

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Best Insurance Contracts, Inc., and)	File No.: EB-TCD-16-00023195
Philip Roesel, dba Wilmington Insurance Quotes)	NAL/Acct. No.: 201732170007
)	FRNs: 0026727396 (Best Insurance
)	Contracts, Inc.); 0026727446 (Roesel, dba
)	Wilmington Insurance Quotes)

FORFEITURE ORDER

Adopted: September 26, 2018

Released: September 26, 2018

By the Commission: Chairman Pai and Commissioner Rosenworcel issuing separate statements;
Commissioner O’Rielly approving in part, dissenting in part and issuing a statement.

I. INTRODUCTION

1. We impose a penalty of \$82,106,000 against Best Insurance Contracts, Inc. (BIC), and Philip Roesel personally and doing business as Wilmington Insurance Quotes (collectively, Roesel), for perpetrating an illegal spoofed robocall campaign—involving more than 21 million robocalls during a three-month period from late 2016 through early 2017—in violation of the Truth in Caller ID Act of 2009 (Truth in Caller ID Act) and the Commission’s rules (Rules). Caller ID is “spoofed” when it is manipulated or altered to display anything other than the originating telephone number.¹ The Truth in Caller ID Act and Rules prohibit any individual from spoofing caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value. Accurate caller ID information allows consumers to make informed decisions about which calls to accept, ignore, or block, and whether the party on the other end of the phone line is reputable and deserving of their trust. As technology has advanced, the combination of spoofing and illegal robocalls has become much more pervasive and harder to stop.

2. The Commission released a Notice of Apparent Liability for Forfeiture (*NAL*) against Roesel for apparently engaging in unlawful spoofing,² and the Enforcement Bureau (Bureau) simultaneously released a Citation and Order (*Citation*) finding that Roesel violated the Telephone Consumer Protection Act (TCPA) and Rules by making unauthorized and disruptive prerecorded telemarketing calls (i.e., robocalls).³ Roesel filed a combined response to the *NAL* and *Citation* (Response).⁴ The Response argues, among other things, that Roesel spoofed the caller ID to avoid having

¹ See *Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, Report and Order, 26 FCC Rcd 9114, 9115, para. 1 (2011) (Truth in Caller ID Order). Spoofing may also involve manipulating or altering the caller ID to display a name or other text (i.e., anything other than the originating number).

² *Best Insurance Contracts, Inc., and Philip Roesel, dba Wilmington Insurance Quotes*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 6403 (2017) (*NAL*).

³ *Best Insurance Contracts, Inc., and Philip Roesel, dba Wilmington Insurance Quotes*, Citation and Order, 32 FCC Rcd 5516 (EB 2017) (*Citation*).

⁴ Statement in Response to, and Request to Rescind, Notice of Apparent Liability for Forfeiture and Response to Citation and Order (on file in EB-TCD-16-00023195) (Sept. 21, 2017) (Response). While in the ordinary course a response to the *Citation* would be addressed by the Bureau, because Roesel filed a combined response, we address both the *Citation* and *NAL* in this Forfeiture Order. The Response also included a declaration sworn by Philip Roesel which will be referred to herein as “Roesel Declaration.”

his cell phone “overwhelmed” with return phone calls from consumers that he robocalled—to protect his own phone number from the same kind of disruption he was imposing on consumers. The Response asks that the Commission rescind the *NAL*. Alternatively, if the Commission declines to rescind the *NAL*, the Response requests that the forfeiture be reduced based on inability to pay and that the forfeiture be applied solely to BIC, a company created by Philip Roesel. Finally, the Response asks that the Commission exercise its discretion and designate the case for hearing.

3. After reviewing Roesel’s Response, we find no reason to cancel or withdraw the *Citation*,⁵ rescind the *NAL*, reduce the proposed penalty, hold BIC solely liable, or designate the case for hearing. We therefore assess the \$82,106,000 forfeiture the Commission previously proposed.

II. BACKGROUND

4. In recent years, robocalls have been used increasingly by the health insurance industry to generate insurance leads and sales.⁶ In December 2016, Spök, Inc. (Spök), which provides paging services to medical providers, submitted an informal complaint to the Bureau about a significant robocalling event that was disrupting its emergency medical paging service.⁷ According to Spök, the robocalling event adversely affected 5,000 to 10,000 of its service subscribers.⁸ The robocalling event harmed Spök’s customers by disrupting those customers’ pager numbers, which are used by doctors, hospitals, and emergency first responders.⁹ Spök said that one of its subscribers is Palmetto Health, which operates seven hospitals serving Columbia, Greenville, and Sumter, South Carolina. Palmetto Health is the largest health resource in the South Carolina Midlands region.¹⁰ According to Spök, Palmetto Health experienced intermittent pager disruptions because of the massive influx of unauthorized

⁵ Although Roesel did not request cancellation or withdrawal of the *Citation*, we nevertheless reach this holding to provide clarity and certainty in any future proceedings that may arise, as well as any future actions or conduct by Roesel. See *Citation*, 32 FCC Rcd at 5516-17, paras. 2, 35 (notifying Roesel that any future violations of the TCPA may result in civil penalties, including forfeitures).

⁶ See Michele Andrews, ‘You’ve Got Mail’: E-mails and Robocalls Hit Home in Promoting Medicaid Enrollment, Kaiser Health News (May 26, 2017), <http://khn.org/news/youve-got-mail-emails-and-robocalls-hit-home-in-promoting-medicaid-enrollment/>; see also Bridgette Small, Phony calls about health insurance, Federal Trade Commission (Feb. 18, 2016), <https://www.consumer.ftc.gov/blog/phony-calls-about-health-insurance>.

⁷ See E-mail from Dexter Lee, Corporate Technical Operations Director, Spök, Inc., to Kristi Thompson, Deputy Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Dec. 14, 2016, 16:59 ET) (on file in File No. EB-TCD-16-00023195). Spök, headquartered in Springfield, Virginia, provides paging services for hospitals, emergency rooms, and physicians. See Spök, Inc., *Meet Spök*, <https://www.spok.com/meet-spok> (last visited Aug. 30, 2018).

⁸ See E-mail from Dexter Lee, Corporate Technical Operations Director, Spök, Inc., to Kristi Thompson, Deputy Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (June 20, 2017, 10:16 EDT) (on file in File No. EB-TCD-16-00023195); see also Declaration of Kimbarly H. Taylor, May 22, 2017 (on file in File No. EB-TCD-16-00023195).

⁹ Paging services are essential in hospitals and emergency rooms across the country, with an estimated 85 percent of hospitals relying on this technology to ensure that emergency room doctors, nurses, EMTs, and other first responders receive immediate alerts. See Priyanka Dayal McCluskey, *Hospitals turning a ‘pager’ on data hardware*, The Boston Globe (Feb. 2, 2016), <https://www.bostonglobe.com/business/2016/02/01/beep-this-accessory-busy-doctors-finally-gets-upgrade/gRcjTy7w3RuTJjqaeKtsEN/story.html>. Because paging technology is not equipped to handle voice calls, a large-scale robocalling campaign will disrupt—and can potentially disable—the medical pager network. Service outages, slowdowns, or other problems caused by robocalls flooding a paging network constitute a serious risk to public safety because they interfere with critical hospital and emergency room communications.

¹⁰ See Palmetto Health, *About Palmetto Health*, <https://www.palmettohealth.org/patients-guests/about-palmetto-health> (last visited Aug. 30, 2018).

robocalls to Spök's network.¹¹ Roesel does not refute evidence that his calls "repeatedly disrupted a critical communications service used by hospitals and emergency medical providers."¹²

5. On January 24, 2017, Bureau staff subpoenaed Roesel's call records for the three-month period from October 23, 2016, to January 23, 2017, from a third-party robocall platform provider, ██████.¹³ According to subpoena responses, Roesel made 21,582,771 calls during this time frame, averaging more than 200,000 calls a day.¹⁴ Bureau staff analyzed a sample of 82,106 spoofed robocalls Roesel made using four specific numbers.¹⁵ The evidence shows that the four telephone numbers used were unassigned (i.e., not assigned to a carrier or a subscriber) during the relevant time frame. Further, Philip Roesel admits that he set up the account with the platform provider, that the platform provider "provided a space to include caller ID information for the calls," and that he used the four unassigned numbers to make the calls.¹⁶ Accordingly, these four telephone numbers were not assigned to Roesel and therefore were inaccurate when Roesel caused them to be displayed in the called parties' caller IDs.

6. Bureau staff also examined robocall complaints by consumers filing on www.donotcall.gov between late October 2016 and January 2017 and compared them to the records of calls that Roesel made during the same period. Bureau staff matched 44 complaints to the call records of robocalls made by Roesel. In the complainants' own words:

- "[I]n the last 6 months or so, I have been receiving an increased number of phone calls and I intend to start listening to each one of them and start reporting each one of them. I am afraid to answer my phone any more. Just like when I used to have an answering machine. It has been so nice for the past however many years knowing that when I get a call, it truly is someone I wish to speak to. And now that has all disappeared. So disappointing!"¹⁷
- "Called my cell, twice. Left no message. I don't need to talk to a scammer. I didn't give them my cell. People I know I give my cell number. I don't know this person."¹⁸
- "[P]lease stop these people[.]"¹⁹
- "[C]alled me[,] didn't answer because I figured they were some punk [***] marks [telemarketers], and I was right."²⁰

¹¹ As soon as Spök identified the robocalls hitting its network, it alerted its carriers (AT&T and Verizon) and Bureau staff. After receiving Spök's reports about the unauthorized nature of the robocalls, and at Spök's request, AT&T and Verizon were able to take steps to mitigate and reduce the number of illegal robocalls before they reached Spök's subscribers.

¹² *Citation*, 32 FCC Rcd at 5517, para. 4. Roesel does not deny making the calls that disrupted communications service used by hospitals and emergency medical providers; rather, he claims only that he did not know the calls were going to "a paging service" (i.e., Spök's network). See Response, Exh. 1, Declaration of Philip Roesel, para. 17 (Roesel Declaration).

¹³ See *NAL*, 32 FCC Rcd at 6406, para. 10.

¹⁴ *Id.*

¹⁵ *Id.* at 6407, para. 11. Such robocalls constitute "any telecommunications service or Internet Protocol-enabled voice service" for the purposes of Section 227 of the Act.

¹⁶ See Roesel Declaration at paras. 6, 13.

¹⁷ *NAL*, 32 FCC Rcd at 6410, para. 19 (quoting Complaint #74852141 (Consumer Sentinel, July 26, 2016)).

¹⁸ *Id.* (quoting Complaint by "Private," Dec. 16, 2016, <http://800notes.com/Phone.aspx/1-713-211-8439>).

¹⁹ *Id.* (quoting Complaint #746757964 (Consumer Sentinel, Sept. 20, 2016)).

²⁰ *Id.* (quoting Complaint by "Blue," Jan. 16, 2017, <http://800notes.com/Phone.aspx/1-803-211-9887>).

- “I activated my cell phone two days ago, and no one knew, but somehow the telemarketer found me. Unbelievable!”²¹
- “Telemarketers have NOTHING BETTER TO DO THAN ANNOY YOU with a plethora of useless non working phone calls! I was resting[,] got woken up by someone with no life! We have lives[,] I wish someone would figure out who these people are and block their access [to] phone services!”²²

7. In addition, Bureau staff spoke to 59 different recipients of robocalls made by Roesel and confirmed that none of the consumers the Bureau spoke with gave Roesel permission—written or otherwise—to make robocalls to their phones.²³ In his Response, Philip Roesel does not deny that he failed to obtain prior consent from any consumers that were robocalled using pre-recorded messages and displayed or caused to be displayed inaccurate caller ID.

8. On August 4, 2017, the Commission issued the *NAL* proposing an \$82,106,000 forfeiture against Roesel for apparent willful and repeated violations of Section 227(e) of the Communications Act of 1934, as amended (Act),²⁴ and Section 64.1604 of the Rules.²⁵ In a separate action, the Bureau cited Roesel for making illegal robocalls in violation of Section 227 of the Act and Section 64.1200 of the Rules.²⁶ The *Citation* directed Roesel to take immediate steps to comply with the law.

9. On September 21, 2017, Roesel filed a combined response to the *NAL* and *Citation*. Roesel does not refute the findings in the *Citation*. Among other things, discussed more fully below, Roesel admits he hired a dialing platform, intentionally spoofed the caller ID, and robocalled consumers during the relevant three-month period identified in the *Citation* and *NAL*. He does not claim to have obtained prior consent from those he called or that his calling with a pre-recorded telemarketing message satisfied one of the exceptions to first obtaining prior consent. Further, Roesel does not deny that he obtained value using his robocalling campaign or that he caused harm. The Response, however, argues that: (1) any value he obtained was not obtained “wrongfully” and thus did not violate the Truth in Caller ID Act; (2) the Truth in Caller ID Act does not apply to TCPA violations and, even if it did, he had no intent to, or did not know, he was causing harm; and (3) Roesel is unable to pay the proposed forfeiture. The Response also objects to the *NAL*’s finding that Roesel is personally liable. The Response asks that the Commission rescind the *NAL*. Alternatively, if the Commission declines to rescind the *NAL*, the Response requests that (1) the forfeiture be reduced based on inability to pay, (2) the forfeiture be applied solely to BIC, and (3) the Commission use its discretion and designate the case for hearing.

III. DISCUSSION

A. Roesel Engaged in a Massive Illegal Robocalling Campaign to Sell Health Insurance and Generate Leads for His Clients in Violation of the TCPA and Rules

10. The Bureau issued Roesel a *Citation* for violating the TCPA and the Rules. Specifically, as discussed in more detail below, the *Citation* found that Roesel had engaged in a large-scale and systematic robocalling campaign in violation of provisions of the TCPA and the Commission’s Rules that

²¹ *Id.* (quoting Complaint by “LD,” Nov. 22, 2016, <http://800notes.com/Phone.aspx/1-281-211-8439>).

²² *Id.* (quoting Complaint by “Anonymous,” Nov. 17, 2016, <http://whocalledchecker.net/phone-number/1-252-211-8439>).

²³ See *Citation*, 32 FCC Rcd at 5520, para. 10.

²⁴ 47 U.S.C. § 227(e).

²⁵ 47 CFR § 64.1604. See *Truth in Caller ID Order*, 26 FCC Rcd 9114.

²⁶ The *NAL* and *Citation* include a more complete discussion of the facts and history of this case and are incorporated herein by reference.

prohibit making (1) prerecorded voice message calls to emergency telephone lines,²⁷ (2) prerecorded voice message calls to cell phones,²⁸ (3) prerecorded telemarketing calls to residential phone lines without prior express written consent absent an emergency purpose,²⁹ and (4) telephone solicitations to telephone lines registered on the national Do-Not-Call registry without prior express written consent.³⁰

11. The TCPA and Rules prohibit calls made using any automatic telephone dialing system or an artificial or prerecorded voice message to “any emergency telephone line, including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency.”³¹ The Commission has previously found that Spōk’s paging system constitutes an “emergency telephone line.”³² The evidence shows that Roesel’s illegal robocalling campaign adversely affected 5,000 to 10,000 of Spōk’s service subscribers. Roesel does not deny calling Spōk’s paging network or any of the 5,000 to 10,000 Spōk subscribers.³³

12. The TCPA and Rules also prohibit calls to cell phones and other mobile services, including paging services such as that operated by Spōk.³⁴ Two exceptions to these prohibitions are (1) calls made for emergency purposes, and (2) calls made with the prior express consent of the called party.³⁵ Prior express written consent is required if the calls include advertisements or constitute telemarketing like the calls that Roesel made.³⁶ To determine whether any of the robocalls went to wireless phones the Bureau analyzed the details of the 21,582,771 robocalls that Roesel made, using an industry-standard, commercially available software and database of known assigned and ported wireless numbers.³⁷ From this analysis, Bureau staff confirmed that 17,487,293 were robocalls to wireless phones.

²⁷ See 47 U.S.C. § 227(b)(1)(A)(i); 47 CFR § 64.1200(a)(1)(i).

²⁸ See 47 U.S.C. §§ 227(b)(1)(A)(i), (iii); 47 CFR § 64.1200(a)(1)(iii).

²⁹ See 47 U.S.C. § 227(b)(1)(B); 47 CFR § 64.1200(a)(3).

³⁰ See 47 U.S.C. § 227(c)(3)(F); 47 CFR §§ 64.1200(c)(2), 64.1200(e).

³¹ 47 CFR § 64.1200(a)(1)(i); see also 47 U.S.C. § 227(b)(1)(A)(i).

³² See *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Citation and Order, 32 FCC Rcd 4965, 4971-72, para. 17 (EB 2017).

³³ See Response at 31.

³⁴ See 47 U.S.C. § 227(b)(1)(A)(iii) (It is unlawful “for any person . . . to make any call . . . using any automatic telephone dialing system or an artificial or prerecorded voice . . . to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.”); see also 47 CFR § 64.1200(a)(1)(iii).

³⁵ See 47 U.S.C. § 227(b)(1)(A); 47 CFR § 64.1200(a)(1).

³⁶ 47 CFR § 64.1200(a)(2)-(3). An advertisement is defined as “any material advertising the commercial availability or quality of any property, goods, or services.” 47 CFR § 64.1200(f)(1). Likewise, the rules define “telemarketing” as “the initiation of a telephone call or message for the purpose of encouraging the purchase . . . of . . . property, goods, or services, which is transmitted to any person.” 47 CFR § 64.1200(f)(12). There are also exceptions for calls “made by or on behalf of a tax-exempt nonprofit organization, or a call that delivers a ‘health care’ message made by, or on behalf of, a ‘covered entity’ or its ‘business associate,’ as those terms are defined in the HIPAA Privacy Rule.” 47 CFR § 64.1200(a)(2); see also *id.* § 64.1200(a)(3).

³⁷ See Interactive Marketing Solutions, *EasyID*, <https://www.ims-dm.com/mvc/page/easyid/> (last visited Aug. 30, 2018). EasyID is Interactive Marketing Solution’s software that allows clients to eliminate wireless numbers from calling lists. *Id.* Interactive Marketing Solutions, Inc., is a member of the Data & Marketing Association and ACA International. See Interactive Marketing Solutions, Inc., Learn More About IMS and Frank Rigano, <https://www.ims-dm.com/mvc/page/about-us/> (last visited Aug. 30, 2018). It bills itself as “the country’s largest single-source supplier” of data identifying telephone numbers that have been assigned or ported to wireless devices, “to help businesses comply with state and federal legislation.” Interactive Marketing Solutions, Inc., *Home*, <https://www.ims-dm.com/mvc/index.php> (last visited Aug. 30, 2018).

Roesel does not deny making these calls nor does Roesel assert that he had the prior consent—written or otherwise—from any of the more than 17 million mobile phone consumers or the 5,000 to 10,000 Spök medical pagers to pitch his health insurance products.

13. Section 227(b)(1)(B) of the Communications Act prohibits any person “to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes . . . or is exempted by rule or order by the Commission”³⁸ Section 64.1200(a)(3) of the Rules states that “[n]o person or entity may: . . . [i]nitiate any telephone call to any residential line using an artificial or prerecorded voice to deliver a message without the prior express *written* consent of the called party” unless one or more of five enumerated exceptions apply.³⁹ The Commission set forth specific exemptions to the prohibition in its Rules none of which apply in this case.⁴⁰ The evidence shows that Roesel made 4,095,478 illegal robocalls to landline phones. Roesel does not deny making these robocalls nor does he assert any claim that he had obtained the prior consent of any called party.

14. The TCPA and Rules also prohibit the initiation of telephone solicitations to telephone lines registered on the national Do-Not-Call registry without prior express *written* consent.⁴¹ Specifically, Section 64.1200(c)(2) states that “[n]o person or entity shall initiate any telephone solicitation to a residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations”⁴² Section 64.1200(c)(2)(ii) states that any person or entity making such telephone solicitations will not be liable for violating Section 64.1200(c)(2) if it has obtained the subscriber’s prior express written permission.⁴³ Commission staff verified that at least nine calls were made to telephone lines registered on the national Do-Not-Call registry at the time of the calls. The calls involved healthcare insurance solicitations, and therefore constitute telephone solicitations as described in Section 64.1200(c)(2) of the Rules. These nine individuals all filed complaints⁴⁴ in connection with Roesel’s calls and confirmed that they did not provide prior express written consent to Roesel to make the calls to their lines.⁴⁵ While generally claiming to have “scrubbed” his calling list to remove any consumer telephone number in the Do-Not-Call registry, Roesel does not deny making robocalls or telephone solicitations, nor does he assert that he had the called parties’ permission.

15. Thus, Roesel made millions of illegal prerecorded message calls to emergency telephone lines, cell phones, residential phone lines, and telephone lines registered on the national Do-Not-Call registry, in violation of the TCPA and Rules, in order to drum up sales of the health insurance policies he and his associated agents were selling.⁴⁶ Roesel admits that that he (1) incorporated BIC for the purpose

³⁸ 47 U.S.C. § 227(b)(1)(B).

³⁹ 47 CFR § 64.1200(a)(3) (emphasis added).

⁴⁰ *Id.*

⁴¹ *See* 47 U.S.C. § 227(c)(3)(F); 47 CFR §§ 64.1200(c)(2), (e).

⁴² *See* 47 CFR § 64.1200(c)(2). Section 64.1200(e) clarifies that “[t]he rules set forth in paragraph (c) and (d) . . . are applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers to the extent described in the Commission’s Report and Order, CG Docket No. 02-278, FCC 03-153, ‘Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991.’” 47 CFR § 64.1200(e).

⁴³ *See* 47 CFR § 64.1200(c)(2)(ii).

⁴⁴ *See* Attachment A (Do-Not-Call Complaints).

⁴⁵ *See* Declaration of Nakasha Ramsey, June 19, 2017 (on file in File No. EB-TCD-16-00023195); Declaration of Lisa Williford, June 19, 2017 (on file in File No. EB-TCD-16-00023195).

⁴⁶ Some of Roesel’s associated agents are listed on the Best Insurance Contracts website. *See* Best Insurance Contracts, *Referrals*, <https://bestinsurancecontracts.com/referrals/> (last visited Aug. 31, 2018) (the list of such agents can be accessed by hovering over the “Referrals” tab drop down menu).

of generating leads for the sale of health insurance,⁴⁷ (2) set up the account with the dialing platform for making the telemarketing calls for such sales,⁴⁸ (3) made telemarketing calls on behalf of BIC and that “[a]ll of the calls [were] made under my [i.e., Roesel’s] account during the period from October 2016 through January 2017 (the period at issue in the NAL),”⁴⁹ and (4) caused a pre-recorded message to be played.⁵⁰ In addition, Roesel does not refute evidence that he made or caused to be made the 21,582,771 robocalls from October 23, 2016 through January 23, 2017, nor that he failed to obtain prior consent—written or otherwise—from any of the recipients of those 21,582,771 calls. Further, Roesel does not assert that his actions were permitted because of any of the exceptions to the TCPA prohibition. Finally, we agree with the *Citation*’s finding that Roesel knew that these calls were illegal when he made them.⁵¹

⁴⁷ See Roesel Declaration at para. 3.

⁴⁸ See *id.* at para. 6.

⁴⁹ *Id.* at para. 8. Philip Roesel claims both that “BIC engaged in [the] calling activities” and that he made the “calls on behalf of BIC.” He also states that “I initiated the calling activities” Cf. Roesel Declaration, paras. 6, 11 and 15.

⁵⁰ See Roesel Declaration at para 9; see also Response at 40, 43 (referencing the message received by the called party).

⁵¹ See *Citation*, 32 FCC Rcd at 5520-21, para. 11. While we agree with the *Citation*’s finding, we do so based on the fact that there is a plethora of public reports (all pre-dating Roesel’s illegal robocalling campaign), including from the FCC, the FTC, media outlets, and the former North Carolina State Attorney General, all informing the public that robocalling telemarketing calls without consent is illegal. Roesel’s Response even cites one such publicly available document from the FCC. See Remarks of FCC Commissioner Ajit Pai at the First Meeting of the FCC Robocall Strike Force at 1 (Aug. 19, 2016), https://apps.fcc.gov/edocs_public/attachmatch/DOC-340872A1.pdf. See also, e.g., FCC, *FCC Actions on Robocalls, Telemarketing*, <https://www.fcc.gov/general/telemarketing-and-robocalls> (last visited Aug. 30, 2018); Truth in Caller ID Order, 26 FCC Rcd at 9120-22, paras. 17-20 (2011); FTC, *Robocalls and the Do Not Call Registry*, <https://www.ftc.gov/news-events/media-resources/do-not-call-registry/robocalls> (last visited Aug. 30, 2018); Press Release, FTC, *FTC and Department of Justice Bring Action Against Lead-Generator Using Robocalls to Pitch Energy Savings: Defendant Bombarded Consumers with Millions of Unwanted Illegal Recorded Calls* (Mar. 10, 2016), <https://www.ftc.gov/news-events/press-releases/2016/03/ftc-department-justice-bring-action-against-lead-generator-using> (explaining that the Defendant’s “companies ignored the Do Not Call Registry and made illegal robocalls” and noting that “[b]reaking the law isn’t a great way for a company to introduce itself to potential customers.”); Jason O. Boyd, *NC Consumers Can Soon Block Unwanted Robocalls*, ABC News Channel 12 (June 19, 2015), <https://wcti12.com/archive/nc-consumers-can-soon-block-unwanted-robocalls>; *North Carolina Attorney General Sues Alarm Company Over Robocalls*, Alarm Laws (Oct. 24, 2013), <http://www.alarmlaws.com/north-carolina-attorney-general-sues-alarm-company-over-robocalls>; John Grooms, *N.C. Investigating Blue Cross’ Robo-calls*, Creative Loafing Charlotte (Nov. 25, 2009), <https://clclt.com/theclg/archives/2009/11/25/nc-investigating-blue-cross-robo-calls>; Peter Overby, *Group with Clinton Ties Behind Dubious Robocalls*, NPR, (Mar. 1, 2008), <https://www.npr.org/templates/story/story.php?storyId=90114863> (North Carolina Attorney General stated the related robocalls targeted to North Carolina residents were illegal for state law reasons); Matt Richtel, *Who’s on the Line? Increasingly, Caller ID is Duped: Regulators are hearing more complaints about “caller ID spoofing” or “call laundering” by telemarketers*, Star News Online (updated Nov. 23, 2011), <http://www.starnewsonline.com/news/20111122/whos-on-the-line-increasingly-caller-id-is-duped> (Wilmington, NC, newspaper discussed the increase in caller ID spoofing, particularly in North Carolina); Chris Kromm, *Civitas pollster fined \$10,000 for breaking NC robo-call law after complaint by Facing South editor*, Facing South (May 26, 2011), <https://www.facingsouth.org/2011/05/civitas-pollster-fined-10000-for-breaking-nc-robo-call-law-after-complaint-by-facing-south-e> (discussing fine and North Carolina General Statute 75-104, which outlines clear consumer protections in the state for the use of automated phone calls). These publicly available sources, coupled with the fact that Roesel is not a mere consumer but rather a business person, makes it reasonable to infer that he knew the law applicable to his various business endeavors, including marketing his business and products. The evidence in the record also corroborates this inference. As discussed in the *Citation*, an assistant to Roesel at the time he was making the illegal robocalls told Bureau staff that Roesel and his staff repeatedly “joked” and “laughed” about their robocalls being “illegal.” *Citation*, 32 FCC Rcd at 5520, para. 11. While Roesel denies joking about his

(continued...)

16. Accordingly, we affirm the *Citation* and find that Roesel willfully and repeatedly violated Section 227 of the Act, and Section 64.1200 of the Rules, for the reasons set forth in the *Citation*.

B. Roesel Engaged in a Massive Spoofing Scheme with the Intent to Defraud, Cause Harm, or Wrongfully Obtain Anything of Value

17. In the *NAL*, the Commission proposed a forfeiture against Philip Roesel personally and against BIC in accordance with Sections 227(e)(5) and 503(b) of the Act,⁵² Section 1.80 of the Rules,⁵³ and the Commission's *Forfeiture Policy Statement*.⁵⁴ In determining the proposed forfeiture, the Commission applied the Section 503(b)(2)(E) balancing factors, taking into account the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."⁵⁵ As discussed below, we have fully considered Roesel's Response to the *NAL* and find it unpersuasive. We therefore affirm the \$82,106,000 forfeiture proposed in the *NAL*.

1. Roesel Engaged in a Massive Spoofing Scheme with the Intent to Wrongfully Obtain Anything of Value

18. The Truth in Caller ID Act prohibits "caus[ing] any caller identification service to knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value."⁵⁶ Members of Congress observed that consumers greatly value accurate, reliable caller ID information to help them decide whether to answer a phone call and, ultimately, whether to trust the caller on the other end of the line. They noted that consumers' widespread expectation is that any information appearing on caller ID represents the true originating number of the person or entity making the call.⁵⁷ The Senate Report also recognized that there are some benign uses of caller ID spoofing technology (e.g., protecting domestic abuse victims), and therefore intended to focus "efforts to curtail ID spoofing . . . on actions by persons with intent to deceive or cause harm."⁵⁸

19. The evidence in this case shows that Roesel not only spoofed calls, but also deliberately engaged in an unlawful robocalling campaign under Sections 227(b) and (c): That is, he placed millions of robocalls without obtaining the prior consent of the called party, called emergency lines, and called consumers who had placed their telephone numbers on the national Do Not Call registry. The evidence indicates that Roesel knew that his sales tactics were not legal, and, in any event, his intentional use of

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robocalling activities, he does not deny knowing that his robocalling scheme was illegal. *See* Roesel Declaration at para. 27; *see also id.* at para. 21 ("I never stated that making illegal telemarketing calls was a minor violation akin to driving above the speed limit."). Whether or not Roesel joked about his robocalling is irrelevant. Based on the totality of evidence, we find it credible that Roesel knew his activities violated the law.

⁵² 47 U.S.C. §§ 227(e)(5), 503(b).

⁵³ 47 CFR § 1.80.

⁵⁴ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

⁵⁵ 47 U.S.C. § 503(b)(2)(E). *See also Truth in Caller ID Order*, 26 FCC Rcd at 9132, para. 46 (although the Commission is not statutorily required to apply the Section 503(b)(2)(E) balancing factors in cases involving apparent violations of Section 227(e), the Commission said it would do so).

⁵⁶ 47 U.S.C. § 227(e)(1).

⁵⁷ *See* 156 Cong. Rec. H2522, H2524 (2010) ("Now, if you see a caller ID and you see it has a phone number, most people think that it's ironclad that that's the actual phone number that's calling them when in truth it's not.").

⁵⁸ S. Rep. No. 111-96, at 2 (2010), *as reprinted in* 2010 U.S.C.C.A.N. 1376, 1377 (2009).

unlawful robocalling (independent of spoofing) demonstrate that that he violated the law (acted wrongfully) to get insurance leads (something of value).

20. First, Roesel engaged a dialing platform and intentionally spoofed the telephone number that appeared in the called party's caller ID.⁵⁹ Roesel used both unassigned telephone numbers and numbers assigned to consumers, and he caused these numbers to appear in the called party's caller ID.⁶⁰ The numbers were inaccurate—because they were not assigned to Roesel—and misleading—because they were not connected to Roesel or his business and provided no means for the called party to reach Roesel or request to be put on a company-specific Do Not Call list as required by the TCPA.

21. Second, using the dialing platform, Roesel intentionally made more than 21 million illegal robocalls, including the 82,106 on which the forfeiture is based, over a three-month period. None of these calls were made with the prior consent—written or otherwise—of the called parties and none satisfied one of the exceptions the TCPA affords that would otherwise allow such calls to be made legally.⁶¹

22. Third, Roesel's robocalling campaign was illegal,⁶² and he admits that he used the robocalling campaign to sell health insurance products, earn commissions, and generate leads for himself and other affiliated agents (i.e., to obtain something of value).⁶³ In addition, by intentionally falsifying the caller ID information, Roesel was able to avoid detection (making it more likely that unwitting consumers would answer the phone), evade law enforcement, and deprive consumers of their legal rights under the TCPA—all wrongful acts.⁶⁴ Both the intent to financially profit (through sales commissions) from unlawful conduct and avoiding culpability are “[things] of value” and demonstrated Roesel's intent to “wrongfully obtain anything of value” in violation of the Truth in Caller ID Act.⁶⁵

23. By violating the prior-consent requirement in Section 227(b), we find that Roesel intended to wrongfully obtain something of value. Had Roesel complied with the law and obtained prior consent, he would not have been able to make the volume of calls he made; he would not have called consumers that did not want his products or calls, disrupted emergency lines, or contacted persons that had registered their telephone numbers on the national Do Not Call registry.

⁵⁹ Roesel admits that he intentionally modified the caller ID and used the modified caller ID as part of his robocalling campaign. *See* Roesel Declaration at para. 13.

⁶⁰ *See* Letter from Kristi Thompson, Acting Division Chief, Telecommunications Consumers Division, FCC Enforcement to Bureau to Rebecca E. Jacobs, Esq., Womble, Carlyle, Sandridge & Rice, LLP, Counsel for Roesel (Sept. 7, 2017) (on file in EB-TCD-16-00023195). After reviewing the Response, the Bureau sought to confirm Philip Roesel's statement, and statements made in the Response, regarding using only unassigned numbers. *See* Roesel Declaration at para. 13; *see also* Response at 3, 8, 31-33, 38, 42. The Bureau searched the call records and found more than a million call records that used assigned/active telephone numbers in the caller ID. Although the *NAL* only referenced the use of unassigned numbers, and we base this decision on the charges in the *NAL*, the call records provided to Roesel before he filed his Response identified more than one million calls that were spoofed using assigned numbers.

⁶¹ Roesel admits that he made or caused to be made calls from October 2016 through January 2017 (the relevant three-month period at issue in the *NAL*). *See* Roesel Declaration at para. 8. Further, Roesel does not deny that the calls he made during that three-month period included the 21,582,771 spoofed robocalls that were the subject of the *NAL*, including the 82,106 upon which the forfeiture is based. *See NAL*, 32 FCC Rcd at 6406-07, paras. 10-11.

⁶² *See supra* paras. 11-16.

⁶³ *See* Roesel Declaration at para. 6.

⁶⁴ *NAL*, 32 FCC Rcd at 6412-13, paras. 24, 26-27.

⁶⁵ *Id.* at 6412-13, paras. 24, 26-27. Consistent with courts' interpretation of “anything of value” in other contexts, we found that “anything of value” includes tangible as well as intangible assets. *See id.* at 6412, para. 25.

24. As courts have recognized, in order to determine intent, it is often necessary to look at a person's conduct.⁶⁶ Therefore, it is reasonable to look at a party's actions, as we do in this case, to determine his or her intent.⁶⁷ Roesel does not deny he intended to obtain value through his robocalling campaign and, in fact, did obtain value. Rather, he makes a variety of arguments in an effort to show that he did not "wrongfully" obtain that value.⁶⁸ We address each of Roesel's arguments in detail below. None of those arguments overcome the fundamental fact, however, that Roesel knowingly engaged in the illegal and thereby wrongful act of robocalling millions of consumers with the intent to obtain things of value.

25. *Roesel's unlawful robocalls were made with the intention of wrongfully earning sales commissions.* Roesel argues that he did not wrongfully obtain anything of value because there is no connection between the spoofed caller ID and any potential lead or actual sale of insurance. He seeks to divorce the end result—the successful insurance sale or lead generation—from the illegal means used to obtain that result. In this regard, Roesel argues that, because the ultimate sale of insurance or commission from a lead was legal, any revenue that he may have obtained was not wrongful and, thus did not violate the Truth in Caller ID Act.⁶⁹

26. We disagree. Roesel "wrongfully" used a massive robocalling campaign without the consent of millions of called parties, in order to obtain leads and potential commissions for health insurance sales. Roesel's spoofing was not disassociated from, or irrelevant to, his efforts to earn sales commissions. Roesel engaged in a scheme that involved making more than 21 million illegal robocalls using misleading or inaccurate caller IDs precisely to earn sales commissions. Roesel could have

⁶⁶ See, e.g., *U.S. v. Dearing*, 504 F.3d 897, 901 (9th Cir. 2007); *U.S. v. Mirabelles*, 724 F.2d 1374, 1379 (9th Cir. 1984); see also *General Cigar Co., Inc. v. CR Carriers, Inc.*, 948 F.Supp. 1030, 1036 (M.D. Ala. 1996) ("Because one cannot know another's subjective intent, circumstantial evidence must be relied upon to indicate intent. The requirement of specific intent under the mail fraud statute is satisfied by the existence of a scheme which was reasonably calculated to deceive persons of ordinary prudence and comprehension and this intention is shown by examining the scheme itself." (internal citations omitted)). The Commission applied the same standard in the *Abramovich Forfeiture Order* where it found that "it is reasonable, and indeed often necessary, to look at a party's actions to determine whether there was an intent to defraud or cause harm." *Adrian Abramovich. Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, FCC 18-58, 2018 WL 2192429, at *4, para. 14 (May 10, 2018), Commissioner O'Rielly approving in part, dissenting in part (*Abramovich Forfeiture Order*) (citations omitted).

⁶⁷ See, e.g., *U.S. v. Davis*, 490 F.3d 541, 549 (6th Cir. 2007); *Tusa v. Omaha Auto Auction Inc.*, 712 F.2d 1248, 1253 (8th Cir. 1983) ("intent to defraud is ordinarily proved by circumstantial evidence"); see also *U.S. v. Rogers*, 321 F.3d 1226, 1230 (9th Cir. 2003) ("It is settled law that intent to defraud may be established by circumstantial evidence"); *U.S. v. Sullivan*, 522 F.3d 967, 974 (9th Cir. 2008) ("the scheme itself may be probative circumstantial evidence of an intent to defraud"); *General Analytics Corp. v. CNA Ins. Co.*, 86 F.3d 51, 54 (4th Cir. 1996) ("[B]ecause it is abstract and private, intent is revealed only by its connection with words and conduct."); *FDIC v. St. Paul Fire & Marine Ins. Co.*, 942 F.2d 1032, 1035 (6th Cir. 1991) ("intent . . . is thought to refer to a subjective phenomenon that takes place inside people's heads [The law is concerned only with] the external behavior ordinarily thought to manifest internal mental states") (citations omitted).

⁶⁸ See Response at 2-3, 11, 14-24, 38-40.

⁶⁹ See Response at 20. Roesel also argues these "sales leads provide something valuable to the persons who affirmatively requested additional information about health insurance" and calls it a stretch of "the statutory text . . . to apply [the Truth in Caller ID Act] in a situation where the call recipient requests a benefit from the caller and does so without any misunderstanding about the identity of that caller." Response at 40. Roesel's argument is misplaced. The test under the Truth in Caller ID Act is *not* whether the consumer obtains anything of value but, rather, whether the person causing the caller ID to be altered intended to wrongfully obtain anything of value. Thus, we need not determine what, if any, value some consumer may have obtained or its potential impact on whether Roesel intended to wrongfully obtain anything of value by his actions. Moreover, Roesel's argument completely disregards the harm suffered by consumers uninterested in his disruptive sales pitches.

conducted his business without using spoofed caller ID and illegal telemarketing or unlawful robocalling to generate leads and sell products. But he did not. Roesel appears to argue that the financial benefit he received (a commission from the insurance provider from the sale of insurance to a lead generated by Roesel) is too attenuated to constitute something of value. We disagree. Roesel generated a high volume of leads (and potential commissions) using unlawful spoofed robocalls. Using these unlawful methods (e.g., mass false-ID robocalling without obtaining prior consent as required under the TCPA) facilitated Roesel's ability to reach a large volume of potential customers.⁷⁰ We therefore find the wrongful conduct closely linked to the intent to earn sales commissions.

27. *Roesel's unlawful conduct was not cured by subsequently providing additional information to some called parties.* Roesel claims that, even if he obtained something of value through sales or commissions, he did not violate the Truth in Caller ID Act because consumers who requested more information were ultimately given truthful information regarding the calling party. Thus, according to Roesel, prior to making any sale or generating a lead, the connection to the false caller ID was broken, thereby curing the alleged violation.⁷¹

28. In the first place, the purported cure was only available to the consumers who pressed a designated number to get more information.⁷² There was no cure for the millions of people who were misled into answering the call and had no interest in learning more about the offer. Second, the statute does not provide for a "cure." In *Abramovich*, we found that the violation occurred when a call with misleading or inaccurate caller ID is transmitted with the requisite intent—it was not dependent on the called party listening to a robocalling message or engaging in discussion with the caller.⁷³ Similarly, we find no statutory support for the proposition that misleading or inaccurate caller ID, coupled with the intent to wrongfully obtain anything of value, can be cured or somehow rendered legal because consumers had the opportunity to obtain accurate information about the caller after listening to a robocalling message and then speaking to a representative for the caller.

29. *Roesel's illegal spoofed robocalling scheme allowed him to evade detection and potential legal action.* Roesel claims that he never intended to evade law enforcement or otherwise mask his identity.⁷⁴ He argues that when the called party answered the phone, a pre-recorded message was played that asked if the called party "wanted to receive information about health insurance."⁷⁵ The recipient "then had the choice to hang up the telephone, ask to be removed from the calling list by pressing a given

⁷⁰ Roesel admits that he could not conveniently reach his potential market through direct mail and thus, turned to robocalling. Roesel Declaration at para. 5. While he declares that he turned to robocalling to reach the Florida market, (*see id.*) the evidence (call records) show that he made illegal robocalls to all 50 states and the District of Columbia. *See* Letter from William E. Raney, Copilevitz & Canter, Counsel for ██████████ to Richard A. Hindman, Division Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (March 10, 2017) (on file in EB-TCD-16-00023195) (containing the call records). At counsel's request, the call records were provided prior to the filing date of the Response.

⁷¹ *See* Response at 40-41. Roesel seeks to support his claim that a violation may be cured based on the same misinterpretation of the Commission's statement in the *Truth in Caller ID Order* discussed below. *See infra* para. 35. For the reasons discussed in paragraph 35, we find that the referenced statement does not support Roesel's asserted claim of cure and reject this argument.

⁷² *See* Roesel Declaration at para. 9; Response at 39.

⁷³ *See Abramovich Forfeiture Order*, 2018 WL 2192429, at *11, paras. 36, 38. While the facts in *Abramovich* were more egregious than in this case (e.g., involved millions more illegal robocalls and included "neighbor spoofing"), the conduct was like this case with respect to intentionally engaging in an illegal robocalling campaign using spoofed numbers to generate sales leads. Regardless of the factual distinctions between the two cases, the Truth in Caller ID Act clearly prohibits the type of conduct in this case.

⁷⁴ Response at 39.

⁷⁵ *Id.*

number, or press a different number to request more information.”⁷⁶ The Response states that Roesel called back those consumers that generated a market lead and identified his cell number, the company name, and a call back number.⁷⁷ The Response then concludes that “[t]hese actions, which clearly identify BIC and provide the consumer with a means of contacting BIC directly, are completely inconsistent with intent to evade detection.”⁷⁸

30. We disagree. First, the statute prohibits any knowing transmission of misleading or inaccurate caller ID information with an intent to “wrongfully obtain anything of value.” Roesel does not and cannot claim that his spoofing was inadvertent.⁷⁹ The statute does not require a showing that Roesel intended to evade law enforcement or to mask his identity. Second, Roesel’s claim is untenable on the facts. The caller ID was spoofed and thereby deprived consumers of accurate, reliable caller ID information that Congress determined would help them decide whether to answer a phone call and, ultimately, whether to trust the caller on the other end of the line.⁸⁰ Because of the spoofed number, the called party only knew the subject of the call if he/she answered the phone *and* listened to the pre-recorded message.⁸¹ A key purpose of the Truth in Caller ID Act is to let people know before they pick up the phone the identity of the caller and whether he/she wants to answer the phone. Moreover, even if consumers listened to the message, they knew only the subject of the call—they had no way of reaching the actual caller or reporting the (unassigned and untraceable) offending phone number to authorities. Thus, by using spoofed caller ID, Roesel wrongfully obtained something of value by inducing consumers to answer the phone and listen to the pre-recorded message without ever identifying himself, BIC, or a valid, traceable phone number.

31. Further, electing to disclose his identity to only a select few callers (those that dialed the number and generated a market lead) is wholly consistent with an “intent to evade detection.” Roesel disclosed his identity and phone number only to those persons unlikely to report him to authorities (i.e., those persons interested his insurance product). But the millions of people who had no interest in the product had no way of reporting or taking action against Roesel. The fact that a small fraction of people (those who pressed a number for more information and were deemed to represent a legitimate sales lead) could reach Roesel at his assigned number does not refute an intent to evade enforcement actions brought on behalf of the vast majority of consumers (and carriers) who did not get access to his legitimate caller ID information.

32. *Roesel obtained value through the use of unassigned numbers.* Roesel claims that he “did not intend to obtain anything of value from the use of unassigned numbers for caller ID purposes.”⁸² Roesel refers to his manipulation of the caller ID as “benign” and argues that it is permitted under the Truth in Caller ID Act.⁸³

33. We disagree. By his own admission, Roesel used unassigned numbers to avoid having his cell phone “overwhelmed” with return phone calls from consumers that were robocalled.⁸⁴ We find

⁷⁶ *Id.*

⁷⁷ *Id.* at 39-40.

⁷⁸ *Id.*

⁷⁹ Roesel Declaration at para. 13 (admitting that Roesel modified the caller ID).

⁸⁰ See 156 Cong. Rec. H2522, H2524 (2010) (“Now, if you see a caller ID and you see it has a phone number, most people think that it’s ironclad that that’s the actual phone number that’s calling them when in truth it’s not.”).

⁸¹ See Response at 39.

⁸² *Id.* at 42.

⁸³ See *id.* at 43-44.

⁸⁴ See Roesel Declaration at para. 13. It is thus apparent that Roesel fully understood the extreme disruption that multiple unwanted calls can wreak.

that this shows an intent to obtain value from unassigned numbers to protect his own phone number from the same kind of disruption he was imposing on consumers. Further, he had no right to use unassigned numbers. He could have requested a toll-free number or additional working telephone lines from his carrier to populate the caller ID, but he did not. These acts further show his intent to use unassigned numbers to wrongfully obtain anything of value.⁸⁵ We also reject Roesel's claim that using unassigned numbers as the caller ID in connection with a massive illegal telemarketing campaign is "benign." The "benign" use recognized in the Senate Report involved instances where the caller ID is modified to protect, for example, domestic abuse victims, where the caller ID was spoofed for reasons other than an intent to defraud, cause harm, or wrongfully obtain anything of value.⁸⁶ That is demonstrably not the case here. Accordingly, the evidence supports our conclusion that Roesel spoofed the caller ID for calls to millions of consumers, including the 82,106 upon which the forfeiture is based, with the intent to wrongfully obtain anything of value.

34. "Intent" under the Truth in Caller ID Act is not limited to wrongfully obtaining anything of value solely from the called party. Roesel argues that even if marketing leads qualified as a thing of value, such value was not obtained from the called party but rather from referrals to other sales agents and thus fall outside the scope of the Truth in Caller ID Act.⁸⁷ The crux of Roesel's argument is that, in his view, the "intent" element in the Truth in Caller ID Act is limited to an intent to defraud, cause harm, or wrongfully obtain anything of value from the called party only.⁸⁸

35. We reject this argument. The text of the Truth in Caller ID Act does not limit from whom a spoofer may wrongfully seek to obtain value to called parties.⁸⁹ Further, Roesel's reliance on the Commission's statement in the *Truth in Caller ID Order* for support is misplaced. The Commission noted there that "the person or entity intending to defraud, cause harm or wrongfully obtain anything of value must facilitate the scheme through the manipulation or alteration of caller identification information."⁹⁰ This statement explicates who may be a *perpetrator* of spoofing; it does not address or limit where the perpetrator may wrongfully obtain anything of value or who may be a potential victim.⁹¹

⁸⁵ See *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9706, 9713, para. 18 (2017) ("Use of an unassigned number provides a strong indication that the calling party is spoofing the Caller ID to potentially defraud and harm a voice service subscriber. Such calls are therefore highly likely to be illegal."). Roesel argues that the Commission's statement indicates "that the use of unassigned numbers . . . may in fact be for benign purposes." Response at 25 n.95 (citing *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Notice of Proposed Rulemaking, 32 FCC Rcd. 2306 (2017)). Whether or not there may be benign uses of unassigned numbers to spoof caller ID is irrelevant. As discussed above, Roesel's use of unassigned numbers was not benign.

⁸⁶ See S. Rep. No. 111-96, at 2 (2010), as reprinted in 2010 U.S.C.C.A.N. 1376, 1377 (2009).

⁸⁷ See Response at 40.

⁸⁸ See *id.* at 30 ("[V]iolations under the Caller ID Act require a showing that the acting party altered caller ID information in furtherance of a scheme intended to (1) cause harm to the called party; (2) defraud the caller [sic] party; or (3) wrongfully obtain anything of value from the called party.") (emphasis added); see also *id.* at 31 (arguing harms to Spök's medical paging network and persons relying on medical pagers "are not sufficient to show intent to cause harm for purposes of the Caller ID Act, which requires a showing that BIC used unassigned numbers for caller ID purposes with the intent to harm called parties who used the Spök paging network.") (emphasis added); *id.* at 40 ("the Caller ID Act applies only to those who intend to obtain 'something of value from the called persons.'").

⁸⁹ See 47 U.S.C. § 227(e)(1).

⁹⁰ See *Truth in Caller ID Order*, 26 FCC Rcd at 9121, para. 19.

⁹¹ See e.g., *Abramovich Forfeiture Order*, 2018 WL 2192429, at *5, 11, paras. 17, 37 (finding the perpetrator intended to cause harm to not only the called party but others as well, including Spök and the carrier who carried Abramovich's call traffic). The limitation sought by Roesel would open the door to a variety of scams to attenuate causation—and we are slamming that door shut.

Nothing in the Truth or Caller ID Act requires that the intent must be directed to any particular person or class of persons, let alone to the exclusion of all others.

36. We find that Roesel used caller ID spoofing with the intent to wrongfully obtain something of value. Thus, Roesel violated the Truth in Caller ID Act. Roesel retained a robocall dialing platform with the intent to engage in an illegal robocalling campaign and relied on spoofed numbers to sell health insurance and generate leads for his clients. Roesel failed to obtain the prior consent of the consumers he called, called emergency lines, and called numbers that were on the national Do Not Call registry. He did this intentionally and knowing that he was using spoofed numbers to robocall people without their consent (i.e., in violation of the TCPA). In other words, Roesel intentionally used an unlawful robocalling campaign with spoofed numbers to place more than 21 million calls to consumers, including the 82,106 calls upon which we base the forfeiture.

2. Roesel's Actions Demonstrate an Intent to Cause Harm.

37. In addition to finding that Roesel spoofed calls with the intention of wrongfully obtaining something of value, the evidence supports the *NAL*'s determination that Roesel intended to cause harm. In the *NAL*, the Commission focused on four types of harm, (1) harm to the consumers he called, (2) harm to Spōk's medical paging network, (3) harm to carrier networks, and (4) devaluation of the phone numbers that Roesel displayed on the called parties caller ID.⁹²

38. Roesel does not deny that he caused harm. Rather, he argues that the Truth in Caller ID Act does not apply in cases involving TCPA violations, and even if it did, he did not intend to cause harm or did not know he was causing harm.⁹³ Roesel argues that the Truth in Caller ID Act only applies in cases that involve a malicious act or scheme—effectively a criminal act.⁹⁴ While not challenging the

⁹² *NAL*, 32 FCC Rcd at 6408-11, paras. 16-23. For example, one unassigned number used by Roesel, 843-211-9757, is flagged as untrustworthy by caller identification service Showcaller. Based on user feedback, Showcaller reports that the “Spam Activity Level” for the number is “High,” and the number is flagged as one associated with telemarketing calls. *Id.* at 6411, para. 23 (citing Showcaller, <https://www.show-caller.com/us/+18432119757> (last visited Aug. 30, 2018)). The evidence of consumer harm was corroborated by a former assistant to Philip Roesel. *See NAL*, 32 FCC Rcd at 6408-11, paras. 17-18. Roesel disputes the statements of the former assistant. *See Roesel Declaration* at paras. 19-29; *see also Response* at 33-35. We do not need to reach a decision regarding the accuracy of the statements made by the former assistant. In this Forfeiture Order, we do not base our decision on the statements of the former assistant. Our decision is based on other evidence of consumer harm cited in the *NAL*; we cite the statements of the former assistant to show only that those statements corroborate other evidence.

⁹³ *See Roesel Declaration* at paras. 15, 17, 18; *see also Response* at 10-23.

⁹⁴ *See Response* at 10-23. Roesel argues that a malicious act or scheme is lacking in the *NAL* and that, according to Roesel, the Commission seeks to find such by use of a former assistant (identified as a “whistle blower” in the *NAL*) that told the Bureau during the investigation that, among other things, Roesel was targeting the poor, elderly, and infirm persons. *Response* at 17-18. Roesel disputes the statements of his former assistant. *Response* at 18, 33-35. However, even assuming the statements were true, according to Roesel, the allegations “at most asserts some sort of deceptive intent” and thus, fall short of the intent to defraud, cause harm, or wrongfully obtain anything of value prohibited by the Truth in Caller ID Act. *Response* at 18, citing *Teltech Sys. v. Bryant*, 702 F.3d 232 (5th Cir. 2012). The question in *Teltech* was whether a state spoofing law was conflict-preempted by the Truth in Caller ID Act where it prohibited spoofing with “intent to deceive, defraud or mislead the recipient of a call” *Id.* at 234 (emphasis in original). The court noted that the state law was more restrictive than the Truth in Caller ID Act because, in addition to outlawing spoofing with an intent to defraud, cause harm, or obtain anything of value (what the court referred to as “harmful spoofing”), the state law also outlawed spoofing ““with the intent to deceive ... or mislead the recipient of the call,”” in what the court referred to as “non-harmful spoofing”. *Id.* The court found “an inherent federal objective in [the Truth in Caller ID Act] to protect non-harmful spoofing” and that the state law’s “proscription of non-harmful spoofing—spoofing done without ‘intent to defraud, cause harm, or wrongfully obtain anything of value’—frustrates this federal objective and is, therefore, conflict-preempted.” *Id.* at 239. The court based its decision on the legislative history of the Truth in Caller ID Act (whereby the House version that included intent to deceive language was not included in the final law) and Congress’s recognition that there were benign uses

(continued...)

Citation's findings that he engaged in robocalling that violated the TCPA, Roesel contends that because the TCPA is a civil statute (not a criminal statute), illegal robocalling facilitated by spoofed numbers (even assuming harm is the result) could not violate the Truth in Caller ID Act.⁹⁵

39. We disagree. The Truth in Caller ID Act prohibits “caus[ing] any caller identification service to knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value.”⁹⁶ Section 64.1604(a) of the Rules states in relevant part that no person “shall, with the intent to [], cause harm, . . . knowingly cause, directly or indirectly, any caller identification service to transmit or display misleading or inaccurate caller identification information.”⁹⁷ On their faces, both the statute and Rules refer to causing “harm” and are not restricted to intentionally causing harm by means a malicious or criminal act.⁹⁸ In fact, the Commission has held that the element of “harm” in the Truth in Caller ID Act is broad and “encompasses financial, physical, and emotional harm”⁹⁹ without tying such harm to malicious acts or criminal conduct. Thus, Roesel’s claim that the Truth in Caller ID Act does not apply to violations of civil statutes like the TCPA is not supported by the Act.

40. With respect to Roesel’s claim that he had no knowledge he was causing harm or lacked the requisite intent to harm, both Congress and the Commission have long recognized that the placement of illegal robocalls causes consumers significant harm, including that such calls are a nuisance and invasion of privacy.¹⁰⁰ The Commission has previously found, as we do in this case, that when spoofing

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of caller ID spoofing (non-harmful uses). We do not need to determine the applicability of *Teltech* to this case because: (1) our holding in this case finds that Roesel spoofed the caller ID with the intent to cause harm and wrongfully obtain anything of value—“harmful” spoofing based on the court’s interpretation of the Truth in Caller ID Act; and (2) although the former assistant’s statements may have affected the tone of the *NAL*, the statements were made to Bureau staff as part of investigation and thus were properly discussed in the *NAL*. That said, we do not rely on the assistant’s statements in this Forfeiture Order but, rather, on other evidence in the record to prove the violations here, including the intent requirement.

⁹⁵ See Response at 15.

⁹⁶ 47 U.S.C. § 227(e)(1).

⁹⁷ 47 CFR § 64.1604(a).

⁹⁸ Roesel cites an earlier version of the Truth in Caller ID Act, which was not adopted by Congress, that prohibited deceptive spoofing. He argues that Congress must have intended that spoofing be associated with something more nefarious than deception to violate the law. See Response at 10-15. Implicit in his argument is what appears to be Roesel’s view that his spoofing was merely annoying, or at worst, deceptive, and therefore not prohibited by the statute. We reject this idea. As discussed more fully above and in the *NAL*, the evidence in this case proves that Roesel knowingly violated the TCPA using spoofed caller ID with intent to harm or wrongfully obtain anything of value and thus, meets the standard adopted by Congress proving a violation of the Truth in Caller ID Act. While Roesel’s actions may have been annoying and deceptive as well (see *supra* note 94), the *NAL* does not charge Roesel or BIC with a violation of the Truth in Caller ID Act based on an intent to deceive or annoy.

⁹⁹ *Truth in Caller ID Order*, 26 FCC Rcd at 9122, para. 22. Roesel argues that the Commission’s finding that “harm” is broad is also limited to harm resulting from criminal or near-criminal acts because, according to Roesel, the Commission made that finding in response to comments by Network to End Domestic Violence that the term harm “include[d] stalking, harassment, and the violation of protection and restraining orders.” Response at 23 (emphasis in original). We find Roesel’s argument unpersuasive. The clarifying language responding to the Network to End Domestic violence that harm “included” stalking, etc., does not mean that it is limited to those types of harms. Included is inclusive of, not exclusive to, the examples that follow. See *Federal Land Bank of St. Paul v. Bismark Lumber Co.*, 314 U.S. 95, 100 (1941) (“the term ‘including’ is not one of all-embracing definition, but connotes simply an illustrative application of the general principle”); see also *Dong v. Smithsonian Institution*, 125 F.3d 877, 880 (D.C. Cir. 1997) (citing *Federal Land Bank* for the proposition that “the word ‘includes’ normally does not introduce an exhaustive list but merely sets out examples of some ‘general principle.’”).

¹⁰⁰ See Pub. L. No. 102-243 (1991); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 7 FCC Rcd 8752 (1992).

is done in conjunction with an illegal robocalling campaign (itself a harmful practice), it indicates an intent to cause harm.¹⁰¹ Thus, by intentionally engaging in an illegal activity known to cause harm to various types of individuals,¹⁰² Roesel knew that his actions would cause harm to parties who would not have consented, and we can therefore infer that he intended to cause harm on a widespread basis (even if he did not intend to harm any specific call recipient, such as Spök).

41. We also reject Roesel's claim that he lacked adequate notice that his conduct was unlawful because he believed (wrongly) that the Truth in Caller ID Act and Rules did not apply to his conduct.¹⁰³ The Truth in Caller ID Act and the implementing Rules identify the elements of a spoofing violation, including the standard by which a case will be brought. Thus, the Truth in Caller ID Act and Rules provided Roesel with sufficiently clear guidelines for him to ascertain that using spoofed caller ID, in conjunction with an unlawful robocalling campaign, violated the Truth in Caller ID Act.¹⁰⁴ We find it unnecessary to undertake another rulemaking on the scope of the Truth in Caller ID Act as the Response

¹⁰¹ See *Abramovich Forfeiture Order*, 2018 WL 2192429, at *8, para. 27; see also *NAL*, 32 FCC Rcd at 6408, para 16.

¹⁰² "All of us, the entire country, is keenly aware of the robocall problem Namely: unwanted, abusive telephone calls disturbing consumers' privacy and frequently using fraud and deception to pitch goods and services, which cause significant harm." Niels Lesniewski, *Even Senators Hate Robocalls*, Roll Call (Oct. 4, 2017), <https://www.rollcall.com/news/policy/even-senators-hate-robocalls>; see also Complaint #77992364 (Consumer Sentinel, Oct. 31, 2016) (A consumer that received unauthorized robocalls from Roesel complained "Do something!! Robocalls in the evening are NOT ok!!!").

¹⁰³ See Response at 24-26. We also reject the Response's claim that applying the Truth in Caller ID Act to anything less than a criminal infraction represents an expansion of the Act without notice and, at a minimum, the Commission must first issue a citation. See Response at 24-30. The Truth in Caller ID Act empowers the Commission "to proceed expeditiously to stop and . . . assess a forfeiture penalty against, any person or entity engaged in prohibited caller ID spoofing without first issuing a citation" against the violator. *Truth in Caller ID Order*, 26 FCC Rcd at 9132, para. 47. Unlike Section 47 U.S.C. § 503(b)(5) of the Communications Act, the Truth in Caller ID Act only requires that the Commission provide the notice required under Section 503(b)(3) of the Act (notice and opportunity for a hearing before the Commission or an administrative law judge) or Section 503(b)(4) of the Act (Notice of Apparent Liability for Forfeiture) before assessing a forfeiture for unlawful spoofing. 47 U.S.C. § 227(e)(5)(A). Here, we provided the required notice under Section 503(b)(4) of the Act through a Notice of Apparent Liability for Forfeiture. Moreover, the Response acknowledges that the Commission addressed the issue of proceeding directly to *NAL* in the notice and comment rulemaking adopting the Rules implementing the Truth in Caller ID Act. See Response at 27 (quoting the discussion in the NPRM to the rulemaking). We also find unpersuasive Roesel's argument that the Commission's decision not to first issue citations for violations of the Truth in Caller ID Act is contrary to its decision implementing the Middle Class Tax Relief Act (finding that a citation was warranted for violations of that Act by non-licensees). See Response at 29. Unlike the Truth in Caller ID Act—that identified specific provisions of Section 503 that applied when imposing forfeitures for violations of the Truth in Caller ID Act and excluded Section 503(b)(5) (i.e., the citation requirement)—Section 6507(c) of the Middle Class Tax Relief Act referred only generally to the applicability of Section 503 for violations. Thus, the Commission determined that all of Section 503 applied, including the citation requirement of Section 503(b)(5). See *Implementation of the Middle Class Tax Relief and Job Creation Act of 2012*, Report and Order, 27 FCC Rcd 13615, 13631-33, paras. 32-35 (2012).

¹⁰⁴ See, e.g., *Star Wireless, LLC v. FCC*, 522 F.3d 469, 473 (D.C. Cir. 2008) (finding the regulation and other public statements of the FCC meant that the "regulated party acting in good faith would be able to identify, with ascertainable certainty, the standards with which the agency expects parties to conform" (citations omitted)); see also *Truth in Caller ID Order*, 26 FCC Rcd at 9122, para 22 (finding that terms in the Truth in Caller ID Act were sufficiently clear to provide guidance about what actions were prohibited); *Abramovich Forfeiture Order*, 2018 WL 2192429, at *9, para. 32.

suggests.¹⁰⁵ Accordingly, we reject Roesel's notice argument and find that the Truth in Caller ID Act and Rules provided the requisite prior notice and the process that Roesel is due.¹⁰⁶

42. Based on the foregoing, we find that Roesel's actions were done with the intent to cause harm and wrongfully obtain anything of value for Roesel and, in fact, that his actions did cause harm. Accordingly, we find that Roesel made 21,582,771 telemarketing robocalls without the prior consent of the called parties with the intent to cause harm or wrongfully obtain anything of value. Further, we conclude that he had the requisite intent, knowingly displaying misleading or inaccurate caller ID with respect to 21,582,771 robocalls, and thus illegally made spoofed calls to millions of consumers in violation of the Truth in Caller ID Act and Rules.

C. The Evidence Supports Holding Philip Roesel Jointly and Severally Liable with BIC.

43. In the *NAL*, the Commission held Philip Roesel personally liable, together with BIC, under the principles of piercing the corporate veil. Following prior FCC cases, the Commission found personal liability appropriate "where the individual . . . is an officer of a closely held corporation and directly participates in, oversees, authorizes or otherwise directs the commission of the wrongful act."¹⁰⁷ The Response argues (1) that the evidence does not show that there is a community of interest such that Philip Roesel and BIC "lack[ed] separate personalities" and (2) "there is no justification for imposing that liability on [Philip] Roesel rather than the company that conducted those [unlawful] activities."¹⁰⁸

44. We disagree. Philip Roesel's federal tax returns, included with the Response, show that he [REDACTED] and conducted his business, including the illegal spoofing and robocalling scheme, [REDACTED].¹⁰⁹ Philip Roesel is not entitled to the benefits or protections of a corporation where the corporate form is disregarded.¹¹⁰

¹⁰⁵ See Response at 25 (suggesting that the Commission "clarify" the scope of the Truth in Caller ID Act in a declaratory ruling or another rulemaking).

¹⁰⁶ We also dismiss Roesel's general and unsupported observation that regulations by independent agencies that allow for the "assess[ment] of penalties against members of the public without warning . . . have been recently challenged as raising constitutional concerns under Article II, because the President cannot supervise its enforcement activities." Response at 29-30. As discussed above, in this case, the statute, a notice and comment rulemaking process implementing the statute, and the Rules themselves provided Roesel ample warning that he could be liable for forfeiture for violations of the Truth in Caller ID Act. Moreover, the Commission is imposing the forfeiture pursuant to authority specifically granted to it by Congress using the process, including Section 503 provisions, identified as applicable by Congress in the Truth in Caller ID Act. Further, at the conclusion of that process, pursuant to Section 504(a) of the Communications Act, Roesel is entitled to a trial *de novo* in the U.S. district court.

¹⁰⁷ *NAL*, 32 FCC Rcd at 6415-16, para. 34.

¹⁰⁸ Response at 47.

¹⁰⁹ See Response, Exh. 2, Attach. 3. [REDACTED]

¹¹⁰ See *Flame S.A. v. Freight Bulk Pte. Ltd.*, 807 F.3d 572, 588-89 (4th Cir. 2015) (Alter ego liability found where "evidence shows a common owner who fails to observe corporate formalities and often commingles funds . . .").

45. In addition, in the *NAL*, the Commission found that Philip Roesel was BIC's "sole incorporator, the sole shareholder, and sole registered agent" and CEO.¹¹¹ While not disagreeing with the findings, the Response argues that these facts are not enough to find the requisite unity of interest to pierce the corporate veil.¹¹² The Response, however, does not refute or even address the other facts that the Commission relied upon to support the decision to pierce the corporate veil. These facts include that: (1) BIC's website domain name, "bestinsurancecontracts.com," was "registered to Philip Roesel personally, rather than" BIC;¹¹³ (2) Philip Roesel's home is BIC's business address;¹¹⁴ (3) BIC and Philip Roesel used the same telephone number for BIC business and Philip Roesel's personal business¹¹⁵— according to Philip Roesel, BIC used his personal cellphone number for BIC business;¹¹⁶ (4) Philip Roesel commingled personal financial accounts with BIC;¹¹⁷ and (5) Philip Roesel set up the account with the calling platform to carry out the illegal robocalling scheme, made or caused the illegal calls to be made through the calling platform, and made all decisions related to the calling platform.¹¹⁸ In his declaration, Philip Roesel confirms that those decisions included, among other things, who to call (the calling list), the decision to spoof the caller ID (and what false numbers to use), and whether or not to call a consumer back and disclose his true identity and telephone number.¹¹⁹

46. Further, we disagree with the Response that "there is no justification for imposing [] liability on [Philip] Roesel rather than" BIC alone.¹²⁰ The evidence demonstrates that BIC is a shell corporation created by Philip Roesel to conduct a massive illegal spoofed robocalling campaign to generate leads and sell health insurance. The facts show that Philip Roesel is the actor behind the illegal campaign and that BIC was merely an instrument used by him. These factors taken together support our finding to pierce the corporate veil and to hold Philip Roesel personally, and hence jointly and severally, liable with BIC for the apparently unlawful conduct.¹²¹

¹¹¹ *NAL*, 32 FCC Rcd at 6416, para. 36.

¹¹² See Response at 47. The Response cites *Valley Fin., Inc. v. United States*, 629 F.2d 162, 172 (D.C. Cir. 1980) for the proposition that ownership of stock by a single person is insufficient to support piercing the corporate veil. This analysis neglects the critical point that the court in fact upheld the lower court's holding piercing the corporate veil. See *Valley*, 629 F.2d at 172-73 ("the court may ignore existence of the corporate form whenever an individual so dominates his organization 'as in reality to negate its separate personality.' Obviously, control by the individual must be active and substantial . . .").

¹¹³ *NAL*, 32 FCC Rcd at 6416, para. 36.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ See Roesel Declaration at para. 13.

¹¹⁷ *NAL*, 32 FCC Rcd at 6416-17, para. 36 ("Philip Roesel sometimes paid [REDACTED] with financial accounts in the name of BIC, while at other times the robocalling services were paid for using Philip Roesel's own financial accounts . . .").

¹¹⁸ *Id.* at 6416, para. 36.

¹¹⁹ See Roesel Declaration at paras. 1-3, 6, 13.

¹²⁰ Response at 47.

¹²¹ We disagree with the Response that the "unity of interest" showing rests on whether or not the principal quickly creates and dissolves companies and continues to use those company names after dissolution. See Response at 46. While these facts are sufficient to show a "unity of interest" and support a finding to pierce the corporate veil, courts have recognized other facts as well that support finding alter ego and piercing the corporate veil. See *N.L.R.B. v. West Dixie Enterprises, Inc.*, 190 F.3d 1191, 1194 (11th Cir. 1999) (finding unity of interest where there was commingling of assets and failure to maintain corporate formalities); *United States Through Small Business Admin. v. Pena*, 731 F.2d 8, 12 (D.C. Cir. 1984) (quoting *Capital Tel. Co., Inc. v. FCC*, 498 F.2d 734, 738 n.10 (D.C. Cir. 1974)) ("Where the statutory purpose could be easily frustrated through the use of separate corporate entities a

(continued...)

D. Roesel's Request for Hearing is Denied.

47. When assessing a forfeiture against a person for violations of the Communications Act or the Rules, the Act authorizes the Commission, at its discretion, to proceed by hearing¹²² or through the issuance of a Notice of Apparent Liability (NAL).¹²³ On August 4, 2017, the Commission released the NAL against Roesel for apparently engaging in unlawful spoofing.¹²⁴ Pursuant to Section 503(b)(4)(C) of the Act, Roesel was given an opportunity to respond to the NAL.¹²⁵ On September 21, 2017, Roesel responded.¹²⁶ The Response asks us now to effectively reverse course and proceed by hearing.¹²⁷ For the reasons discussed below, we are not persuaded that a hearing is necessary, nor that it would serve the public interest.

48. The Response asserts that “[a]ll of the allegations concerning BIC’s and Roesel’s intent are based on interviews the Bureau staff had with a former employee of BIC referred to as a ‘whistleblower’ with minimal knowledge of BIC’s operations and with no knowledge of BIC’s or Roesel’s intent.”¹²⁸ The Response argues a hearing is necessary to afford an opportunity to “face this witness” and “test before a trier of fact the allegations made.”¹²⁹ According to the Response, absent a hearing, “there is no way that BIC can respond and present exculpatory evidence or refute the allegations of intent made by a short term employee.”¹³⁰

49. We do not find a hearing necessary. First, the Commission has already exercised its discretion and proceeded by NAL and this Forfeiture Order. Pursuant to the statute, Roesel has had an opportunity to respond in writing and has responded. With regard to the asserted need to confront witnesses generally and the “whistleblower” or former employee specifically, after release of this Forfeiture Order, the case may be referred to the Department of Justice to enforce the order and collect the penalty. Pursuant to Section 504(a) of the Act, at that time Roesel is entitled to a trial *de novo*. Thus, Roesel will have his opportunity to confront witnesses in due course, and we find that the public interest would not be served by disrupting the process set out in the statute at this juncture by ordering a hearing.

50. Second, we reject the Response’s contention that our findings with respect to “intent” rest solely (or even substantially) on the statements of a whistleblower the Response characterizes as a “short term employee” and Philip Roesel calls his “assistant.”¹³¹ The statements of Philip Roesel’s former assistant corroborate the evidence and our findings with respect to Roesel’s intent to cause harm and

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regulatory commission is entitled to look through corporate entities and treat the separate entities as one for purposes of regulation.”); *Green v. Freeman*, 749 S.E.2d 262, 270-71 (N.C. 2016) (listing piercing factors to consider under North Carolina law such as “inadequate capitalization, noncompliance with corporate formalities, lack of separate corporate identity, excessive fragmentation, siphoning of funds . . . , nonfunctioning officers and directors, and absence of corporate records”); *Telseven, LLC, Patrick Hines*, Forfeiture Order, 31 FCC Rcd 1629, 1632-33, para. 10 (2016) (finding unity of interest where the individual and company shared same address, the individual was the sole director and officer, and he had complete control over the company).

¹²² See 47 U.S.C. § 503(b)(3)(A); see also 47 CFR § 1.80(g).

¹²³ See 47 U.S.C. § 503(b)(4)(A).

¹²⁴ See *supra* note 2.

¹²⁵ See 47 U.S.C. § 503(b)(4)(C).

¹²⁶ See *supra* note 4.

¹²⁷ See Response at 4, 48-49.

¹²⁸ *Id.* at 48.

¹²⁹ *Id.*

¹³⁰ *Id.* at 49.

¹³¹ See Response at 49; see also Roesel Declaration at para. 19.

wrongfully obtain anything of value. As shown in the *NAL* and discussed above, our findings with respect to Roesel's intent are based on the knowing and deliberate actions of Philip Roesel, acting individually and through BIC. We draw our conclusions from the entirety of the record evidence, including consumer complaints and the Response, not merely the statements of the whistleblower. Accordingly, for the forgoing reasons, the Response's request for hearing is denied.

IV. A DOWNWARD ADJUSTMENT FOR "INABILITY TO PAY" IS NOT WARRANTED

51. Section 227(e) of the Act authorizes the Commission to assess a civil forfeiture against persons who knowingly cause, directly or indirectly, any caller ID service to transmit or display misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value.¹³² The statute also limits the maximum amount of the forfeiture for each violation to \$11,052.¹³³ For the reasons discussed in the *NAL*, the Commission proposed a forfeiture of \$82,106,000 based on 82,106 of the 21,582,771 total violations; representing a per violation forfeiture of \$1,000 (well under the \$11,052 statutory maximum).¹³⁴

52. The Response argues that the proposed forfeiture is in excess of Roesel's ability to pay and requests that the Commission reduce the proposed forfeiture to no greater than \$[REDACTED].¹³⁵ In support, the Response included Philip Roesel's federal tax returns for the years 2014 through 2016 and commissions received from business for January through August 29, 2017.¹³⁶ The Response states that BIC did not [REDACTED].¹³⁷ The Response observes that the Commission has previously found forfeitures representing between 2.02% and 7.96% of an entity's gross revenues not to be excessive when assessing forfeitures. The Response states that \$[REDACTED] represents 7.96% of Roesel's gross income and that this should be the amount of the forfeiture (an amount that excludes [REDACTED]).¹³⁸

53. In the *NAL*, the Commission said that we "will *not* consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; and (3) any other reliable and objective documentation that accurately reflects the petitioner's current financial status."¹³⁹ Roesel submitted three years of federal tax returns and what

¹³² 47 U.S.C. § 227(e)(5)(A)(i); 47 CFR § 64.1604(a).

¹³³ The per violation maximum was initially set at \$10,000 and has subsequently been raised periodically to account for inflation. *See* 47 U.S.C. § 227(e)(5)(a)(i) ("The amount of the forfeiture penalty determined under this paragraph shall not exceed \$10,000 for each violation"); 47 CFR § 1.80 (adopting the statutory maximum with the required inflation adjustment); *Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 31 FCC Rcd 13485, 13489 (2016). In the alternative and in lieu of the Act's general criminal penalty provisions in Section 501 of the Act, the Truth in Caller ID Act also provides for criminal fines up to \$10,000 for each violation, or three times that amount for each day of a continuing violation. 47 U.S.C. § 227(e)(5)(B).

¹³⁴ *See NAL*, 32 FCC Rcd at 6414-15, para. 33. Consistent with the Truth in Caller ID Act, the base forfeiture was established on a per violation basis. 47 U.S.C. § 227(e)(5)(A)(i). In setting the base we used the lowest base forfeiture amount specified in Section 1.80.

¹³⁵ Response at 45-46, Exh. 2 at 1, 3.

¹³⁶ *See id.* at Exh. 2.

¹³⁷ *See* Response, Exh. 2 at 2.

¹³⁸ *See* Response at 45-46; *see also id.* at Exh. 1 (citing *Kenneth Paul Harris, Sr.*, Forfeiture Order, 15 FCC Rcd 23991, 23993, para. 7 (EB 2000); *Hoosier Broadcasting Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 8640, 8641, para. 7 (EB 2000); *PJB Commc'ns. of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089, para. 9 (1992); *Coleman Enterprises, Inc. d/b/a Local Long Distance, Inc.*, Apparent Liability for Forfeiture, 15 FCC Rcd 24385 (2000)). *But see infra* notes 146, 157 (declining to adjust the forfeiture downward; following a different line of Commission cases).

¹³⁹ *NAL*, 32 FCC Rcd at 6418, para. 43 (emphasis added).

appears to be an [REDACTED] that he asserts represents net commissions he received for the months January 2017 through August 31st of 2017.¹⁴⁰ Wholly lacking are “financial statements prepared according to generally accepted accounting practices” and “any other reliable and objective documentation that accurately reflects the petitioner’s current financial status.”¹⁴¹ Thus, the Response fails to meet even the minimum standard the Commission identified in the *NAL* in order to consider a request for adjustment based on inability to pay. As the Commission explained in the *Abramovich Forfeiture Order*, and equally applicable to Roesel:¹⁴²

Although the Commission has looked at the prior three years of tax returns as one way to benchmark an ability to pay, we also recognize that income may represent only a small fraction of a wrongdoer’s wealth. Thus, the tax returns in themselves may not fully address whether the wrongdoer is able to pay the proposed forfeiture.¹⁴³ We note, too, that when the Department of Justice pursues collections on the Commission’s behalf, it looks at a wide range of resources, beyond tax returns, in evaluating a person or entity’s ability to pay a claim or judgment.¹⁴⁴ If we limit our analysis to tax returns, the Commission would be ignoring relevant assets that the Department of Justice would consider in its ability to pay determination, potentially reducing the pool of assets that could factor into the determination.¹⁴⁵

54. Accordingly, we deny Roesel’s request for modification for lack of appropriate documentation. Even if we assume for the sake of argument that the documents provided are all that exist and Roesel lacks other financial assets beyond those identified in his tax returns, for the reasons discussed below, we would also decline to reduce the forfeiture based on an asserted inability to pay.¹⁴⁶

¹⁴⁰ See Response at 45; see also *id.* at Exh. 2, Attach. 4.

¹⁴¹ *NAL*, 32 FCC Rcd at 6418, para. 43.

¹⁴² *Abramovich Forfeiture Order*, 2018 WL 2192429, at *13, para. 44.

¹⁴³ In addition, [Roesel] offers no basis for the Commission to conclude that his estimated “present” income (for the year 20[18]) is representative of his future earning potential. Further, [Roesel] presents no evidence concerning his educational background, physical capacity, or professional skills that might enable the Commission to assess his future earning potential. Finally, [Roesel] made [little or] no showing regarding assets he or his companies may have to satisfy the forfeiture, including available funds, potential access to capital, and whether he or his companies may come into funds in the future. See, e.g., *United States v. Elizabeth Mastropierro, et. al.*, 931 F.2d 905, 906-07 (D.C. Cir. 1991) (When considering ability to pay in applying the sentencing guidelines, the court recognized “the appellants are currently without substantial assets or gainful employment and therefore unable to pay the full fines immediately, we nevertheless conclude that the record supports the judge’s implicit finding that they can obtain employment and pay the fines over time.”).

¹⁴⁴ See U.S. Department of Justice, Financial Statement of Debtor, <https://www.justice.gov/sites/default/files/usao-wdwa/legacy/2011/10/03/Fillable%20Form%20Financial%20statement%20individual.pdf>. These include, for example, bank accounts, investments, cash, available credit, participation in profit sharing plans, vehicles, any anticipated increase in household income in the next two years, real estate, personal assets, and accounts or loans receivable. The FCC also considers assets, liabilities, income, and expenses when determining the ability to pay a debt in installments. See 47 CFR § 1.1914.

¹⁴⁵ It makes little sense for the Commission to limit its consideration to a subset of potential resources. Because the Department of Justice may not collect more than the forfeiture amount that the Commission establishes, limiting our ability to pay analysis effectively reduces the broader scope of resources that the Department of Justice will include in its analysis.

¹⁴⁶ We have never adjusted downward a proposed forfeiture for inability to pay when millions of violations have been committed by a single individual. Thus, we are not guided by the cases cited by the Response. See *supra* note 138. In fact, even in cases involving far fewer violations and consumer harm, where the violations are repeated or particularly egregious, as in this case, our precedent is to not adjust the forfeiture downward for inability to pay. See *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-904, paras 32-33 (2015) (acknowledging (continued...))

55. When we assess forfeitures for violations of Section 227(e), the Commission has stated that it will “employ the balancing factors” of Section 503 “when determining the amount of a forfeiture penalty” to take into account the specific facts of a given case.¹⁴⁷ Roesel does not expressly challenge the Commission’s application of the balancing factors. His sole argument is that the proposed forfeiture is in excess of his ability to pay and asks that we consider this “statutory” factor as a basis for reducing the penalty.¹⁴⁸ As the Commission has found in prior cases, ability to pay is only one of several factors we consider in determining the appropriate forfeiture; as explained below, we find that factor to be greatly outweighed by other balancing factors that militate in favor sustaining the forfeiture proposed in the *NAL*.

56. As a preliminary matter, the Truth in Caller ID Act does not require that there be actual harm; only that there be an intent to cause harm, defraud, or obtain anything of value. However, in this case and as more fully discussed above, Roesel not only obtained anything of value, but did in fact cause harm. Roesel harmed consumers, Spök’s medical paging network, between five and ten thousand Spök subscribers, carriers that transmitted millions of his illegal spoofed calls, and telephone numbers (a public resource). Roesel admits that he made the spoofed robocalls during the relevant period between October 2016 and January 2017 and that the calls were made through an account he set up using a calling platform. Further, he does not refute evidence (i.e., the call records) that the 82,106 calls on which the Commission based the *NAL* were representative of his operation. In short, Roesel’s misconduct was egregious and demonstrates a blatant disregard for the law and for the rights of consumers. The violations were intentional and repeated. He caused substantial harm and gained economically from his misconduct. These are all factors we consider in determining whether an upward adjustment to a base fine should be made under Section 503(b)(2)(E) of the Act—not downward.¹⁴⁹

57. In addition, in the *NAL*, the Commission limited the proposed forfeiture to the 82,106 call violations verified by the Bureau (less than one percent of the total 21,582,771 potential violations); itself a substantial discount off the total potential forfeiture. And, as the Commission recognized in the *NAL*, by applying a \$1,000 base forfeiture, the FCC was “significantly lowering the potential penalty—which

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that “standing alone, Purple’s financial documents might support a reduction” but finding after applying the balancing factors no reduction was warranted); *Telecom Long Distance, Inc.*, Forfeiture Order, 31 FCC Rcd 10392, 10410-411, paras. 42-44 (2016); *see also infra* note 157. Thus, our conclusion not to downward adjust in this case follows these latter line cases and is based on the facts before us and guided by the balancing factors of Section 503(b)(2)(E).

¹⁴⁷ Although the Commission is not statutorily required to apply the section 503(b)(2)(E) balancing factors in cases involving apparent violations of section 227(e), the Commission said it would do so. *See Truth in Caller ID Order*, 26 FCC Rcd at 9132, para. 46 (“In order to provide guidance about the factors the Commission will use in determining the amount of penalty it will assess for violations of the Truth in Caller ID Act, we adopt . . . the balancing factors the Commission typically considers when determining the amount of a forfeiture penalty. . . . The balancing factors include the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require. These factors allow the Commission to properly consider the specific facts of each case when determining an appropriate forfeiture penalty.” (citations omitted)).

¹⁴⁸ *See* Response at Exh. 2. Roesel does not challenge the proposed forfeiture on Constitutional grounds as was the case in *Abramovich*. *See Abramovich Forfeiture Order*, 2018 WL 2192429, at *9, paras. 29-32. Thus, we need not repeat our Constitutional analysis from the *Abramovich* case here. We note, however, in *Abramovich* we were dealing with analogous facts involving a massive spoofed robocalling scheme in violation of the Truth in Caller ID Act and our Rules. Further, we applied the same \$1,000 base in the present case as we did in *Abramovich* and determined that the forfeiture was not “excessive” in violation of the Constitution. *Id.* Thus, consistent with our findings in the *Abramovich Forfeiture Order*, we find that the forfeiture we impose by this Forfeiture Order to be reasonable and not excessive.

¹⁴⁹ *See* 47 C.F.R. § 1.80(b)(8), NOTE: Section II, Adjustment Criteria for 503 Forfeitures, Upward Adjustment Criteria (1)-(8). That said, the *NAL* declined to impose an additional upward adjustment above the base forfeiture; although Roesel’s conduct could support an upward adjustment, we find it is unnecessary to do so at this juncture.

may reach up to a statutory maximum of \$11,052 per call.”¹⁵⁰ If we were to reduce the forfeiture even more (to no more than \$ [REDACTED] as Roesel requests) the result would be less than one half of one cent per violation—an entirely unreasonable per violation amount in light of the \$11,052 maximum (adjusted for inflation) set by Congress. Such a per violation amount simply would not reflect the nature, circumstances, extent, and gravity of the violations. Nor would it reflect Philip Roesel’s culpability as the person behind the massive illegal spoofed robocalling scheme or the egregious conduct considering the sheer volume of calls over just one three-month period.¹⁵¹

58. As the Commission said in the *Abramovich Forfeiture Order*, “[i]n cases like this, where a person engages in rampant lawlessness in violation of the Act and our Rules, our forfeiture must be high enough to deter future wrongdoing, and ensure that our forfeiture is not just the cost of doing business.”¹⁵² Thus, we affirm the finding in the *NAL* that “[o]n balance, . . . neither an upward adjustment nor a further downward adjustment to the proposed base forfeiture of \$82,106,000 is necessary to punish misconduct and deter future wrongdoing.”¹⁵³ Consistent with the FCC’s finding in *Abramovich*, “[t]he fact that even a greatly reduced per-violation forfeiture amounts to \$[82,106,000] is a problem wholly of [Philip Roesel]’s own making. [Philip Roesel] elected to engage in massive spoofing and committed more than [21] million separate violations. The volume of his violations does not justify a ‘volume discount.’”¹⁵⁴

59. Finally, as in *Abramovich*, we “consider the context in which th[e] spoofing violations occurred—in furtherance of a massive robocalling campaign to millions of consumers without their prior written consent.”¹⁵⁵ In a separate action released simultaneously with the *NAL*, the Bureau cited Roesel for making illegal telemarketing robocalls to consumers on their wireless and landline phones, as well as to critical emergency phone lines, without prior express written consent and absent an emergency purpose, and to persons who’s numbers were on the Do Not Call list.¹⁵⁶ Justice requires that we consider the egregiousness of Roesel’s violations, the consumers he harmed, and the scale and scope of all his illegal activities. The facts in this case do not warrant a reduction in the proposed forfeiture.

60. Thus, after balancing the statutory factors and taking into consideration the arguments advanced in the Response, we find that the “ability to pay” factor to be greatly outweighed by the other balancing factors that militate in favor of an assessing the forfeiture proposed in the *NAL*. Our decision not to downward adjust based on ability to pay is consistent with prior precedent.¹⁵⁷ As the Commission said in the *Abramovich Forfeiture Order*,

[w]hen adopting its spoofing rules, the Commission said that it would ‘seek substantial penalties’ against violators. Because of the ease and low costs that technology has brought to the task of generating telephone calls and falsifying caller ID information for unlawful purposes, large-scale violators may generate hundreds of thousands or even

¹⁵⁰ *NAL*, 32 FCC Rcd at 6415, para. 33 n.84; *see also* 47 U.S.C. 503(b)(2)(E).

¹⁵¹ *NAL*, 32 FCC Rcd at 6415, para. 33.

¹⁵² *Abramovich Forfeiture Order*, 2018 WL 2192429, at *14, para. 46.

¹⁵³ *NAL*, 32 FCC Rcd at 6415, para. 33 (footnote omitted).

¹⁵⁴ *Abramovich Forfeiture Order*, 2018 WL 2192429, at *7, para. 25.

¹⁵⁵ *Id.* at *14, para. 47.

¹⁵⁶ *See supra* note 3.

¹⁵⁷ *See, e.g., TV Max, Inc., et al., Forfeiture Order*, 29 FCC Rcd 8648, 8661, para. 25 (2014) (noting that the Commission “has previously rejected inability to pay claims in cases of repeated or otherwise egregious violations”); *Kevin W. Bondy, Forfeiture Order*, 26 FCC Rcd 7840, 7844-45, para. 16 (EB 2011) (violator’s repeated intentional and malicious violations outweighed evidence of inability to pay), *recon. dismissed*, Memorandum Opinion and Order, 28 FCC Rcd 1170 (EB 2013); *Whisler Fleurinor, Forfeiture Order*, 28 FCC Rcd 1087, 1090, para. 9 (EB 2013) (violator’s demonstrated inability to pay outweighed by gravity of repeated violations).

millions of illegal calls within a short period of time. We find that large-scale spoofing operations tend to be more harmful to consumers. . . . Accordingly, any proposed forfeitures in such cases must reflect the exponential harm associated with large-scale spoofing.¹⁵⁸

61. Accordingly, we decline to downwardly adjust the proposed forfeiture based on an asserted “inability to pay.” We conclude, based upon the evidence before us, that the proposed forfeiture of \$82,106,000 properly reflects the seriousness, duration, and scope of Roesel’s violations.

V. CONCLUSION

62. Based on the record before us and the applicable statutory factors, we conclude that Roesel willfully and repeatedly violated Section 227(e) of the Act¹⁵⁹ and Section 64.1604 of the Rules.¹⁶⁰ We decline to cancel or reduce the \$82,106,000 forfeiture proposed in the *NAL*.

VI. ORDERING CLAUSES

63. Accordingly, **IT IS ORDERED** that, pursuant to Sections 227(e)(5)(A)(i) and 503(b) of the Act¹⁶¹ and Section 1.80 of the Rules,¹⁶² Best Insurance Contracts, Inc., and Philip Roesel, doing business as Wilmington Insurance Quotes, are **JOINTLY AND SEVERALLY LIABLE FOR A MONETARY FORFEITURE** in the amount of eighty-two million, one hundred and six thousand dollars (\$82,106,000) for willfully and repeatedly violating Section 227(e) of the Act¹⁶³ and Section 64.1604 of the Rules.¹⁶⁴

64. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release of this Forfeiture Order.¹⁶⁵ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.¹⁶⁶

65. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the *NAL*/Account Number and FRN referenced above. Best Insurance Contracts, Inc., and Philip Roesel, doing business as Wilmington Insurance Quotes, shall send electronic notification of payment to Lisa Williford at Lisa.Williford@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁶⁷ When completing the Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with completed Form 159) must be

¹⁵⁸ *Abramovich Forfeiture Order*, 2018 WL 2192429, at *14, para. 48.

¹⁵⁹ 47 U.S.C. § 227(e).

¹⁶⁰ 47 CFR § 64.1604.

¹⁶¹ 47 U.S.C. §§ 227(e)(5)(A)(i), 503(b).

¹⁶² 47 CFR § 1.80.

¹⁶³ 47 U.S.C. § 227(e).

¹⁶⁴ 47 CFR § 64.1604.

¹⁶⁵ 47 CFR § 1.80.

¹⁶⁶ 47 U.S.C. § 504(a).

¹⁶⁷ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

mailed to the Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

66. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.¹⁶⁸ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

67. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to Best Insurance Contracts, Inc., and Philip Roesel, dba Wilmington Insurance Quotes, at [REDACTED] and to Martin L. Stern, Womble Carlyle Sandridge & Rice, LLP, 1200 Nineteenth St, N.W., Suite 500, Washington, DC 20036 and Christopher W. Jones, Womble Carlyle Sandridge & Rice, LLP, 555 Fayetteville Street, Suite 1100, Raleigh, NC 27601, Counsel to Best Insurance Contracts, Inc., and Philip Roesel.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁶⁸ See 47 CFR § 1.1914.

**STATEMENT OF
CHAIRMAN AJIT PAI**

Re: *Philip Roesel, dba Wilmington Insurance Quotes, and Best Insurance Contracts, Inc.*,
File No.: EB-TCD-16-00023195

During my tenure as FCC Chairman, I've had the opportunity to set the agenda for 20 monthly meetings. And at almost half of those meetings, we've voted on measures to fight the scourge of unlawful robocalls. This proactive strategy follows through on what I said shortly after becoming Chairman: Combating illegal robocalls would be the FCC's top consumer protection priority.

Today, we take further steps to address this priority by approving two major enforcement actions. The first involves Philip Roesel. By making unsolicited calls to consumers, Roesel generated leads for insurance products that he sold. Last year, we found he and his company apparently liable for \$82,106,000 for violating the Truth in Caller ID Act. Roesel was responsible for more than 200,000 spoofed robocalls a day—21.5 million altogether, over a three-month period from late 2016 through early 2017.

Roesel's response to the Commission was not persuasive, to say the least. He admits that he hired a dialing platform. He admits that he intentionally spoofed the caller ID. He admits that he robocalled consumers. And he does not deny that he failed to obtain prior consent from any consumers that he robocalled. Nor does he deny he obtained value using his robocalling campaign or that he caused harm.

Now, Roesel claims that any value obtained was not obtained "wrongfully." But it's impossible to believe that he would have generated the same volume of leads (and potential commissions) had he not made over 21 million unlawfully spoofed robocalls in violation of the Truth in Caller Act.

He also asserts that any unlawful conduct was "cured" because consumers who wanted more information were ultimately given truthful information. But tell this to the millions of innocent consumers who were misled into answering his calls, or who had no interest in learning more about the offer. Baiting the hook and casting the line are bad, with or without the sinker.

So today, we reject Roesel's specious arguments and impose a forfeiture of over \$82 million for intentionally including false or misleading spoofed caller ID information with his unlawful robocalls.

The second enforcement action is a Notice of Apparent Liability against Affordable Enterprises of Arizona. Affordable ran a telemarketing scheme to gain new customers and increase sales of its home improvement and remodeling services. The company apparently made over two million unlawful spoofed telemarketing calls in just a 14-month period. So we're proposing a penalty of \$37,525,000 for apparent violations of the Truth in Caller ID Act.

Here's how their scheme apparently worked. First, Affordable would upload a random list of targeted numbers into a calling platform that would dial the numbers on Affordable's behalf. (Affordable was apparently aware that many of these numbers were on the national Do No Call Registry.) Next, Affordable would program the calling platform to display spoofed caller ID information. In other words, this information did not transmit the originating phone number. The Caller ID displayed was an unassigned number, an assigned number to a prepaid burner phone, or, in the most egregious instances, a number already assigned to an innocent consumer.

This design made it virtually impossible for any consumer with a complaint to contact Affordable's official business line. It also was designed to make it easier for Affordable to hide any link between the company and its illegal telemarketing calls from law enforcement or potential plaintiffs.

The Enforcement Bureau's able investigation unearthed details about this scheme after investigating a sampling of 13 separate numbers used by Affordable for caller ID purposes from July 26, 2016 to September 25, 2017. Affordable used these 13 numbers to make 2,341,125 telemarketing calls

during this period. And not one of these numbers displayed correct caller ID information to show that the calls came from Affordable or otherwise listed Affordable as the subscriber of record.

Most troubling is the fact that four of the sampled numbers used by Affordable for caller ID purposes were assigned to innocent consumers. One of them claimed to have received more than five calls a day from people irate that they were receiving unwanted calls from her number and demanding that she stop. This consumer said that she was overwhelmed by these calls. And no wonder: The Bureau's investigation confirmed that Affordable had made more than 48,349 calls alone using her phone number during the period that it was assigned to this consumer. This conduct is outrageous and unacceptable.

Of course, enforcement actions alone won't solve the problem of unlawful robocalls. That's why we've been busy working on a variety of initiatives to address this issue. In response to our charge, the North American Numbering Council, an FCC Advisory Committee, has set out the next steps for implementing a nationwide call authentication system designed to stamp out robocalls from bad actors, and the private sector is now setting up the governance system for authenticating calls industry-wide. We are carefully monitoring these efforts and will consider whether any Commission action is needed to ensure that milestones are met in a timely manner.

But make no mistake about it: Penalizing those who spoof caller ID information and flood Americans' phones with unlawful robocalls must be a component of any effective strategy for combatting this scourge.

I want to thank staff for their careful sleuthing and hard work in bringing these cases forward. For Roesel, I want to thank Vilma Anderson, Tamara Baxter, Jonathan Garvin, Lisa Gelb, Susan German, Rosemary Harold, Jermaine Haynes, Rick Hindman, Parul Desai, Matthew Hoke, Lisa Landers, Coly Marierose, Ann Morgan, Phil Priesman, Nakasha Ramsey, Terrell Richardson, Mary Romano, Stacy Ruffin-Smith, Mika Savir, Michael Scurato, Daniel Stepanicich, Kimbarly Taylor, Kristi Thompson, Bridgette Washington, and Lisa Williford of the Enforcement Bureau; Kurt Schroeder, Mark Stone, and Kristi Thornton of the Consumer and Governmental Affairs Bureau; and Terry Cavanaugh, Neil Dellar, Valerie Hill, Billy Layton, and Rick Mallen in the Office of General Counsel. And for Affordable, I want to thank Jonathan Garvin, Lisa Gelb, Rosemary Harold, Jermaine Haynes, Rick Hindman, Parul Desai, Matthew Hoke, Coly Marierose, Nakasha Ramsey, Terrell Richardson, Michael Scurato, Kristi Thompson, Bridgette Washington, Shante Willis, and Shana Yates of the Enforcement Bureau; John B. Adams, Jerusha Burnett, Kurt Schroeder, Mark Stone, and Kristi Thornton of the Consumer and Governmental Affairs Bureau; and Ashley Boizelle, Valerie Hill, Tom Johnson, Rick Mallen, Linda Oliver, and Bill Richardson in the Office of General Counsel.

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY
APPROVING IN PART, DISSENTING IN PART**

Re: *Best Insurance Contracts, Inc., and Philip Roesel, dba Wilmington Insurance Quotes*, File No. EB-TCD-16-00023195, Forfeiture Order.

Based on the material presented, Philip Roesel engaged in a spoofed robocall campaign that was so massive and disruptive that it impaired the critical communications services of a major hospital network. I support a large portion of the Forfeiture Order but take issue with one part.

The Commission's role is to faithfully execute the laws passed by Congress, and, in this case, determine whether Mr. Roesel "intended to defraud, cause harm, or wrongfully obtain anything of value." While it is not entirely clear when each of the latter categories applies, the intent to harm prong features a distinct subjective component. Did Mr. Roesel harm those targeted by his systematic robocalling-spoofing campaign? No doubt; Mr. Roesel himself does not dispute this. Did he *intend* to harm the recipients of his calls? That is a separate question, and the Forfeiture Order does a disservice by conflating Mr. Roesel's presumed knowledge with his intent. While harm was unquestionably a by-product of his robocalling scheme, his general intent seemed to be to sell as many health insurance policies as possible—not to engage in the type of intentionally malicious conduct, such as stalking or scamming, captured by a plain reading of the text. In particular, I do not agree that the mere fact of conducting an illegal robocalling campaign indicates an intent to cause harm. Such a reading would turn the statute on its head and invalidate the need for the intent to cause harm prong at all.

While I fully support and appreciate the importance of cracking down on illegal robocalling, we should not do so at the expense of textual fidelity or in an arbitrary manner. Finding Mr. Roesel liable under such an expansive and imprecise reading of the "intent to harm" prong misapplies the Truth in Caller ID Act and creates legal uncertainty for entities that engage in legitimate types of robocalling. Moreover, since intent to harm constitutes an alternative basis for liability, it is unnecessary to reach the Forfeiture Order's decision.

Accordingly, I approve in part and dissent in part.

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL**

Re: *Philip Roesel, dba Wilmington Insurance Quotes, and Best Insurance Contracts, Inc.*,
File No.: EB-TCD-16-00023195

If you think we're drowning in robocalls now, get ready. The *Washington Post* just reported that by next year we will reach a new high-water mark. In 2019 nearly half of all cellphone calls will come from scammers.

This is insane. It's great that this agency is issuing a forfeiture order and notice of apparent liability today. But it's crazy to think that these individual actions are going to do the trick and staunch the flow. With this one-by-one effort we are trying to empty the ocean with a teaspoon.

We need a better approach. We need to develop a policy statement to articulate this agency's goals and efforts to reduce robocalls. We need to set deadlines. It has been roughly two years since this agency identified SHAKEN/STIR as a call authentication technology that can reduce robocalls. In the meantime, Canada went ahead and set a 2019 deadline to put his technology in place. We should be doing the same as our neighbors to the north. We should renew the Robocall Strike Force that this this agency convened a few years ago. We should have field hearings and seek technical expertise from far and wide. Closer to home, we should respond to every outstanding court remand on robocalls and petitions before this agency expeditiously.

Just this week, NBC news reported on the same statistic cited by the *Washington Post*. It sought comment from this agency. The best we had to offer was an unnamed official who said an "industry led effort is the fastest way" and we "hope some companies will implement it within the year." I like hope. But hope alone is not going to fix this problem. It takes effort and it's time for this to agency to offer real robocall resistance, because the flood of these calls is destroying something essential—trust in our communications network.