

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Affordable Enterprises of Arizona, LLC.
File No.: EB-TCD-17-00024974
NAL/Acct. No.: 201832170003
FRN: 0027881093

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

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 and dissenting in part.

I. INTRODUCTION

1. This Notice of Apparent Liability for Forfeiture (NAL) finds Affordable Enterprises of Arizona (Affordable or Company)1 apparently liable for unlawfully spoofing caller ID information to perpetrate a large-scale illegal telemarketing campaign. Caller ID information is “spoofed” when it is manipulated or altered to display anything other than the originating telephone number. 2 The Truth in Caller ID Act of 2009 and the Federal Communication Commission (Commission or FCC) rules (Rules) prohibit any individual from falsifying or misrepresenting his or her caller ID information3 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. Accurate caller ID also allows the phone companies and law enforcement to detect and combat unlawful calls, such as unlawful telemarketing calls. As technology has advanced, the dangerous combination of spoofing and illegal telemarketing calls has become much more pervasive and harder to stop.

2. The Enforcement Bureau (Bureau) investigated Affordable’s telemarketing activities and found that the Company made apparently unlawfully spoofed telemarketing calls to consumers throughout Arizona—many of whom had placed their numbers on the National Do-Not-Call (DNC)

1 Affordable operates under numerous names. See Westlaw Clear Report (detailing that Affordable Enterprises of Arizona also operates under the names Affordable Enterprises of AZ, Affordable Windows Plus Exteriors, LLC, Affordable Bathrooms, LLC, Affordable Kitchens, LLC., Affordable Enterprises, LLC, Affordable Windows and Home Renovations, LLC, Affordable Windows, and Affordable Windows of Tucson, LLC.); see Declaration of [redacted] March 12, 2018 (on file in EB-TCD-17-00024974) ([redacted] Declaration).

2 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).

3 Caller ID spoofing is not per se unlawful. In fact, there are legitimate reasons for spoofing. For instance, “domestic violence shelters often need to” manipulate caller ID information and have “important reasons for not revealing the actual number of the shelter.” Id. at 9117, para. 9. Doctors “may want to use their cell phones to return” calls to patients, “but choose to transmit their office number rather than their cell phone number as the calling number.” Id. at 9117-18, para. 9. However, spoofing with the intent to defraud, cause harm, or wrongfully obtain something of value is illegal.

Registry to avoid unwanted telemarketing calls. When making the calls, Affordable did not transmit the originating phone number. Instead, Affordable displayed the caller ID information of: (1) numbers that were assigned to prepaid wireless phones, for which the subscriber information was not available; (2) numbers that were unassigned (i.e., not in use by any consumer); or (3) numbers that were assigned to consumers who had no affiliation or relationship with Affordable (innocent consumers). The caller ID information was misleading or inaccurate and did not permit consumers to identify the caller. Affordable apparently made the spoofed calls with the intent to cause harm and wrongfully obtain something of value.

3. The Commission issues this NAL and proposes a penalty of \$37,525,000 against Affordable. The evidence shows that, over a 14-month period spanning 2016 and 2017, Affordable made 2,341,125 apparently unlawful spoofed telemarketing calls. Moreover, Bureau staff confirmed that 37,525 of those calls were made by spoofing numbers that had been assigned, at the time of the calls, to innocent consumers—leaving such individuals vulnerable to scores of angry callbacks from other consumers whom Affordable had targeted with unwanted marketing messages while effectively shielding itself from their complaints. We therefore find that Affordable apparently violated the Truth in Caller ID Act of 2009 (Truth in Caller ID Act), as codified in Section 227(e) of the Communications Act of 1934, as amended (Communications Act or Act),⁴ and Section 64.1604 of the Rules.⁵ Affordable’s apparent violations of the DNC registry regulations are being addressed separately.⁶

II. BACKGROUND

A. The Truth in Caller ID Act of 2009

4. For many years, the Commission has recognized the importance of requiring telemarketers to transmit accurate caller ID information. Even before passage of the Truth in Caller ID Act, the Commission noted that “[c]aller ID allows consumers to screen out unwanted calls and to identify companies that they wish to ask not to call again.”⁷ The Commission further stated that “[k]nowing the identity of the caller is also helpful to consumers who feel frightened or threatened by hang-up and ‘dead air’ calls.”⁸ The Truth in Caller ID Act prohibits “caus[ing] any caller identification service,” in connection with any telecommunications service or Internet Protocol-enabled service, to “knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value.”⁹ Members of Congress observed that consumers place substantial value in accurate and reliable caller ID information to assist them in deciding whether to answer a phone call and, ultimately, whether to trust the caller on the other end of the line.¹⁰ They further noted that consumers’ widespread expectation is that any information that appears on caller ID represents

⁴ 47 U.S.C. § 227(e).

⁵ 47 CFR § 64.1604.

⁶ The Bureau also is contemporaneously releasing a Citation and Order notifying Affordable that it violated the Telephone Consumer Protection Act (TCPA) by making telephone solicitations to consumers whose numbers were registered on the DNC Registry at the time the calls were made. *Affordable Enterprises*, File No. EB-TCDD-17-00024974, Citation and Order, DA 18-984 (EB rel. Sept. 26, 2018) (Affordable Citation). For details, see *infra* para. 12.

⁷ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014, 14122, para. 179 (2003).

⁸ *Id.*

⁹ 47 U.S.C. § 227(e).

¹⁰ See 155 Cong. Rec. S170-02, S173 (2009) (“Consumers expect caller I.D. to be accurate because it helps them decide whether to answer a phone call and trust the person on the other end of the line.”)

the true originating number of the person or entity making the call.¹¹

B. FCC Investigation into Affordable's Spoofed Telemarketing Calls

5. In August 2017, the Bureau received evidence from a former employee of Affordable (Former Employee) alleging that Affordable engaged in an illegal spoofed telemarketing campaign targeting consumers throughout Arizona. The Former Employee worked for Affordable from [REDACTED] in Affordable's telemarketing phone room. The Former Employee told the Bureau that Affordable purchased a call directory from which it created its lists of Arizona customers to target in its telemarketing campaign.¹² According to the Former Employee, Affordable's call lists contained both cell phone and residential numbers of consumers residing in Arizona and included numbers that were registered on the DNC Registry. Affordable used these call lists to initiate telemarketing calls, using a third-party telemarketing platform, [REDACTED] to advertise various home remodeling and improvement services.¹³

6. According to the Former Employee, Affordable would upload the call lists into [REDACTED] telemarketing platform, and the telemarketing platform would dial the uploaded numbers on the Company's behalf. Affordable formatted the telemarketing platform to display caller ID information associated with prepaid wireless Tracfones¹⁴ that Affordable purchased at Walmart and registered anonymously, rather than displaying the caller ID information of the originating phone number or Affordable's business numbers.¹⁵ Affordable made thousands of telemarketing calls per day displaying phone numbers associated with these burner phones.¹⁶ According to the Former Employee, when customers attempted to call Affordable to complain about repeatedly receiving unwanted telemarketing calls and to ask that Affordable cease making such calls, those consumers reached the burner phone rather than the phone from which Affordable places the call. Affordable instructed its employees to "hang up on complaining customers, or to apologize but to avoid engaging in any conversation."¹⁷

7. According to the Former Employee, Affordable elected to display the burner phone numbers on the caller ID so that customers could not identify the company or otherwise report the company to authorities.¹⁸ In furtherance of this scheme, Affordable would use a variety of caller ID information (none of which was traceable to Affordable) to ensure that no phone number was used too often.¹⁹ In fact, according to the Former Employee, Affordable regularly conducted online searches for complaints associated with the burner phone numbers. If Affordable identified numerous complaints associated with any particular phone number, Affordable would retire use of that number and donate the burner phone.²⁰ The Former Employee provided the Bureau with 29 burner phone numbers, which, he

¹¹ 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.").

¹² See [REDACTED] Declaration at 1.

¹³ See *id.*

¹⁴ Affordable's owners referred to these prepaid wireless Tracfones as "burner phones." See *id.* The term "burner phone" is used to refer to prepaid cell phones that are cheap, difficult to trace, and easy to discard and replace. This NAL does not find that Tracfone was aware of or participated in Affordable's use of the burner phones to illegally spoof caller ID information.

¹⁵ See *id.*

¹⁶ See *id.*

¹⁷ *Id.*

¹⁸ See *id.*

¹⁹ See *id.* at 2.

²⁰ See *id.*

stated, constituted only a portion of burner phone numbers that Affordable used during the Former Employee's tenure at Affordable.²¹ The Former Employee told Bureau investigators that Affordable's telemarketing campaign was lucrative; he stated that Affordable's "phone center made about \$300,000 per month" from sales it generated from telemarketing calls.²²

8. Based upon this information, the Bureau initiated an investigation. On September 26, 2017, Bureau staff subpoenaed Affordable's call records from the third-party telemarketing platform²³ and obtained Affordable's call records for a 14-month period from July 26, 2016, to September 25, 2017.²⁴ According to the call records, Affordable made 2,341,125 calls during this 14-month period.²⁵ Affordable's call records identified 13 separate phone numbers that Affordable displayed as the caller ID information for the 2,341,125 calls. The call records also corroborated the burner phone evidence that the Former Employee provided to the Bureau.²⁶

9. In late February 2018, the Bureau issued subpoenas to identify the subscriber of record associated with the 13 separate caller ID numbers that Affordable displayed when making each of the 2,341,125 calls from July 26, 2016 to September 25, 2017. The subscriber records showed that none of the 13 numbers that Affordable displayed on the caller ID when making the 2,341,125 telemarketing calls were registered to Affordable, or otherwise listed Affordable as the subscriber of record. The subscriber records thus confirmed the Former Employee's allegations that Affordable's telemarketing calls displayed the caller ID information of burner phones rather than any number belonging to, or associated with, the Company. The subscriber records also revealed that some of Affordable's telemarketing calls displayed the caller ID information of phone numbers that were unassigned at the time (i.e., had not been given to any consumer); still others displayed phone numbers that were assigned to innocent consumers.

²¹ See *id.* (indicating that Affordable used the following burner cell numbers: [REDACTED]).

²² *Id.* at 1.

²³ See Letter from Kristi Thompson, Acting Division Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to [REDACTED] (Sept. 26, 2017) (on file EB-TCD-17-00024974); Letter from Kristi Thompson, Acting Division Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to [REDACTED] (Dec. 13, 2017) (on file EB-TCD-17-00024974); E-mail from Shante Willis, Attorney-Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau, to [REDACTED] (Dec. 15, 2017, 15:37 EST) (on file EB-TCD-17-00024974) (requesting call detail records for Affordable). The Bureau issued subpoenas and/or requests for information to both [REDACTED] and [REDACTED]. [REDACTED] provided dialer services to Affordable in which Affordable could upload call lists and make associated calls. [REDACTED] provided the dialer technology and back office support to [REDACTED] through its "White Label Program" in which [REDACTED] associated its business name and company logo with [REDACTED] dialer software.

²⁴ See E-mail from [REDACTED] to Shante Willis, Attorney-Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau (Dec. 18, 2017, 21:01 EST) (on file EB-TCD-17-00024974) ([REDACTED] Response) (providing call detail records for Affordable).

²⁵ *Id.*

²⁶ Bureau staff compared the caller ID numbers reflected in Affordable's call records to the burner phone numbers that the Former Employee provided. This comparison confirmed that some of the burner phone numbers provided by the Former Employee appeared in Affordable's call records. In fact, five of the burner phone numbers that the Former Employee identified were displayed as caller ID numbers for the vast majority – 2,075,462 of the 2,341,125 – of the calls made by Affordable during the 14-month period. See [REDACTED] Response (providing call details records for Affordable and corroborating the Former Employee's statements that the following cell phone numbers were used as caller ID numbers: [REDACTED]).

10. In sum, the Bureau found that for a 14-month period from July 26, 2016, to September 25, 2017, none of the calls that Affordable made displayed the caller ID information of the true originating number. Instead, each of the 13 numbers that Affordable used as the caller ID information during the relevant time period was (1) a number assigned to a prepaid wireless phone, for which the subscriber information was not available; (2) a number that was unassigned; or (3) a number assigned to an innocent consumer. During the start of the period covered by the investigation (i.e., July 2016), our evidence shows that four of the 13 numbers were assigned to innocent consumers, four were assigned to a pre-paid burner phone, and five of the numbers were unassigned.²⁷ None was assigned to Affordable. Accordingly, as discussed more fully below, by modifying the caller ID information to display one of the 13 numbers, all the calls were “spoofed” (i.e., Affordable displayed a telephone number other than the originating number). These spoofed calls were apparent violations of the Truth in Caller ID Act because (a) the caller ID information was misleading or inaccurate, and (b) Affordable made the calls with an apparent intent to cause harm or wrongfully obtain anything of value.

C. Complaints Related to Affordable’s Spoofed Telemarketing Calls

11. The Bureau’s investigation found that numerous consumers filed complaints with the Federal Trade Commission (FTC) alleging that they were receiving unwanted telemarketing calls from the spoofed numbers used by Affordable. The FCC reviewed 45 such FTC consumer complaints and found that consumers expressed great frustration with receiving Affordable’s calls on their home and wireless numbers, even though the complainants had registered those numbers on the DNC Registry. Consumers frequently tried to reach the caller and voice their anger and frustration at receiving the unsolicited telemarketing calls. According to the Former Employee, consumers “called [the burner phones] daily with complaints that they were receiving several unwanted phone calls per day and demanding that Affordable stop calling them.”²⁸ Affordable instructed its employees to “hang up” on complaining customers and to “avoid engaging in any conversation.”²⁹ Several consumers relayed how they were treated by Affordable’s employees and the impact of the Company’s calls:

- “I asked the gentlemen who called me if he knew what the do not call list was. He said yes, and he said ‘you don’t think they hand out a list do ya!’ My response was the company should check the list and then he hung up.”³⁰
- “Repeated calls for over 1 month-do not answer.”³¹
- “I asked them to stop calling and remove my number from their records and they asked ‘why’ and I told them because I asked them too [*sic*] and he laughed and hung up on me.”³²

²⁷ The Bureau’s investigation reflects that some of the numbers changed status during the period covered by the investigation. In some cases, for example, Affordable used a number that was assigned to a pre-paid burner phone at the onset of the investigation and continued to use that number when it was subsequently unassigned or assigned to an innocent consumer. For example, Affordable used [REDACTED] to make 15,649 calls between July 27, 2016, and July 26, 2017. During this period, the number was first assigned to a pre-paid burner phone and was subsequently in unassigned status. As another example, Affordable used [REDACTED] to make 469,522 calls between July 27, 2016, and September 8, 2017. During this period, that number was first assigned to an innocent consumer and then to a pre-paid burner phone. In some cases, the phone numbers (e.g., [REDACTED] and [REDACTED]) were assigned to innocent consumers for the entire period covered by the investigation.

²⁸ [REDACTED] Declaration at 1.

²⁹ *Id.*

³⁰ Complaint #83382189 (Consumer Sentinel, Apr. 27, 2017) (Complaint regarding spoofed number [REDACTED]).

³¹ Complaint #88413470 (Consumer Sentinel, Sept. 5, 2017) (complaint regarding spoofed number [REDACTED]).

³² Complaint #84031004 (Consumer Sentinel, May 16, 2017) (Complaint regarding spoofed number [REDACTED]).

- “Caller ID No Name. No message. Has called others about solar windows.”³³
- “I received a call to my registered dnc telephone number on [REDACTED] at 3.17p from [REDACTED] identified as Phoenix, AZ. I returned the call the next day. I left an [sic] message to have my number removed. i contend this number should not have called in the first place. This number’s identification is a violation of FCC regulations.”³⁴

Notably, the complaints reflected that Affordable did not provide identifying information to the consumers. Some consumers were only able to provide the number listed on the caller ID (i.e., one of the 13 caller ID numbers that Affordable used) and could not identify Affordable by name. A few consumers were able to identify Affordable by name, but when prompted to provide the phone number of the calling party, the complainant entered the number reflected on the caller IDs, which the investigation determined was not the number assigned to the phone that placed the call.

12. Bureau staff compared the complaints to the call records that Affordable made during the relevant time period and matched all 45 FTC complaints to the call records of telemarketing calls made by Affordable—thereby confirming that Affordable made the calls in question. Based on this and other evidence, the Bureau has cited Affordable (in a citation released concurrently with this NAL) for making illegal telephone solicitations to consumers registered on the DNC Registry in violation of the Telephone Consumer Protection Act (TCPA).³⁵ Those violations are separate from, and in addition to, the apparent unlawful spoofing violations set forth in this NAL.

D. Innocent Consumers Affected by Affordable’s Spoofed Telemarketing Calls

13. As discussed above, Affordable made telemarketing calls by spoofing the caller ID information to display the numbers assigned to pre-paid burner phones, unassigned numbers, or numbers assigned to innocent consumers. Bureau staff interviewed one such consumer—the legitimate user of phone number [REDACTED] which was one of the 13 numbers that Affordable spoofed and displayed in the caller ID of its telemarketing calls. The consumer expressed that she was assigned the number [REDACTED] as her cell phone number.³⁶ The consumer recounted a two-month period, beginning “around May 2017,” in which she received more than five calls per day on her cell phone from consumers complaining that they were receiving unwanted calls from her number and demanding that she stop calling them.³⁷ The consumer indicated that she was very “annoyed” at receiving so many calls per day on her cell phone and “confused” as to why she was receiving such calls in the first place.³⁸ The consumer wanted the calls to stop but did not know how to bring an end to the annoying and intrusive calls on her cell phone.³⁹

14. Through the Bureau’s analysis of Affordable’s call detail records, the Bureau confirmed that Affordable displayed the number assigned to this consumer in the caller ID during the time period specified by the consumer. In fact, according to the call detail records, Affordable made more than 48,349 calls using this number during the period that it was assigned to this consumer.⁴⁰

³³ Complaint #79971346 (Consumer Sentinel, Jan. 19, 2017) (Complaint regarding number [REDACTED]).

³⁴ Complaint #85368480 (Consumer Sentinel, June 24, 2017) (Complaint regarding spoofed number [REDACTED]).

³⁵ See Affordable Citation, DA-984 at para. 2.

³⁶ See Declaration of Shante Willis, May 11, 2018 (on file in EB-TCD-17-00024974) at 1.

³⁷ See *id.*

³⁸ See *id.*

³⁹ See *id.* The consumer indicated that the calls ultimately ended without any intervention or action on her part.

⁴⁰ See [REDACTED] Response (providing call details records for Affordable).

III. DISCUSSION

15. Section 227(e) of the Act and Section 64.1604 of the Rules prohibit any person within the United States, in connection with any telecommunications service or Internet Protocol-enabled voice service, to cause, directly or indirectly, any caller ID service to knowingly transmit or display misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value.⁴¹ We find that Affordable apparently violated Section 227(e) of the Act and Section 64.1604 of the Rules by knowingly causing the display of misleading or inaccurate caller ID information, or “spoofing,” with unlawful intent, for the purpose of implementing an illegal telemarketing campaign.

A. Affordable Apparently Knowingly Caused the Display of Misleading or Inaccurate Caller ID Information

16. Affordable knowingly spoofed the caller ID information when it directed its employees to upload the telephone numbers assigned to the burner phones into the telemarketing platform.⁴² The Bureau’s investigation also found that some of the spoofed numbers used by Affordable for calls made via the telemarketing platform either were unassigned or were assigned to innocent consumers. Thus, Affordable knowingly displayed misleading or inaccurate numbers for which called parties could not identify the company based on the caller ID information.⁴³

17. The spoofed numbers were both misleading and inaccurate to those consumers who received the calls. According to the Commission’s rules, “telemarketers are required to transmit caller identification information, and the phone number they transmit must be one that a person can call to request placement on a company-specific do-not-call list.”⁴⁴ The Commission has made clear that “this requirement allows consumers to more easily identify incoming telemarketing calls and to . . . facilitate[] consumers’ ability to request placement on company-specific do-not-call lists.”⁴⁵

18. As a result of the spoofing, called parties could not identify the company based on the caller ID information or report the company to authorities.⁴⁶ In fact, many consumers filed complaints with the FTC to report unwanted telemarketing calls but were unaware that the caller ID information was not associated with Affordable’s assigned numbers. Moreover, by spoofing the caller ID information, consumers could not effectively make company-specific do-not-call requests nor could many identify Affordable as the perpetrator of do-not-call violations. Affordable had a policy of avoiding company-specific do-not-call requests by instructing its employees to “hang up on complaining customers”⁴⁷ before they could ask to be placed on the company’s do-not-call list.⁴⁸

⁴¹ 47 U.S.C. § 227(e); 47 CFR § 64.1604.

⁴² See █████ Declaration at 1.

⁴³ *Id.* at 1.

⁴⁴ Truth in Caller ID Order, 26 FCC Rcd at 9128, para. 36; *see also* 47 CFR § 64.1601(e).

⁴⁵ Truth in Caller ID Order, 26 FCC Rcd at 9128, para. 36.

⁴⁶ █████ Declaration at 1 (Affordable chose to “display the numbers associated with the ‘burner phones’ . . . so that irate customers could not identify the company based on [the caller ID number], or report the company to authorities.”).

⁴⁷ *Id.* (“Affordable Enterprises instructed its employees to hang up on complaining customers, or to apologize but to avoid engaging in any conversation.”)

⁴⁸ *Id.* at 2. (“Affordable instructed the employees to simply hang up on any consumer that said they were on the National Do Not Call Registry.”)

B. Affordable’s Falsification of Caller ID Was Done With the Apparent Intent to Cause Harm or Wrongfully Obtain Anything of Value

19. Section 227(e) of the Act and Section 64.1604 of the Rules prohibit, “in connection with any telecommunications service or IP-enabled voice service,”⁴⁹ knowingly displaying “misleading or inaccurate” caller ID information “with the intent to defraud, cause harm, or wrongfully obtain anything of value.”⁵⁰ In this case, Affordable knowingly spoofed caller ID information with the apparent intent to perpetuate a large scale illegal telemarketing campaign that was harmful to consumers and for which Affordable wrongfully obtained something of value.

20. *Intent to Wrongfully Obtain Anything of Value.* The Truth in Caller ID Act and our Rules prohibit knowingly displaying misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value.⁵¹ Although the term “anything of value” is not defined in the statute, it is not limited to tangible assets.⁵² As discussed below, the spoofed numbers were a key element of Affordable’s unlawful telemarketing campaign designed to generate customers for its home remodeling and improvement businesses. The spoofed calls also helped Affordable evade law enforcement (and potential monetary penalties) and private civil lawsuits. Thus, Affordable was apparently knowingly spoofing the numbers to wrongfully obtain something of value.

21. Affordable was seeking to generate increased sales (i.e., gain something of value) by making unlawful, and thus wrongful, spoofed telemarketing calls. According to the Former Employee, Affordable’s “phone center made about \$300,000 per month” in sales as a result of its apparently illegal spoofed telemarketing calls.⁵³ Affordable initiated its telemarketing campaign intending to gain something of value—new customers and, ultimately, increased sales of its home improvement and home remodeling services. Affordable could have acquired these new customers and increased sales legitimately (i.e., by displaying phone numbers which would enable the called party to identify the company and by avoiding calling consumers that had registered their numbers on the DNC Registry). Instead, Affordable intended to obtain these new customers and increase sales by unlawfully making telemarketing calls to consumers on the DNC Registry. The unlawful conduct violated Section 227 of the

⁴⁹ 47 U.S.C. § 227(e).

⁵⁰ 47 U.S.C. § 227(e); 47 CFR § 64.1604.

⁵¹ See 47 U.S.C. § 227(e); 47 CFR § 64.1604.

⁵² See *United States v. Girard*, 601 F.2d 69, 71 (2d Cir. 1979) (“[T]he phrase [‘thing of value’] is generally construed to cover intangibles as well as tangibles.”); see also, e.g., *United States v. Nilsen*, 967 F.2d 539, 542-43 (11th Cir. 1992) (“Congress’ frequent use of ‘thing of value’ in various criminal statutes has evolved the phrase into a term of art which the courts generally construe to envelope both tangibles and intangibles. This broad interpretation is based upon a recognition that monetary worth is not the sole measure of value.”); *United States v. Picquet*, 963 F.2d 54, 55 (5th Cir. 1992) (holding that sales taxes constitute “a thing of value” for the purposes of 18 U.S.C. 1029(a)(2)’s prohibition of using unauthorized access devices to obtain “anything of value”); *United States v. Draves*, 103 F.3d 1328 (7th Cir. 1997) (agreeing with and applying 5th Circuit’s expansive interpretation of phrase “anything of value” in *Picquet*); *United States v. Schwartz*, 785 F.2d 673, 680 (9th Cir. 1986) (noting broad range of intangibles that have been found to be “things of value” by prior courts); *United States v. Singleton*, 144 F.3d 1343, 1349-50 (10th Cir. 1998), *rev’d on other grounds*, 165 F.3d 1297 (10th Cir. 1999) (agreeing with *Picquet*); see also *United States v. Sheker*, 618 F.2d 607, 609-10 (9th Cir. 1980) (holding that “value” includes anything recognized or appreciated by others); *United States v. Williams*, 705 F.2d 603, 622-23 (2d Cir. 1983) (holding that the district court properly construed the meaning of the term “anything of value” to “focus on the value that the defendants subjectively attached to the items received”); *Best Ins. Contracts, Inc., and Philip Roesel, DBA Wilmington Ins. Quotes*, File No. EB-TCD-16-00023195, Forfeiture Order, FCC 18-134, at para. 22 n.65 (rel. Sept. 26, 2018) (*Roesel FO*); *Best Ins. Contracts, Inc., and Philip Roesel, DBA Wilmington Ins. Quotes*, Notice of Apparent Liability, 32 FCC Rcd 6403, 6412, para 25 (2017) (*Roesel NAL*).

⁵³ [REDACTED] Declaration at I. We note that an intent to wrongfully obtain anything of value constitutes a violation; the statute does not demand that the spoofing perpetrator actually obtain something of value.

Act and Section 64.1200 of the Rules.⁵⁴ And the evidence suggests that the unlawful conduct was pervasive. Bureau staff ran a sampling of 604 calls contained in Affordable's call detail records and found that 446 calls were to consumers registered on the DNC Registry.⁵⁵ And because the caller ID was spoofed, Affordable was able to violate the DNC Registry restrictions for many months with impunity.

22. The evidence also shows that Affordable was seeking to avoid detection, evade law enforcement, and escape consumer litigation for initiating telephone solicitations to consumers registered on the DNC Registry. "Avoidance of culpability is a benefit that qualifies as a thing of value."⁵⁶ Affordable attempted to evade law enforcement and thereby culpability for the calls, which has an ascertainable dollar value. Specifically, a penalty of up to \$19,639 *per* unlawful telemarketing call made in violation of the Commission's DNC rules in a forfeiture action brought by the FCC,⁵⁷ and up to \$40,654 in civil penalties for *each* violation of the Telemarketing Sales Rule in a lawsuit brought by the FTC.⁵⁸

23. Affordable intended to wrongfully obtain these valuable shields from detection and culpability. For example, Affordable purchased the prepaid burner phones, registered the phones anonymously, and displayed these burner phone numbers on the caller ID rather than Affordable's actual business numbers. Affordable actively searched for online complaints that referenced the burner phone numbers and discarded any burner phone that accumulated a significant number of online complaints.⁵⁹ In fact, Affordable took these actions because it apparently believed the telemarketing calls were illegal.⁶⁰ These actions indicate that Affordable wrongfully spoofed caller ID information intending to avoid detection and culpability for its illegal telemarketing calls. These facts, taken together, demonstrate the wrongful nature of Affordable's conduct, and the value that Affordable gained from such wrongful conduct.

24. *Intent to Cause Harm.* It is unlawful to display misleading or inaccurate caller ID information when the caller's intent is to cause harm. 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."⁶¹ Both Congress and the Commission have long recognized that the placement of telemarketing calls without consumers' consent causes consumers significant harm, including that such calls are a nuisance and invasion of privacy.⁶² In fact, the FTC and FCC established the DNC Registry to provide

⁵⁴ See 47 U.S.C. § 227(c); 47 CFR § 64.1200(c)(2).

⁵⁵ The consumer complaints suggest that Affordable knew that many of its telemarketing calls were going to consumers on the DNC Registry.

⁵⁶ See, e.g., *Roesel FO*, FCC 18-134 at para. 22; *Roesel NAL*, 32 FCC Rcd at 6413, para 27.

⁵⁷ See *Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 33 FCC Rcd 46 (EB 2018) (2018 Inflation Order).

⁵⁸ See 16 CFR § 310.1 *et seq.* See also "Complying with the Telemarketing Sales Rule," FTC, <https://www.ftc.gov/tips-advice/business-center/guidance/complying-telemarketing-sales-rule#penalties>. ("Anyone who violates the TSR is subject to civil penalties of up to \$40,654 for each violation.")

⁵⁹ See [REDACTED] Declaration at 2.

⁶⁰ See *id.* ("The owners of Affordable Enterprises were aware of the TCPA and knew that their telemarketing calls were illegal. They used the burner cell phones to avoid detection and TCPA liability.")

⁶¹ *Truth in Caller ID Order*, 26 FCC Rcd at 9122, para. 22.

⁶² 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); see, also, 2003 TCPA Order, 18 FCC Rcd at 14035, para. 29 ("Although some industry commenters attempt to characterize unwanted solicitation calls as petty annoyances and suggest that consumers purchase certain technologies to block unwanted calls, the evidence in this record leads us to believe the cumulative effect of these disruptions in the lives of millions of Americans each day is significant.")

consumers with options for avoiding unwanted telephone solicitations.⁶³ Moreover, courts have routinely recognized that telemarketing calls are an invasion of privacy, an injury in fact sufficient for Article III jurisdiction.⁶⁴ Intentionally placing telemarketing calls to consumers who have made clear their desire to avoid such calls demonstrates an intent to cause the disruptive harm that Congress, the FCC, and the FTC, through establishment of the DNC Registry, sought to prevent.

25. Courts have recognized that direct evidence of specific intent is rarely available.⁶⁵ Therefore, it is reasonable, and indeed often necessary, to look at a party's actions to determine whether there was an intent to cause harm.⁶⁶ In the particular circumstances presented in this case, specific intent to cause harm can be inferred by Affordable's own actions. Among other things, the record shows that: (1) Affordable's called customers that it knew were registered on the DNC Registry, and it knowingly disregarded those requests to not receive telemarketing calls⁶⁷; (2) Affordable disguised its identity through the use of phone numbers assigned to innocent consumers, unassigned numbers,⁶⁸ and burner phones; and (3) Affordable instructed its employees to not engage with any consumers that called to complain about the telemarketing calls.⁶⁹

26. Affordable was, presumably, driven by the desire to make money from sales. That desire, however, does not negate the evidence showing it had an intent to harm. The methods it used were substantially certain to cause harm to the call recipients and to the consumers whose numbers were used, in some cases, to make the spoofed telemarketing calls. Because the harms were substantially certain,

⁶³ See 2003 TCPA Order, 18 FCC Rcd at 14034-35, paras. 27-28. The DNC Registry is a national database of persons who do not wish to receive telephone solicitations that is maintained by the Federal Government. *Id.*

⁶⁴ See, e.g., *Frisby v. Schultz*, 487 U.S. 474, 484 (1988) (recognizing that preserving the sanctity of the home is an important value); *Mims v. Arrow Financial Services, LLC*, 565 U.S. 368, 372 (2012) (finding that robocalls are an invasion of privacy); *LaVigne v. First Community Bancshares, Inc.*, 2016 WL 6305992 at *4 (D.N.M. Oct. 9, 2016) (finding that the invasion of privacy is a concrete harm); *Krakauer v. Dish Network LLC*, 168 F.Supp.3d 843, 845 (M.D.N.C. 2016) (holding that violations of the TCPA are concrete injuries because unwanted telemarketing calls are "a disruptive and annoying invasion of privacy").

⁶⁵ See, e.g., *United States v. Dearing*, 504 F.3d 897, 901 (9th Cir. 2007); *United States 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)).

⁶⁶ See, e.g., *United States 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, *United States v. Rogers*, 321 F.3d 1226, 1230 (9th Cir. 2003) ("It is settled law that intent to defraud may be established by circumstantial evidence."); *United States 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. Cos.*, 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)).

⁶⁷ See [REDACTED] Declaration at 2 (stating that Affordable was "aware of the TCPA and knew their telemarketing calls were illegal").

⁶⁸ 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.").

⁶⁹ See [REDACTED] Declaration at 2.

intent can be reliably inferred.⁷⁰ The harm that resulted from using spoofed numbers to make telemarketing calls to consumers on the DNC Registry is sufficiently certain to support a finding that Affordable had an intent to harm.

27. Moreover, the evidence indicates that Affordable had actual knowledge that its calls were causing harm. According to the Former Employee, Affordable checked complaint databases and found numerous complaints about the telephone numbers it was using. Affordable received numerous angry call-backs on the burner phones whose numbers had been spoofed. The fact that Affordable continued its practices unabated following numerous complaints demonstrates that Affordable apparently intended the harm that it caused. The fact that Affordable continued to use spoofed caller ID information and did not modify its practices (except for discarding the burner phone and replacing with another burner phone) after receiving numerous complaints supports the conclusion that Affordable used misleading or inaccurate caller ID with the intent to harm consumers. Once Affordable had reason to know (following multiple complaints) that its conduct was harmful, and continued the conduct unabated, its harmful conduct can be deemed intentional.

28. In addition to harming consumers who received the spoofed calls, Affordable's spoofed calls were particularly harmful to innocent consumers who had been assigned the phone numbers that Affordable spoofed. Affordable made several thousands of calls using numbers that were assigned to such innocent consumers. The Bureau identified four such innocent consumers whose phone numbers Affordable used to make more than 154,756 telemarketing calls. Affordable's use of numbers that belonged to other people presented the risk of significant harm to these consumers; as illustrated by the record evidence here, a person whose number is spoofed by a telemarketer and used to make large numbers of illegal calls often finds herself inundated with callbacks and angry messages from the telemarketer's other, and often irate, victims. In short, by spoofing numbers assigned to legitimate users, Affordable shifted the risk of harm—large numbers of disturbing calls from angry consumers—on to innocent third parties.

29. And that is exactly what happened in this case. As discussed earlier, Bureau staff talked to one such consumer that was receiving calls from individuals attempting to reach—and complain to—the perpetrating telemarketer.⁷¹ The consumer recounted the number of irate calls that she received daily on her cell phone over a two-month period, and expressed significant frustration both over receiving the calls and being unable to stop them.⁷² Accordingly, by spoofing numbers assigned to innocent consumers, Affordable knowingly and intentionally caused harm to the true owners of those numbers.

30. We find that in a 14-month period, Affordable made more than two million apparently illegal spoofed calls. Because every call that we investigated was apparently unlawfully spoofed using one of 13 caller ID numbers, we conclude that Affordable apparently made 2,341,125 spoofed telemarketing calls with the intent to cause harm or wrongfully obtain something of value—each call an apparent violation of the Truth in Caller ID Act and our Rules.

C. Proposed Forfeiture

31. Section 227(e) of the Act and Section 1.80 of the Rules authorize the Commission to impose a forfeiture against any person that engages in unlawful spoofing.⁷³ Specifically, the Act and

⁷⁰ “Intent is not . . . limited to consequences which are desired. If the actor knows that the consequences are certain, or substantially certain, to result from his act, and still goes ahead, he is treated by the law as if he had in fact desired to produce the result.” Restatement (Second) of Torts § 8A, comment b, p. 15 (Emphasis Added). Restatement (Second) of Torts § 8A, comment b, p. 15.

⁷¹ See *supra* para. 13.

⁷² See *id.* The consumer indicated that the calls ultimately ended without any intervention or action on her part.

⁷³ 47 U.S.C. § 227(e)(5); 47 CFR § 1.80(b)(4); 2018 Inflation Order, 33 FCC Rcd 46. The Truth in Caller ID Act and the Rules contain a two-year statute of limitations on proposing forfeitures for unlawful spoofing. 47 U.S.C. §

(continued....)

Rules authorize a forfeiture of up to \$11,278⁷⁴ for each spoofing violation, or three times that amount for each day of a continuing violation, up to a statutory maximum of \$1,127,799⁷⁵ for any single act or failure to act.⁷⁶ 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.⁷⁷

1. Base Forfeiture for Truth in Caller ID Violations

32. When the Commission adopted the spoofing rules, the Commission said that it would “seek substantial penalties” against violators.⁷⁸ Accordingly, the Commission has previously established \$1,000 as the base forfeiture amount per violation⁷⁹ when confronted with large-scale spoofing operations.⁸⁰ It has then 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

(Continued from previous page)

227(e)(5)(A)(iv); 47 CFR § 1.80(c)(3). Unlike forfeitures assessed under Section 503(b) of the Act, “the Truth in Caller ID Act does not require ‘willful’ or ‘repeated’ violations to justify imposition of a penalty.” Truth in Caller ID Order, 26 FCC Rcd at 9133, para. 48. Thus, the Bureau is not required to demonstrate the “conscious and deliberate commission or omission of such act” or that such act happened more than once or for more than one day to propose a forfeiture for apparently unlawful spoofing. 47 U.S.C. § 312(f)(1)-(2) (defining “willful” and “repeated” under the Act). We nevertheless find that Affordable willfully and repeatedly spoofed caller ID information with the intent to harm.

⁷⁴ As discussed above, the Bureau obtained records of the spoofed telemarketing calls that Affordable made during the time period July 26, 2016, to September 25, 2017. In 2016, the per-violation statutory maximum (adjusted for inflation) for unlawful spoofing was \$10,874. See *Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 31 FCC Rcd 6793, 6797 (EB June 9, 2016) (June Inflation Order). In 2017, the per-violation statutory maximum (adjusted for inflation) was \$11,052. See *Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 31 FCC Rcd 13485, 13488 (EB Dec. 30, 2016) (December Inflation Order).

⁷⁵ In 2016, the statutory maximum (adjusted for inflation) for continuing violations was \$1,087,450. See June Inflation Order, 31 FCC Rcd at 6797. In 2017, the statutory maximum (adjusted for inflation) for continuing violations was \$1,105,241. See December Inflation Order, 31 FCC Rcd at 13488.

⁷⁶ See 47 U.S.C. § 227(e)(5)(A); 47 CFR § 1.80(b)(4). 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). See also 2018 Inflation Order, 33 FCC Rcd at 49.

⁷⁷ Truth in Caller ID Order, 26 FCC Rcd at 9132-33, para. 47. Under Section 503(b)(5) of the Act, a person who does not hold a license, permit, certificate, or other authorization issued by the Commission, or is not an applicant for the same, may not be issued a Notice of Apparent Liability for Forfeiture unless: (1) that person is first sent a citation of the violation charged, (2) is given an opportunity for a personal interview with an official of the Commission, and (3) subsequently engages in conduct of the type described in such citation. 47 U.S.C. § 503(b)(5). By contrast, 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 provide the required notice under Section 503(b)(4) of the Act through this Notice of Apparent Liability for Forfeiture.

⁷⁸ Truth in Caller ID Order, 26 FCC Rcd at 9115, para. 2.

⁷⁹ Instead of applying the \$1,000 base forfeiture to the millions of calls made by the violator, the Commission has instead applied the base forfeiture to a smaller sample of the calls.

⁸⁰ See *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 5418, 5426, para. 25 (2017) (*Abramovich NAL*); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, FCC 18-58, 2018 WL 2192429, at *10, para. 33 (May 10, 2018), Commissioner O’Rielly approving in part, dissenting in part (*Abramovich FO*). See also *Roesel FO*, FCC 18-134 at para. 57; *Roesel NAL*, 32 FCC Rcd at 6403, 6414-15, para. 33.

culpability, any history of prior offenses, ability to pay, and such other matters as justice may require” to determine the total forfeiture amount.⁸¹

33. For instance, in *Roesel*, the Commission addressed a case in which the perpetrator falsified caller ID information to reflect unassigned telephone numbers, rather than the perpetrator’s own business numbers. In *Roesel*, we proposed a forfeiture designed to deter other large scale spoofing operations and notify bad actors that the Commission takes spoofing violations seriously.⁸² We applied a base forfeiture in the amount of \$1,000 per unlawful spoofed call verified by the Bureau.⁸³ We then took into account the statutory factors required under Section 503 of the Act and found an upward adjustment was not warranted in that particular case.⁸⁴ Based on the totality of circumstances, the Commission found that a forfeiture of \$82,106,000 was necessary to punish Roesel’s misconduct and deter future wrongdoing. Because *Roesel* involved analogous apparent spoofing violations under the Truth in Caller ID Act, we use it as guidance in proposing an appropriate forfeiture in this case.

2. Number of Violations

34. We find that Affordable committed multiple apparent violations of the Truth in Caller ID Act for which we are authorized to impose a forfeiture. Affordable made 2,341,125 calls from July 26, 2016, to September 25, 2017.⁸⁵ The Bureau evaluated a total of 37,525 total calls and used this sampling of spoofed calls as the basis for assessing a forfeiture.⁸⁶ As described in detail above, Affordable apparently spoofed the caller ID information by displaying: (1) numbers that were assigned to prepaid wireless phones, for which the subscriber information was not available; (2) numbers that were unassigned to any consumer; or (3) numbers assigned to individuals or entities who were innocent consumers. Affordable made these 2,341,125 spoofed calls with an apparent intent to cause harm or wrongfully obtain anything of value. Accordingly, we find that each call was an apparent violation of the Truth in Caller ID Act. However, we propose a fine specifically for the 37,525 calls that we analyzed. We confirmed that not only were these calls spoofed, but the numbers spoofed had been assigned, at the

⁸¹ 47 U.S.C. § 503(b)(2)(E). See 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). See *Abramovich NAL*, 32 FCC Rcd at 5426, para. 25; *Abramovich FO*, 2018 WL 2192429, at *4, para. 11; see also *Roesel FO*, FCC 18-134 at para. 17; *Roesel NAL*, 32 FCC Rcd at 6414, para. 31.

⁸² *Roesel FO*, FCC 18-134 at paras. 17, 62; *Roesel NAL*, 32 FCC Rcd at 6414, para. 31.

⁸³ *Roesel FO*, FCC 18-134 at para. 51; *Roesel NAL*, 32 FCC Rcd at 6414-15, para. 33.

⁸⁴ *Roesel FO*, FCC 18-134 at para. 58; *Roesel NAL*, 32 FCC Rcd at 6414-15, para. 33.

⁸⁵ See [REDACTED] Response.

⁸⁶ This sample represents calls selected from a pool of violations that are of a type that are particularly harmful: calls that displayed phone numbers assigned to innocent consumers. Spoofed telemarketing calls that use innocent consumers’ numbers cause harm not only to the recipients of the calls but also to the owners of the numbers, who often must field numerous calls from irate recipients of the spoofed calls. See, e.g., *Abramovich NAL*, 32 FCC Rcd at 5424, para. 18; *Abramovich FO*, 2018 WL 2192429, at *5, para. 18. In fact, the Bureau verified that one such innocent consumer did receive irate calls complaining about the unwanted telemarketing calls. However, the spoofed calls that displayed the numbers assigned to burner phones or that were unassigned were also apparently unlawful, and we could have included those calls in our sample. Moreover, we recognize this is the first time we have determined that the use of burner phones to spoof caller ID information with unlawful intent is a violation of the Truth in Caller ID Act. Although we believe a “person of ordinary intelligence” would come to the same conclusion, we proceed more cautiously than necessary here in order to negate any claims concerning notice. See *Lycra Tel, LLC*, Forfeiture Order, 30 FCC Rcd 11792, 11796, para. 15 (2015) (to satisfy due process concerns, a regulation must “provide a person of ordinary intelligence fair notice of what is prohibited”) (internal citations omitted)). By issuing this NAL, we put all entities and persons on notice that the use of burner phones to unlawfully spoof caller ID information is subject to the Truth in Caller ID Act and potential enforcement action.

time of the calls, to consumers who had no relationship, nor any affiliation, with Affordable.⁸⁷

3. Calculation of Proposed Forfeiture

35. In determining the proposed forfeiture in this case, we apply a \$1,000 base forfeiture to each of the 37,525 spoofed calls evaluated by the Bureau, for a total proposed base forfeiture of \$37,525,000.⁸⁸ Similar to our proposed forfeiture in *Roesel*, in this case we find that the application of the facts to the statutory factors in Section 503⁸⁹ do not warrant an upward adjustment to the base forfeiture. The evidence does not indicate that the content of Affordable's telemarketing calls were fraudulent or that it made any misrepresentations to consumers (with the exception of the caller ID information itself). Based on the evidence, Affordable did not appear to misrepresent the products and services it was selling, nor did it engage in the more deceptive types of spoofing such as neighbor spoofing (modifying the telephone numbers to falsely appear to be originating from the same area code and prefix as the called party). In addition, the instant action appears to be the first time that Affordable has run afoul of the TCPA. Affordable, however, is highly culpable—it concocted a scheme to purchase burner phones, as well as using unassigned numbers and numbers assigned to innocent consumers in order to avoid identification and detection and deprive consumers of their consumer protection rights. On balance, we find that neither an upward adjustment nor a further downward adjustment⁹⁰ to the proposed base forfeiture of \$37,525,000 is necessary to punish misconduct and deter future wrongdoing.

IV. CONCLUSION

36. Based on the foregoing, we find that Affordable, apparently willfully and repeatedly violated Section 227(e) of the Act and Section 64.1604 of the Rules. Accordingly, Affordable is apparently liable for a forfeiture in the amount \$37,525,000.

⁸⁷ As noted above, some of the numbers that Affordable used were, at the outset of the investigation, either unassigned or assigned to Tracfone, but were subsequently assigned to innocent consumers. *See supra* note 27. Affordable might not have known precisely when the numbers were reassigned to innocent consumers, but such reassignment was an easily foreseeable event—Tracfone's terms of service make clear that service would be deactivated for lack of use or payment. The website states, "If your Service is deactivated . . . your phone may be assigned a new phone number." <https://www.tracfone.com/termsandconditions>.

⁸⁸ *See* Reviewed Call Detail Records (on file in File No. EB-TCD-17-00024974) (containing the call records that include the dates and times the calls were made and are incorporated herein by reference). The 37,535 calls for which the Commission applies its forfeiture were all made on or after October 1, 2016. *See Purple Commc'ns, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14899-900, paras. 21-23 (2015) (discussing the identification of dates pursuant to Section 503). The Commission has stated that the notice requirements of Section 503 are satisfied when the Notice of Apparent Liability identifies the conduct resulting in the violations and provides "(1) specific cite references to the record (i.e., specific citations to files and documents provided by the violator that identified relevant dates sufficient to allow the violator to lodge its defense) or, (2) citations to the records containing dates and other relevant information." *Id.* at 14899, para. 22.

⁸⁹ 47 U.S.C. § 503(b)(2)(E) ("In determining the amount of such a forfeiture penalty, the Commission or its designee shall take 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.").

⁹⁰ We note that by selecting a base forfeiture in the amount of \$1,000 per apparently unlawful call, we are already significantly lowering the potential penalty, which may reach up to the applicable statutory maximum per call. *See supra* notes 74-75. We have previously explained that we "recognize that in cases involving massive spoofing campaigns, there is a risk that the fine will far exceed any person or company's ability to pay," but nevertheless "we calculate the proposed forfeiture to account for the egregiousness of the harm caused by this massive spoofing activity and to serve as both a punishment and a deterrent to future wrongdoing." *Abramovich NAL*, 32 FCC Rcd at 5426, paras. 24-25; *see also Abramovich FO*, 2018 WL 2192429, at *14, para. 46.

V. ORDERING CLAUSES

37. **IT IS ORDERED** that, pursuant to Sections 227(e)(5)(A)(i) and 503(b) of the Act⁹¹ and Sections 1.80 of the Rules,⁹² Affordable Enterprises of Arizona is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of thirty-seven million, five hundred twenty-five thousand dollars (\$37,525,000) for willful and repeated violations of Section 227(e) of the Act,⁹³ Section 64.1604 of the Rules,⁹⁴ and the *Rules and Regulations Implementing the Truth In Caller ID Act of 2009*.⁹⁵

38. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,⁹⁶ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Affordable Enterprises of Arizona, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraphs 41-42, below.

39. 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. Affordable Enterprises of Arizona 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.⁹⁷ When completing the FCC 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 the completed Form 159) must 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.
- 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.

40. 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

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

⁹² 47 CFR § 1.80.

⁹³ 47 U.S.C. § 227(e).

⁹⁴ 47 CFR § 64.1604.

⁹⁵ *Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, Report and Order, 26 FCC Rcd 9114 (2011).

⁹⁶ 47 CFR § 1.80.

⁹⁷ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Street, SW, Room 1-A625, Washington, DC 20554.⁹⁸ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

41. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.⁹⁹ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Telecommunications Consumers Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Kristi Thompson, Division Chief, Telecommunications Consumers Division, at Kristi.Thompson@fcc.gov, and Shante Willis, Attorney Advisor, Telecommunications Consumers Division, at Shante.Willis@fcc.gov.

42. The Commission 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.¹⁰⁰ Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation.

43. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture, together with the Reviewed Call Detail Records, shall be sent by first class mail and certified mail, return receipt requested, to Affordable Enterprises of Arizona, 150 E Alamo Drive, Suite 9, Chandler, AZ 85225-1208.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁹⁸ See 47 CFR § 1.1914.

⁹⁹ *Id.* at §§ 1.16, 1.80(f)(3).

¹⁰⁰ See *Abramovich FO*, 2018 WL 2192429, at *13, paras. 44-45.

**STATEMENT OF
CHAIRMAN AJIT PAI**

Re: *Affordable Enterprises of Arizona*, File No.: EB-TCD-17-00024974.

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 JESSICA ROSENWORCEL**

Re: *Affordable Enterprises of Arizona*, File No.: EB-TCD-17-00024974.

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 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 agency to offer real robocall resistance, because the flood of these calls is destroying something essential—trust in our communications network.