

In the Latest TCPA Twist, State AGs Seek FCC Guidance on Legality of Call-Blocking Technology

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On September 9, 2014, the National Association of Attorneys General sent a [letter signed by 39 state attorneys general](#) to FCC Chairman Tom Wheeler seeking a formal opinion as to whether there are any “legal and/or regulatory prohibitions [that] prohibit telephone carriers from implementing call-blocking technology,” and, if such prohibitions exist, whether a carrier may nevertheless implement such technology if customers “affirmatively ‘opt into’ [the technology] (either for a fee or as a free service).” The letter asserts that call-blocking tools such as NoMoRobo, Call Control and Telemarketing Guard represent “the first major advancement towards a solution” in the ongoing battle to eliminate unwanted telemarketing calls. The signatories hope to see a favorable statement from the FCC regarding call-blocking technology so that they can encourage the private industry to implement it.

The letter seemingly seeks a response from the Commission to statements by representatives of the US Telecom Association which suggest that common carriers are resistant to using call-blocking technology because of legal and regulatory risks that would arise from implementing it. Specifically, during a hearing before the U.S. Senate Subcommittee on Consumer Protection, Product Safety, and Insurance in July 2013, a US Telecom representative said “[t]he current legal framework simply does not allow [phone companies] to decide for the consumer which calls should be allowed to go through and which calls should be blocked.” Additionally, in response to a subsequent inquiry from Sen. Claire McCaskill on the issue, US Telecom claimed that one challenge to implementing call-blocking technology is the FCC’s position that “call blocking is an unjust and unreasonable practice under section 201(b) of the Communications Act of 1934.” The letter poses the following additional questions to the Commission in response to the US Telecom statements:

- “At a customer’s request, can telephone carriers legally block certain types of calls (e.g., telemarketing calls) if technology is able to identify incoming calls as originating or probably originating from a telemarketer?”
- “Is US Telecom’s characterization of the FCC’s position [as one of ‘strict oversight in ensuring the unimpeded delivery of telecommunications traffic’] accurate? If so, upon what basis does the FCC claim that telephone carriers may not ‘block, choke, reduce or restrict telecommunications traffic in any way’?”

The FCC has not yet issued a response to the letter. We expect it to seek public comment on the request in the near future.