

FCC Proposes to Amend Truth in Caller ID Rules at its January Open Meeting

Wednesday, January 9, 2019

The FCC has announced its intention to take another step in combatting fraudulent robocalls by amending its Truth in Caller ID rules to extend to communications originating from outside the United States, as well as expanding the scope of covered communications services to include text messages and additional voice services. Specifically, in anticipation of its scheduled January 30, 2019 Open Meeting, the FCC, just prior to its shutdown on January 3, 2019, [released a draft Notice of Proposed Rulemaking](#), which would implement new FCC rules and definitions designed to deter malicious caller identification spoofing. The proposed rules are intended to update current FCC Truth in Caller ID rules to reflect Congress' recent enactment of [Section 503 of the RAY BAUM'S Act](#) that modified section 227(e) of the

Communications Act as well as to "expand and clarify the prohibition on misleading or inaccurate caller identification information."

While many companies use caller ID spoofing for legitimate purposes such as enabling customer service callbacks to reflect the caller ID of the company rather than a customer service vendor, the FCC's draft Notice observes that caller ID spoofing has also long been used to perpetrate frauds and identity theft on American consumers. The FCC's proposed rule changes, if adopted, would target those calls or texts that are being spoofed "with the intent to defraud, cause harm, or wrongfully obtain anything of value." Plainly the FCC is aware of the threat to consumers posed by fraudulent robocalls—which it calls a "scourge on American consumers"—and appears to be training its focus on bad actors rather than legitimate callers who may inadvertently fumble one of the TCPA's many technical requirements.

Consistent with Congress' emphasis in amending section 227(e) to combat fraudulent spoofing activities directed at U.S. consumers from foreign actors and technologies utilizing alternative voice and text messaging services, the draft Notice of Proposed Rulemaking unveils for public comment the following proposals:

- The FCC's Truth in Caller ID rules would explicitly apply to "communications originating from outside the United States to recipients within the United States." This proposed language mirrors the statutory language contained in the RAY BAUM's Act. This would allow the FCC to bring enforcement actions against "statutory and rule violations against bad actors who seek out victims in this country, regardless of where the communications originate."
- The rules would be expanded to apply to "any voice service or text messaging service" to broadly define covered practices, also clarifying the definition of prohibited practices under the Truth in Caller ID rules. This would address more directly which types of "telecommunications service or interconnected VoIP service" are covered. It would also reflect the increasing use of technologies that were not explicitly contemplated by the Truth in Caller ID Act of 2009, including text messaging.
- The term "text message," for purposes of section 227(e) of the Communications Act, would be defined to encompass all types of messages that transmit text, images, sounds, or other media over wireless messaging channels with two statutory exclusions - "real-time, two-way voice or video communications" and messages "sent over an IP-enabled messaging service to another user of the same messaging service[]" except for an SMS or MMS message." The FCC proposes to interpret these statutory exclusions to include messages between users of the Internet-based chats apps, such as iMessage, Google

Drinker Biddle®

Article By [Anthony D. Glosson](#)
[Laura H. Phillips](#)[Qiusi Y. Newcom](#)
[Drinker Biddle & Reath LLP](#) [TCPA Blog](#)

[Communications, Media & Internet](#)
[Administrative & Regulatory](#)
[All Federal](#)

Hangouts, WhatsApp, and Skype.

- The FCC proposes to adopt in its rules the statutory definition of the term “text messaging service.”
- The FCC would also adopt the statutory definition of the term “voice service.” Notably, this definition would be broader than “telecommunications service” and “interconnected VoIP service” and would “include any service that enables voice communications either to the PSTN (public switched telephone network) or from the PSTN, regardless of whether it enables both inbound and outbound communications within the same service.” This definition would specifically include any transmissions to a telephone facsimile machine and would exclude real-time two-way communications that are not connected to the PSTN, such as voice calling on social media platforms.
- The FCC proposes to adopt the same definition of “SMS” and “MMS” as defined in its recent [Wireless Messaging Service Declaratory Ruling](#).
- The FCC would explicitly find that the amendment to section 227(e) does not change the definition of “call” or “calls” in relation to statutory restrictions on the use of automated telephone dialing systems or artificial or prerecorded voice.
- The definition of the following terms would be revised for purposes of section 227(e): “caller identification information” and “caller identification service.” The FCC proposes to adopt the statutory definitions for both, except it would substitute the phrases “telecommunications service or IP-enabled voice service” in the current statute with phrases “voice services or text message sent using a text messaging service” in the new Truth in Caller ID rules.

The draft Notice of Proposed Rulemaking also invites comments about what other changes to the existing Truth in Caller ID rules the FCC should make toward ending and preventing malicious Caller ID Spoofing.

The FCC is expected to vote on issuing this Notice of Proposed Rulemaking at its upcoming Open Meeting currently scheduled for January 30, 2019. Depending upon the length of the FCC’s furlough, the actual timing of any vote could be delayed.

© 2019 Drinker Biddle & Reath LLP. All Rights Reserved

Source URL: <https://www.natlawreview.com/article/fcc-proposes-to-amend-truth-caller-id-rules-its-january-open-meeting>