

## TCPA Regulatory Update - February 2019



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### **FCC Adopts Notice of Proposed Rulemaking to Modify Rules on Caller ID Spoofing; Releases Report on Illegal Robocalls**

In its February 14 meeting, the FCC adopted a [Notice of Proposed Rulemaking](#) (“NPRM”) in which it proposes to extend its Truth in Caller ID rules — which prohibit anyone from knowingly transmitting misleading or inaccurate caller ID information (“spoofing”) with the intent to defraud, cause harm, or wrongly obtain anything of value — to robocalls originating outside the United States. The NPRM also proposes to expand the scope of covered communications services to include text messages and additional voice services, including one-way interconnected VoIP. The NPRM seeks comment on several revised definitions related to Section 227(e) of the Communications Act and any other changes to the Truth in Caller ID rules that may be necessary to effectuate Congressional intent. The proposals are intended to implement the 2018 RAY BAUM’S Act’s changes to the Truth in Caller ID Act of 2009.

Also on a busy Valentine's Day, the FCC released its first-ever [report on illegal robocalls](#). The report details FCC efforts to combat illegal robocalls through a combination of enforcement, policy, and regulatory improvements, as well as partnerships with public and private stakeholders. Looking ahead, the FCC plans to fully implement and utilize caller ID authentication standards, but stated that some network upgrades are necessary before this can be fully achieved. The FCC is also looking to expand its consumer education and fraud prevention awareness programs.

## **FCC Steps Up Push for Call Authentication and Call Blocking Technology in 2019; Threatens Regulatory Intervention**

Showing no love for unwanted robocalls, Chairman Pai sent a [follow-up letter](#) to fourteen major voice providers on February 13, reiterating the FCC's earlier call for a robust caller ID authentication system to combat illegal caller ID spoofing. We reported on a similar letter sent to fourteen major voice providers and eight small voice providers in our [November 2018 TCPA Regulatory Update](#). In the November letter, Chairman Pai stressed that if it does not appear that a call authentication system is on track to get up and running this year, the FCC "will take action to make sure that it does."

The fourteen recipients of the November letters [responded](#) to the FCC, detailing the steps they had already taken and outlining their plans for 2019. In the February letters, Chairman Pai applauded the companies that committed to deploying the SHAKEN/STIR framework in 2019, and implored those lagging behind to "make every effort to catch up." He said that in their responses, some carriers hedged their ability to rollout call authentication services in the coming months, citing concerns that other carriers appear to have already addressed. Following the tone of the November letter, Chairman Pai said "the FCC will have to consider regulatory intervention" if it appears major carriers will not meet the deadline to implement SHAKEN/STIR in 2019.

Additionally, Commissioner Rosenworcel released her [response](#) to her earlier call for major phone companies to provide customers with free robocall blocking tools. She also included letters from a number of voice service providers — including AT&T, CenturyLink, Comcast, Sprint, Verizon, T-Mobile, and Cox — who responded to her call by detailing the steps they have already taken in making free robocall blocking tools available to consumers.

## **FCC Considers Multiple Petitions for Declaratory Ruling**

The FCC continues to stay busy reviewing comments and reply comments it received in a recent bevy of Petitions for Declaratory Ruling on a number of TCPA issues. As reported in the [January TCPA Regulatory Update](#), the FCC recently released Public Notices seeking comment on a [Petition for Expedited Declaratory Ruling](#) filed by SGS North America, Inc. ("SGS") and a [Petition for Declaratory Ruling](#) filed by Best Doctors, Inc. ("Best Doctors").

The SGS Petition sought a ruling clarifying the meaning of "telemarketing" and "dual purpose" under the TCPA. The National Consumer Law Center and Taylor Carroll, the plaintiff in a putative class action against SGS filed in 2016, opposed the Petition.

Carroll argued that the robocall blasts received from SGS aiming to schedule pre-term lease inspections were clearly timed to coincide with imminent decisions regarding the return or replacement of a leased vehicle, and therefore did have a marketing purpose. SGS, however, explained that the content of the communication itself should control the characterization of the call, and courts should not look at context outside the communication to create a “dual purpose.” Additionally, SGS [met](#) with multiple FCC staff in February to make its case for grant of its Petition. SGS also filed [reply comments](#).

The FCC is also reviewing comments on the Best Doctors Petition concerning junk faxes. The Petition asked the FCC to clarify that a fax requesting that a recipient verify the contact information and operational status of a medical practice for inclusion in a database, that does not mention the commercial availability of any property, good, or service, is not an advertisement under the TCPA. While Enclarity, Inc. supported the Petition, the Petition was opposed by two different doctors, one of whom is the plaintiff in a federal lawsuit against Enclarity, Inc. in the Northern District of Illinois. Parties opposing the Petition argued that the fax contained links that were actually hidden advertisements for another entity, and asked that the FCC not limit their inquiry to the fax itself, but also allow consideration of all facts pled in the complaint as well as those developed through discovery. Best Doctors, on the other hand, argued that only the fax itself should be examined to determine whether it is an advertisement subject to the TCPA’s restrictions. Best Doctors, Inc. also submitted [reply comments](#).

Finally, on February 12, the FCC released a Public Notice seeking comment on a [Petition for Expedited Declaratory Ruling](#) filed by NorthStar Alarm Services, LLC regarding the use of soundboard technology. The FCC seeks comment on whether “calls using recorded audio clips specifically selected and presented by a human operator in real-time, a tool generally referred to as ‘soundboard technology,’ do not deliver a ‘prerecorded message’ under the [TCPA].” To learn more about the Petition, see our [January TCPA Regulatory Update](#). Comments will be due on March 15, followed by reply comments due on March 29.

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