaints received by the FCC and that has driven much regulatory attention by the agency in recent years. Specifically, at its December meeting, the FCC intends to classify most text messaging as an “information service” to preserve service providers’ ability to block robotexts and other unsolicited messages. The FCC’s anticipated action comes after years of debate regarding the proper regulatory treatment for text messaging and could have far-reaching impacts by exempting such services from the standard “common carrier” rules applicable to most legacy telecommunications. The FCC also plans to order the creation of a reassigned numbers database that would allow robocallers and others to check in advance whether a particular number still belongs to a consumer that has agreed to receive prerecorded calls. Rounding out the major actions, the FCC released draft items that would: (1) set the stage for the next [Spectrum Frontiers](#) auction of high-band spectrum; (2) offer additional funding to rural broadband recipients of Connect America Fund money if they increase high-speed offerings; and (3) issue the FCC’s first consolidated Communications Marketplace Report, providing a comprehensive look at industry competition. The December items cover many priority Pai FCC topics and would affect service providers of all sizes while tackling longstanding consumer protection and broadband deployment issues. You will find more details on the significant December items after the jump:

**Text Messaging Classification:** The draft [Declaratory Ruling](#) would classify the two most popular forms of text messaging – Short Message Service (“SMS”) and Multimedia Messaging Service (“MMS”) – as information services subject to light-touch regulation, and not commercial mobile services required to comply with legacy common carrier rules. In doing so, the FCC would note that text messaging services possess the capacity to store and retrieve information normally found in information services, such as email. FCC rules significantly curtail the ability of common carriers to block the transmission of communications. The FCC is concerned that applying the common carrier classification to text messaging would prevent service providers from utilizing anti-spoofing, anti-spam, and anti-robotext technologies. By officially declaring text messaging an information service, the FCC is hoping to spur further adoption of these blocking technologies and keep text-messaging relatively spam-free.

**Reassigned Numbers Database:** The draft [Report and Order](#) would establish procedures to create

a single database that will enable robocallers and others to verify whether a particular number has been permanently disconnected, meaning the number may have been reassigned to a new consumer. With limited exceptions, federal law prohibits robocalls to wireline and wireless phones without the called party's prior consent. As a result, a business could be subject to liability for making a call to what it thought was a consenting customer when the number actually was reassigned to a new consumer that never provided consent to receive such traffic. The FCC expects the database to reduce these incidents after its implementation, which could occur as early as next year. But just as important as what the draft item would do is what it would not do. The FCC would not establish a safe harbor for callers that rely on the database but still reach a number assigned to a non-consenting consumer. In fact, the FCC explicitly would decline to address outstanding issues regarding the definition of an automatic telephone dialing system and potential liability for calls to reassigned numbers stemming from the D.C. Circuit's [ACA International v. FCC](#) decision earlier this year, stating that it will take up these issues in a separate proceeding.

**Spectrum Frontiers Auctions:** The draft [Report and Order](#) would adopt rule changes to facilitate a consolidated auction of high-frequency spectrum in the Upper 37 GHz Band (37.6-38.6 GHz), 39 GHz Band (38.6-40.0 GHz), and 47 GHz Band (47.2-48.2 GHz). The draft item would modify the band plans for these frequencies to move from 200 megahertz channels to 100 megahertz channels to facilitate incumbent repacking, ensure consistency with international allocations, encourage equipment standardization across spectrum bands, and promote secondary market transactions. The new licenses would be auctioned on a Partial Economic Area ("PEA") basis. The draft item also would lay the groundwork for the FCC's second incentive auction. The 39 GHz Band is home to incumbents holding licenses in non-contiguous spectrum blocks that overlap multiple PEAs. In order to resolve these encumbrances, incumbents would be afforded the options of either modifying their licenses or relinquishing their licenses in exchange for "vouchers" of "equivalent value" to use in bidding for new licenses at the auction or cash incentive payments. The FCC expects to complete the auction by the end of 2019.

**Rural Broadband Funding:** The draft [Report and Order, Notice of Proposed Rulemaking, and Order on Reconsideration](#) would offer additional funding to certain carriers, predominately located in rural areas, that currently receive so-called "model" (versus legacy rate-of-return) support under the Connect America Fund. In exchange for additional funding of up to \$200 per location, the carrier would need to expand the availability of broadband service meeting the FCC's current high-speed benchmark of 25 Mbps download/3 Mbps upload in current service locations and provide broadband service of at least 10 Mbps download/1 Mbps upload speeds in new service locations. The item would provide opportunities for legacy rate-of-return carriers to receive additional funding and transition to model-based support if they can meet the high-speed benchmark. The item also would seek comment on whether the FCC should award support in areas "overlapped" by unsubsidized competition through an auction. The FCC would ask how it should determine whether an area is sufficiently overlapped, the appropriate size of the areas to be auctioned, and the auction bid weighting methodology. Finally, the draft item would deny reconsideration of the FCC's [decision](#) earlier this year to increase model-based support.

**Communications Marketplace Report:** The draft [Report](#) would provide an overview of competition in mobile wireless, fixed broadband, audio, video, and satellite communications markets. The Report would assess the state of communications deployment and barriers to market entry. It also would compile a list of geographic areas not served by any provider of advance telecommunications. The FCC is required to issue the Report this month under the [RAY BAUM'S Act](#) passed earlier this year. The Report consolidates and replaces a number of separate reports covering

different areas of the communications industry, such as the annual mobile wireless competition report required by Section 332 of the Communications Act and the report on cable industry prices required by Section 623 of the Communications Act. However, the broadband deployment report required by Section 706 of the Communications Act would remain separate, along with other FCC reports not covered by the RAY BAUM'S ACT. The next Report is due by the end of 2020.