

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementing Section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act))	EB Docket No. 20-22
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NOTICE OF PROPOSED RULEMAKING

Adopted: February 5, 2020

Released: February 6, 2020

Comment Date: 10 days after date of publication in the Federal Register

Reply Date: 15 days after date of publication in the Federal Register

By the Commission:

I. INTRODUCTION

1. Unlawful prerecorded voice message calls—robocalls—plague the American public. Such calls are frequently coupled with misleading or inaccurate telephone numbers displayed as caller ID information, an act known as spoofing, and are often intended to facilitate fraudulent or other harmful activities. The Commission has deployed a multi-prong strategy to combat these illegal calls.¹ An important prong of the Commission’s strategy to attack illegal robocalls has been to trace the unlawful robocalls back to their origination, a process known as “traceback.” Notwithstanding these measures, unlawful spoofed robocalls persist.

2. Congress recognized the continued problem and recently enacted the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act) to further aid the Commission’s efforts.² In that Act, Congress acknowledged the beneficial collaboration between the Commission and the private sector on traceback issues and required the Commission to issue rules “for the registration of a single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls.”³ Today, we propose rules to establish such a registration process.

¹ Among other actions, the Commission has imposed forfeitures for violation of the Truth in Caller ID Act, *e.g.*, *Best Insurance Contract, Inc. and Philip Roesel dba Wilmington Insurance Quotes*, Forfeiture Order, 33 FCC Rcd 9204 (2018) (*Roesel Forfeiture Order*); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC 4663 (2018) (*Abramovich Forfeiture Order*), and adopted rules enabling voice service providers to block certain clearly unlawful calls before they reach consumers. *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9706 (2017).

² Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274 (2019) (TRACED Act).

³ TRACED Act § 13(d)(1), 133 Stat at 3287.

II. BACKGROUND

3. Section 227 of the Communications Act of 1934, as amended (the Communications Act), is designed to protect consumers from unlawful robocalls. Sections 227(b), (c), and (d) impose specific requirements on telemarketing and prerecorded voice message calls to give consumers the ability to know who is calling and to control the calls they receive.⁴ Section 227(e) prohibits unlawful spoofing—the transmission of misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value.⁵ Failure to comply with section 227 has resulted in vigorous enforcement action by the Commission.⁶

4. Robocallers that make unlawful robocalls, however, frequently hide behind spoofed telephone numbers, making it difficult to determine the identity of the real caller. Commission staff has worked with the private sector, led by the USTelecom Industry Traceback Group, on tracebacks to successfully uncover the true identity of callers behind illegal robocalls using spoofed caller ID information.⁷ The Industry Traceback Group is a collaborative group comprised of providers across wireline, wireless, Voice over Internet Protocol (VoIP), and cable services and others. Commission staff and the Industry Traceback Group have worked to develop an effective traceback process that has been, and continues to be, of significant assistance to the Commission in both the evolution and continuation of the traceback process. The continued collaboration is important to unmask the identities of those entities making the illegal robocalls.⁸

5. The TRACED Act directs the Commission, no later than March 29, 2020, to “issue rules to establish a registration process for the registration of a single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls.”⁹ The TRACED Act contemplates that this registration process be conducted on an annual basis.¹⁰ Congress specified that the registered consortium meet four requirements: (1) be a neutral third party competent to manage private-led traceback efforts; (2) maintain a set of written best practices regarding traceback efforts; (3) focus private-led traceback efforts on “fraudulent, abusive or unlawful” traffic consistent with section 222(d)(2) of the Act;¹¹ and (4) file a notice with the Commission that the consortium plans to conduct private-led traceback efforts in advance of registration.¹²

⁴ 47 U.S.C. §§ 227(b)-(d).

⁵ 47 U.S.C. § 227(e).

⁶ See 47 U.S.C. § 227(e)(5); see, e.g., *Roesel Forfeiture Order*; *Abramovich Forfeiture Order*.

⁷ Traceback is the process whereby a suspected illegal robocall that used a spoofed telephone number is traced to its origination source. The Commission has received a number of referrals for investigation based on traceback information that the Industry Traceback Group was able to provide. See Letter from Rosemary Harold, Chief, Enforcement Bureau and Eric Burger, Chief Technology Officer, to Jonathan Spalter, President and CEO, USTelecom – The Broadband Association (Nov. 6, 2018).

⁸ See Letter from Rosemary Harold, Chief, Enforcement Bureau and Eric Burger, Chief Technology Officer, to Jonathan Spalter, President and CEO, USTelecom – The Broadband Association (Nov. 6, 2018) (stating that the information received from the work of the Industry Traceback Group “has resulted in dozens of active investigations [of illegal spoofed robocalls].”).

⁹ TRACED Act § 13(d), 133 Stat. at 3287.

¹⁰ *Id.*

¹¹ 47 U.S.C. § 222(d)(2).

¹² TRACED Act § 13(d)(1)(A)-(D), 133 Stat. at 3287-88.

III. DISCUSSION

6. We propose rules to implement a simple registration process. *First*, we propose that the Enforcement Bureau issue an annual public notice seeking registration of a single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls.¹³ The Enforcement Bureau would issue the public notice no later than April 28 this year¹⁴ and by that date annually thereafter as required by the TRACED Act. We invite comment on this proposal.

7. *Second*, we propose to require an entity that plans to register as the consortium for private-led traceback efforts to submit in this docket a letter of notice of its intent to conduct private-led traceback efforts and its intent to register as the single consortium.¹⁵ We propose that the letter of notice include the name of the entity and a statement of its intent to conduct private-led traceback efforts and its intent to register with the Commission as the single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls. We invite comment on this proposal.

8. *Third*, we propose to mandate that the entity address the statutory requirements in such letter by:

- (a) demonstrating that the consortium is a neutral third-party competent to manage the private-led effort to trace back the origin of suspected unlawful robocalls;
- (b) including a copy of the consortium's written best practices regarding management of its traceback efforts and regarding providers of voice services' participation in the consortium's efforts to trace back the origin of suspected unlawful robocalls, and an explanation thereof;
- (c) certifying that, consistent with section 222(d)(2) of the Communications Act,¹⁶ the consortium's efforts will focus on fraudulent, abusive, or unlawful traffic; and
- (d) certifying that the consortium has notified the Commission that it intends to conduct traceback efforts of suspected unlawful robocalls in advance of registration as the single consortium.

We invite comment on this proposal. We also invite comment on how to construe the terms used in these four statutory criteria and whether we should adopt any specific rules to ensure compliance with them. In addition, we seek comment on whether we should require any additional information or consider any other factors.

9. *Fourth*, we note that the statute contemplates a single registrant with the Commission, and so we must select a single consortium if more than one qualified consortium seeks to register. To do that, we propose that the Enforcement Bureau select the single registered consortium based on its analysis of any letter and associated documentation submitted by an entity seeking to register as the single consortium. Our judgment of compliance with the TRACED Act's requirements will be informed by the work we have done with the private sector, particularly the Industry Traceback Group. We propose to heavily weight the consortium applicant's expertise in both managing and improving the traceback process to the benefit of interested parties, including the Commission. Moreover, we propose to heavily weight whether the consortium applicant is open to all voice service providers. The degree of openness is indicative of the level of neutrality we would expect in order to accept a consortium's registration. We invite comment on these proposals and also seek comment on methods we should use to select between or

¹³ *Id.* § 13(d)(2), 133 Stat. at 3288.

¹⁴ *Id.*

¹⁵ *Id.* § 13(d)(1)(D), 133 Stat. at 3288.

¹⁶ 47 U.S.C. § 222(d)(2).

among any competing consortium applicants. We welcome comment on other factors that merit consideration in evaluating any consortium application.

10. *Fifth*, while we propose to continue to solicit interest by public notice on an annual basis, in order to minimize the burdens of the registration process we propose not to require the incumbent consortium to file a new application each year. Rather, under our proposal, our rules will require that each certification in a letter extend for the duration of each subsequent year that the incumbent consortium serves, unless the incumbent consortium notifies the Commission otherwise in writing on or before the date for the filing of such letters set forth in the annual public notice. In the event of any delays in our annual selection process, we also propose to authorize the incumbent consortium to continue its traceback efforts during the pendency of that process, until the effective date of the selection of any new consortium. We propose that the Bureau shall select any new consortium no later than 90 days after the date set forth in the annual public notice. We seek comment on these proposals.

IV. PROCEDURAL MATTERS

11. *Initial Regulatory Flexibility Certification*. As required by the Regulatory Flexibility Act,¹⁷ the Commission certifies that the proposals in this Notice, if adopted, will not have a significant impact on a substantial number of small entities.¹⁸ This Notice seeks comment on a limited and simple process for registration with the Commission of a single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls as required by section 13 of the TRACED Act.¹⁹ We reasonably expect, based on our experience, that no more than a few entities, and perhaps only one, would apply to serve as the consortium. Moreover, the proposals contained herein impose minimal registration burdens such that they will have no more than a *de minimis* economic impact on any entity that has the resources to perform the private-led traceback efforts.

12. *Initial Paperwork Reduction Act of 1995 Analysis*. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

13. *Ex Parte Presentations—Permit-But-Disclose*. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.²⁰ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filing in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meeting are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission’s rules. In proceedings governed by section 1.49(f) of the Commission’s rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all

¹⁷ 5 U.S.C. § 603.

¹⁸ 5 U.S.C. § 605(b).

¹⁹ TRACED Act § 13(d), 133 Stat. at 3287-3288.

²⁰ 47 CFR §§ 1.1200 *et seq.*

attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

14. *Comment Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on or before the dates indicated on the first page of this document in EB Docket No. 20-22. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).²¹

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

15. Comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments must also comply with section 1.49 of the Commission's rules²² and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments. All parties are encouraged to use a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the Notice in order to facilitate our internal review process.

16. *People with Disabilities:* To request material in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

17. *Further Information.* For further information, contact Sonja Rifken, Attorney, Telecommunications Consumers Division, Enforcement Bureau, at (202) 418-1730 or sonja.rifken@fcc.gov.

V. ORDERING CLAUSES

18. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 154(j), and section 13(d) of the Telephone Robocall

²¹ *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

²² 47 CFR § 1.49.

Abuse Criminal Enforcement and Deterrence Act, Pub. L. 116-105, 133 Stat. 3274, this *Notice of Proposed Rulemaking*, is hereby ADOPTED.

19. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX
Proposed Rules

The Federal Communications Commission proposes to amend Parts 1 and 64 of Title 47 of the Code of Federal Regulations as follows:

Part 0 -- COMMISSION ORGANIZATION

1. The authority citation for Part 1 continues to read as follows:

Authority: 47 U.S.C. 155, 225, unless otherwise noted.

Amend section 0.111 by adding new subsection (i) as follows:

§ 0.111 - Functions of the Bureau.

* * * * *

(i) Conduct the annual registration and selection of a single consortium to conduct private-led efforts to trace back the origin of suspected unlawful robocalls, under section 13(d) of the TRACED Act, 133 Stat. at 3287, and § 64.1203 of this chapter.

(j) Perform such other functions as may be assigned to it or referred to it by the Commission.

Part 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for Part 64 is revised to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 217, 218, 220, 225, 226, 227, 228, 251(e), 254(k), 262, 287, 403(b), (2)(B), (c), 616, 620, 1401-1473, unless otherwise noted.

New section 64.1203 is added to read as follows:

§ 64.1203 – Consortium registration process.

(a) The Enforcement Bureau shall issue a public notice no later than April 28th annually seeking registration of a single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls.

(b) Except as provided in subsection (c) of this rule, an entity that seeks to register as the single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls must submit a letter and associated documentation in response to the public notice issued pursuant to subsection (a) of this rule. In the letter, the entity must:

(1) Demonstrate that the consortium is a neutral third party competent to manage the private-led effort to trace back the origin of suspected unlawful robocalls;

(2) Include a copy of the consortium's written best practices regarding the management of its traceback efforts and regarding providers of voice services participation in the consortium's efforts to trace back the origin of suspected unlawful robocalls and an explanation thereof;

(3) Certify that, consistent with section 222(d)(2) of the Communications Act of 1934, as amended, the consortium's efforts will focus on fraudulent, abusive, or unlawful traffic; and

(4) Certify that the consortium has notified the Commission that it intends to conduct traceback efforts of suspected unlawful robocalls in advance of registration as the single consortium.

(c) The entity selected to be the registered consortium will not be required to file the letter mandated in subsection (b) of this rule in subsequent years after the consortium's initial registration. The registered consortium's initial certifications, required by subsection (b) of this rule, will continue for the duration of each subsequent year unless the registered consortium notifies the Commission otherwise in writing on or before the date for filing letters set forth in the annual public notice issued pursuant to subsection (a) of this rule.

(d) The current registered consortium shall continue its traceback efforts until the effective date of the selection of any new registered consortium.