

FCC Proposes New Rules to Target Caller ID Spoofing and Issues Report on the Fight Against Illegal Robocalls

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While the FCC continues to tread carefully in evaluating the thorny issue of how broadly to interpret the TCPA's definition of "automated telephone dialing system," particularly as it confronts proposed legislation that, if adopted, would ultimately expand the reach of the TCPA, the Commission has decided to move forward with some less controversial issues. In particular, the Commission's leadership took two actions last week as part of an effort to address mounting concerns about the influx of unwanted and illegal robocalls, particularly including the prevalent use of fake caller ID information to dupe consumers into answering the phone when a telemarketer calls or, even worse, providing sensitive information based on a false impression that they are speaking to a reputable company or government agency.

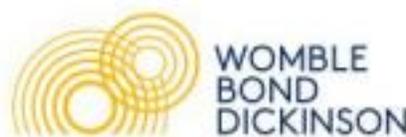
For example, in comments issued by FCC Chairman Pai, he relays a story about how caller ID information was manipulated to make it look individuals were calling from one of the Chinese consulate offices in the United States, and used that perception to con victims into believing that they were the subject of a criminal investigation that could be resolved by wiring money to a Hong Kong bank account. Dozens of residents were defrauded out of an estimated three million dollars.

On February 14, 2019, the FCC issued two documents related to its efforts to address unwanted robocalls. First, it issued a [Notice of Proposed Rulemaking](#) ("NPRM") that would expand its Truth in Caller ID regulations to text messages and to calls originating from outside of the United States. Second, the Commission's Consumer and Governmental Affairs Bureau issued a [Report on Robocalls](#) that reports progress and challenges in the industry on identifying and preventing callers who are making robocalls without the required level of consent. The NPRM and Report acknowledge that while many businesses make legitimate use of these technologies, unwanted calls (including spoofed calls and illegal robocalls) are the top consumer complaint the FCC receives each year and steps must be taken to address this issue.

Notice of Proposed Rulemaking

The NPRM proposes rules that would empower the agency to further prohibit unwanted text messages and calls from outside the United States. If adopted, these rules will largely track the recent amendments to the Truth in Caller ID Act, which makes it unlawful to transmit misleading or inaccurate caller ID information, also known as "spoofing", with the intent to defraud, cause harm, or wrongly obtain anything of value. The RAY BAUM'S Act of 2018 amended the Truth in Caller ID Act and expanded these prohibitions to both text messages and international calls. The NPRM seeks to implement these recent legislative changes and invites comment on the Commission's proposal. Specifically, the NPRM invites comments on four issues:

1. A proposal to extend the reach of the caller ID spoofing rules to include communications originating from outside the United States to recipients within the United States;



Article By

[Susan Nikdel](#)

[Womble Bond Dickinson \(US\) LLP](#)

[TCPA Defense Force](#)

[Communications, Media & Internet](#)

[Administrative & Regulatory](#)

[All Federal](#)

2. A proposal to incorporate the phrase “in connection with any voice service or text messaging service” into the prohibition on causing “any caller identification service to transmit or display misleading or inaccurate caller identification information.”
3. A proposal to adopt definitions of “text message,” “text messaging service,” and “voice service” and to revise the definitions of “caller identification information,” and “caller identification service” to implement Congress’ intent to expand the scope of the prohibition on harmful caller ID spoofing. The definitions proposed are as follows:

Text Message: A “message consisting of text, images, sounds, or other information that is transmitted to or from a device that is identified as the receiving or transmitting device by means of a 10-digit telephone number or N11 service code.” The explicitly includes “a short message service (SMS) message and a multimedia message service (MMS) message” but excludes “a real-time, two-way voice or video communication” or “a message sent over an IP-enabled messaging service to another user of the same messaging service, except for [an SMS or MMS message].”

Text Messaging Service: A “service that enables the transmission or receipt of a text message, including a service provided as part of or in connection with a voice service.”

Voice Service: “Any service that is interconnected with the public switched telephone network and that furnishes voice communications to an end user using resources from the North American Numbering Plan or any successor to the North American Numbering Plan adopted by the Commission under section 251(e)(1). . . .” It also explicitly “includes” “transmissions from a telephone facsimile machine, computer, or other device to a telephone facsimile machine.”

Caller Identification Information and Caller Identification Service: The rules propose to substitute “voice services” and “text message sent using a text messaging service” for “telecommunications services” and “interconnected VoIP services,” respectively, currently in each of these definitions.

4. Finally, whether in addition to the proposals the FCC has made to implement to statutory amendments adopted in the RAY BAUM’S Act, there are other revisions the Commission should make to the Truth in Caller ID rules to effectuate Congress’ intent.

Because bad actors and scam artists annoy consumers and foster distrust of robocalls and automated text messages, they are making it harder for law-abiding businesses to communicate with consumers. Therefore, expanding the reach of the Truth in Caller ID to calls originating outside of the United States and working to prevent fraudulent use of caller ID information reflects a laudable goal. However, the proposal also leaves unanswered questions. Among those unanswered questions is whether the proposed rules will extend to “Rich Communication Services (RCS),” which the Commission describes as the “IP-based asynchronous messaging protocol” that is the “next-generation SMS”. For this reason, we encourage companies to consider filing comments in response to the NPRM or, at the very least, paying close attention to any policies adopted in this docket that could impact your consumer-engagement strategies.

The comment date on the NPRM is 30 days after publication in the Federal Register, and the reply comment date is 60 days after publication in the Federal Register.

Report on Illegal Robocalls

The FCC issued this Report as part of an initiative to describe “both the progress made by industry, government, and consumers in combatting illegal robocalls, and the remaining challenges to continuing these important efforts.” As outlined in the Report, the FCC has implemented new policies since 2017, in an attempt to stop unwanted calls before they reach consumers’ phones. Through these policies, the Commission has allowed voice service providers to block obviously-spoofed calls, authorized the creation of a reassigned numbers database, and urged industry to implement Caller ID authentication.

In order to enforce these policies, the FCC has imposed monetary forfeitures totaling \$245,923,500 against violators of the TCPA or Truth in Caller ID Act since 2010. Under the Commission’s authority, the FTC has also recovered \$40 million in civil penalties and \$71 million in redress or disgorgement through 140 enforcement actions against companies and telemarketers for abandoned-call, robocall, and Do Not Call Registry violations.

The Report also outlines the current state of robocalling by providing an overview of the types of robocalls and regulations, data on robocalls, and recent trends in call volume and consumer complaints.

Finally, the Report acknowledges that network upgrades are necessary to implement caller ID authentication standards and explains that the FCC is looking for more opportunities to expand call blocking, while allowing

good-actors to continue placing legal calls.

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