



NEWS

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See *MCI v. FCC*, 515 F.2d 385 (D.C. Cir. 1974).

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FCC SEEKS COMMENT ON RULES TO ELIMINATE SPAM FROM MOBILE PHONES

Commission Also Asks for Comments on Possible "Safe Harbor" for Telemarketing Calls to Mobile Phones

Washington, DC -- Today the Commission adopted a Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking relating to protecting consumers from SPAM and unauthorized telemarketing calls on their mobile phones.

The FCC is asking for comments on how to best protect consumers and businesses from the costs, inefficiencies and inconveniences of receiving unwanted electronic mail messages on wireless devices such as mobile phones. This action is in response to Congress' passage of the *Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act)*.

The Commission is also seeking further comment on two issues related to the restrictions under the Telephone Consumer Protection Act (TCPA). For autodialed and artificial or prerecorded message calls to wireless telephone numbers, we seek comment on the possibility of instituting a "safe harbor" for telemarketers to allow them reasonable opportunities to comply with the rules in the era of local number portability. In addition, the Commission seeks comment on whether, as part of its safe harbor, telemarketers should be required to update their calling lists every 30 days using the national do-not-call registry, to be consistent with a possible rule change by the Federal Trade Commission (FTC).

SPAM

Section 14 of the Act requires the FCC to promulgate rules to protect consumers from unwanted mobile service commercial messages which it defines as "commercial electronic mail message that is transmitted directly to a wireless device that is utilized by a subscriber of commercial mobile service" in connection with such service.

Specifically, the Commission asked for comments on, among other things:

- The ability of senders to determine whether a message is a mobile commercial electronic mail message and methods to enable the sender to

make this determination; for instance, whether there should be a list of, or standard naming convention for domain names, or an individual registry of e-mail addresses. Another area for comment is that of automatic challenge-response mechanisms that alert senders they are sending their message to such a subscriber.

- How to provide subscribers with the ability to avoid receiving mobile service commercial messages sent without the subscribers' prior consent, and how to indicate electronically a desire not to receive future mobile service commercial messages from specific senders.
- Whether commercial cellular providers should be exempted from having to obtain express prior authorization before sending a commercial message to their customers.
- How senders can comply with the Act in general, given the unique technical limitations, particularly message length limitations and the information required to be included in messages by the Act.

TCPA Further Notice

The Telephone Consumer Protection Act (TCPA) specifically prohibits most calls using an autodialer or artificial or prerecorded message “to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other common carrier service, or any service for which the called party is charged.” Beginning November 24, 2003, local number portability (LNP) has permitted subscribers to port numbers previously used for wireline service to wireless service providers. Telemarketers must ensure that they do not place autodialed or prerecorded calls to wireless devices.

The Commission is now seeking comment on the adoption of a limited “safe harbor” for telemarketers that call wireless numbers that have recently been ported from wireline service. Telemarketers contend that even a ported number database will not allow them to update their call lists instantaneously when consumers port their wireline numbers. As a result, telemarketers may not have a reasonable opportunity to comply with the rules.

In a separate but related matter, on January 23, 2004, the Consolidated Appropriations Act of 2004 was signed into law, requiring the FTC to amend its Telemarketing Sales Rule to require telemarketers subject to those rules to obtain the telephone numbers on the do-not-call registry once a month. The FCC rules currently provide a safe harbor for those telemarketers and sellers that access the list quarterly, as do the FTC rules. The FTC released a Notice of Proposed Rulemaking on February 10, 2004, proposing to amend its rule so that telemarketers and sellers will need to use the updated national do-not-call registry every thirty (30) days to purge those numbers from their calling lists. Without FCC action to amend its safe harbor provision, many telemarketers

might face inconsistent standards because the FTC's jurisdiction extends only to certain entities, while FCC jurisdiction extends to all telemarketers.

The FCC is asking for comments on:

- Whether it should adopt a limited safe harbor provision for telemarketers that call telephone numbers that have recently been ported from a wireline telecommunications provider to a wireless telecommunications provider.
- Whether the FCC safe harbor provision requiring telemarketers to access the national do-not-call registry and scrub their call lists quarterly should be amended to require them to do so every 30 days, in order to remain consistent with the Federal Trade Commission's proposed rule change.

Action by the Commission March 11, 2004, by Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (FCC 04-52). Chairman Powell, Commissioners Abernathy, Copps, Martin and Adelstein, with Chairman Powell and Commissioners Copps and Martin issuing separate statements.

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CG Docket 04-53

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