

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	
	)	
John C. Spiller; Jakob A. Mears; Rising Eagle	)	File No.: EB-TCD-18-00027781
Capital Group LLC; JSquared Telecom LLC; Only	)	NAL/Acct. No.: 202032170007
Web Leads LLC; Rising Phoenix Group; Rising	)	FRN: 0029650744; 0029650785
Phoenix Holdings; RPG Leads; and Rising Eagle	)	
Capital Group – Cayman	)	

**FORFEITURE ORDER**

**Adopted: March 17, 2021**

**Released: March 18, 2021**

By the Commission: Acting Chairwoman Rosenworcel and Commissioner Simington issuing separate statements.

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**I. INTRODUCTION**

1. John C. Spiller and Jakob A. Mears, doing business under the names Rising Eagle Capital Group LLC, JSquared Telecom LLC, Only Web Leads LLC, Rising Phoenix Group, Rising Phoenix Holdings, RPG Leads, and Rising Eagle Capital Group – Cayman (collectively, Rising Eagle or the

Company), made approximately one billion health insurance-related robocalls in the first four-and-a-half months of 2019. Moreover, in making calls, Rising Eagle used spoofed caller ID with the intent to defraud, cause harm, and wrongfully obtain something of value in violation of the Truth in Caller ID Act.

2. The Notice of Apparent Liability for Forfeiture (*Notice* or *Rising Eagle Notice*) proposed a \$225,000,000 penalty for violations of the Truth in Caller ID Act.<sup>1</sup> After reviewing Rising Eagle’s response to the *Notice*, we find no reason to cancel, withdraw, or reduce the proposed penalty, and we therefore assess a \$225,000,000 forfeiture.

## II. BACKGROUND

3. *Legal Background.* Congress recognized that consumers have embraced caller ID as a vital part of voice telephone service, depending on it to help them decide whether to answer the phone. Caller ID is only valuable, however, if it is accurate.<sup>2</sup> Congress codified these policies in 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 (Act).<sup>3</sup> 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”<sup>4</sup>—a practice otherwise known as “spoofing.”

4. Spoofing on a large scale is often coupled with illegal robocalling activity. In enacting the Telephone Consumer Protection Act (TCPA),<sup>5</sup> Congress determined that unwanted prerecorded voice message calls (a type of robocall) are a greater nuisance and invasion of privacy than live calls and that such calls delivered to wireless phones can be costly.<sup>6</sup> The TCPA and the Commission’s implementing rules prohibit prerecorded voice message calls to wireless telephone numbers without subscribers’ prior express consent—unless made for an emergency purpose<sup>7</sup>—and mandate inclusion of the telephone

<sup>1</sup> See *John C. Spiller; Jakob A. Mears; Rising Eagle Capital Group LLC; JSquared Telecom LLC; Only Web Leads LLC; Rising Phoenix Group; Rising Phoenix Holdings; RPG Leads; and Rising Eagle Capital Group – Cayman*, Notice of Apparent Liability for Forfeiture, 35 FCC Red 5948, 5948, para. 1 (2020) (*Notice* or *Rising Eagle Notice*). The *Notice* includes a more complete discussion of the facts and history of this case and is incorporated herein by reference.

<sup>2</sup> 156 Cong. Rec. H2522, H2524 (2010) (Remarks of Rep. Engel) (“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.”); 155 Cong. Rec. S170-02, S173 (2009) (Remarks of Sen. Nelson) (“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.”).

<sup>3</sup> 47 U.S.C. § 227(e).

<sup>4</sup> 47 U.S.C. § 227(e)(1); see also 47 CFR § 64.1604. There are exceptions for investigative, protective, or intelligence activities, but those exceptions do not apply here.

<sup>5</sup> Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (codified at 47 U.S.C. § 227) (TCPA).

<sup>6</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Red 14014, 14115, para. 165 (2003) (*2003 TCPA Order*). Similarly, courts have routinely agreed that robocalls are an invasion of privacy, an injury in fact sufficient for Article III jurisdiction. *LaVigne v. First Community Bancshares, Inc.*, 215 F. Supp. 3d 1138, 1146-47 (D. NM 2016). See also *Mims v. Arrow Financial Services, LLC*, 565 U.S. 368, 372 (2012) (recognizing Congress’s finding that robocalls are an invasion of privacy); *Frisby v. Schultz*, 487 U.S. 474, 484 (1988) (recognizing that preserving the sanctity of the home is an important value).

<sup>7</sup> 47 U.S.C. § 227(b)(1)(A)(iii); 47 CFR § 64.1200(a)(1)(iii). See also *Barr v. Am. Ass’n of Political Consultants*, 140 S. Ct. 2335 (2020) (invalidating the debt collection exception in 47 U.S.C. § 227(b)(1)(A)(iii)). The Commission has granted exemptions to the prior-express-consent requirement, relying on the exemption authority Congress provided in 47 USC § (b)(2)(C).

number of the entity responsible for initiating the call.<sup>8</sup> The Commission has found that spoofing, when employed in an unlawful robocalling campaign, can indicate an intent to cause harm.<sup>9</sup>

5. *Factual Background.* In September 2018, the USTelecom Industry Traceback Group (Traceback Group) informed the Enforcement Bureau (Bureau) that it had traceback information for millions of robocalls containing prerecorded health insurance messages.<sup>10</sup> The Traceback Group determined that approximately 23.6 million health insurance robocalls were crossing the networks of the four largest wireless carriers each day.<sup>11</sup> Moreover, the Traceback Group’s experts found indications that many or possibly all of the offending robocalls contained false caller ID information.<sup>12</sup> The Bureau launched an investigation to determine who was responsible for the apparently unlawful spoofed robocalls affecting consumers.

6. The Bureau uncovered evidence that many of the robocalls included false or misleading statements about the identity of the caller and the products being offered. Rising Eagle made spoofed robocalls on behalf of clients that sell short-term, limited-duration health insurance plans. The prerecorded messages purported to offer health insurance plans from well-known health insurance companies such as Aetna, Blue Cross Blue Shield,<sup>13</sup> Cigna, and UnitedHealth Group. In fact, we have confirmed that Rising Eagle had no connection with at least two of the insurance companies—Blue Cross Blue Shield and Cigna—and we have no evidence that Rising Eagle was connected with any of the other insurance companies mentioned.<sup>14</sup> For example, some calls included the following message:

Are you looking for affordable health insurance with benefits from a company you know? Policies have all been reduced nationwide such as Cigna, Blue Cross, Aetna, and United[,] just a quick phone call away. Press 3 to get connected to a licensed agent or press 7 to be added to the Do Not Call list.<sup>15</sup>

Contrary to the message, however, if a consumer “press[ed] 3” after hearing the message, the consumer would be transferred to a call center unaffiliated with, and not authorized by, the named companies. The

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<sup>8</sup> 47 U.S.C. § 227(d)(3)(A); 47 CFR § 64.1200(b)(2).

<sup>9</sup> *Best Insurance Contracts, Inc., and Philip Roesel, dba Wilmington Insurance Quotes*, Forfeiture Order, 33 FCC Rcd 9204, 9218-19, para. 40 (2018) (*Roesel Forfeiture Order*); *Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Notice of Apparent Liability, 32 FCC Rcd 5418, 5423, para. 16 (2017) (*Abramovich Notice*).

<sup>10</sup> Letter from Kevin G. Rupy, Vice President, Law & Policy, USTelecom—The Broadband Association, to Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Sept. 21, 2018) (on file in EB-TCD-18-00027781). Traceback is the process of tracing suspected illegal robocalls through multiple voice service provider networks until the originating voice provider or the calling party is identified. USTelecom Industry Traceback Group, 2019 Progress Report at 3 (2019), <https://www.ustelecom.org/wp-content/uploads/2020/01/ITG-2019-Progress-Report.pdf>.

<sup>11</sup> USTelecom Subpoena Response (Oct. 4, 2018) (on file in EB-TCD-18-00027781).

<sup>12</sup> *Id.*

<sup>13</sup> Blue Cross Blue Shield is comprised of 36 independent and locally operated companies. Together these companies form the Blue Cross Blue Shield Association, which owns the intellectual property rights. *The Blue Cross Blue Shield System*, Blue Cross Blue Shield, <https://www.bcbs.com/about-us/the-blue-cross-blue-shield-system> (last visited Feb. 20, 2020). References to Blue Cross Blue Shield in this Forfeiture Order are to the Blue Cross Blue Shield system as a whole.

<sup>14</sup> Affidavit of Adam Peltzman, Assistant General Counsel, Executive Director, Blue Cross Blue Shield Association at 1 (Apr. 10, 2020) (Blue Cross Aff.); Affidavit of Kaitlin Reilly, Legal Compliance Senior Advisor, Cigna Corporation at 1-2 (Feb. 12, 2020) (Cigna Aff.).

<sup>15</sup> Nomorobo, (678) 261-1817 Is a Health Insurance Scam (Feb. 6, 2019), <https://www.nomorobo.com/lookup/678-261-1817>.

representatives in that call center then would attempt to convince the caller to purchase an insurance product sold by one of Rising Eagle's clients—none of which were companies named in the prerecorded messages. Rising Eagle's largest client was a company called Health Advisors of America.<sup>16</sup> Of the billion-plus robocalls at issue in this investigation, Rising Eagle said that it made approximately half of the calls on behalf of Health Advisors.<sup>17</sup> Rising Eagle made calls on behalf of clients other than Health Advisors.<sup>18</sup>

7. John Spiller and Jacob Mears were Rising Eagle's sole owners, directors and managers.<sup>19</sup> Between approximately November 27, 2018 and March 25, 2019, Spiller was incarcerated at the Travis and Harris County correctional complexes while serving a sentence for a drunk driving incident.<sup>20</sup> While incarcerated in Travis County, Spiller routinely spoke with Mears about Rising Eagle's robocall business.<sup>21</sup> Those calls, like all collect calls made from the Travis County Correctional Complex, were subject to monitoring and recording.<sup>22</sup> The Bureau obtained copies of the recorded conversations, via its cooperative agreement with the Texas Office of the Attorney General, specifically to evaluate assertions that Spiller made about his involvement with the Company while incarcerated.<sup>23</sup> Spiller and Mears spoke on several hundred occasions during this three-and-a-half-month period, discussing in detail Rising Eagle's robocalling operations.<sup>24</sup> Although we do not depend on the recorded conversations for our findings, they corroborate our findings regarding apparent violations of the Truth in Caller ID Act that the Commission identified in the *Notice* and that we confirm in this Forfeiture Order.

8. Between January 2, 2019 and May 14, 2019, Rising Eagle, under the direction of John Spiller and Jakob Mears, made 1,047,677,198 robocalls to American and Canadian consumers on behalf of its clients.<sup>25</sup> The Bureau reviewed a subset of Rising Eagle's more than one billion robocalls to

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<sup>16</sup> One of the call centers to which consumers were routed on the calls at issue here was Health Advisors of America, Inc., run by Michael Smith Jr., Zachary Cox, and Scott Shapiro in Florida (collectively, Health Advisors). The Missouri Attorney General sued Health Advisors for telemarketing violations in February 2019. *Missouri v. Health Advisors of America, Inc. et al.*, Petition for Permanent Injunction, Civil Penalties, and Other Relief, 19SL-CC00580 (Feb. 8, 2019). The Missouri Attorney General reached a settlement on August 8, 2019. *Missouri v. Health Advisors of America, Inc. et al.*, Consent Judgment, 19SL-CC00580 (Aug. 8, 2019). Similarly, the Florida Department of Agriculture and Consumer Services sued Health Advisors for telemarketing violations in May 2019. *Dept. of Agriculture and Consumer Services v. America's Best Insurance Group, Inc.*, Final Order, 1809-41258 (May 8, 2019). Health Advisors was not authorized to sell any products offered by the companies mentioned in the Rising Eagle robocalls. Blue Cross Aff. at 1; Cigna Aff. at 1-2.

<sup>17</sup> Spiller Aff. at 4.

<sup>18</sup> See Bank of Am., Rising Eagle Global Payments Reporting U.S. Wire (Sep. 4, 2019) (Bank of Am. Wire Records) (on file in EB-TCD-18-00027781) (showing payments from clients).

<sup>19</sup> Rising Eagle Capital Group LLC, Certificate of Amendment, Office of the Sec'y of State of Tex. (June 1, 2018).

<sup>20</sup> See Notice Response at RE\_000008-09 (providing copy of arrest record).

<sup>21</sup> See generally Audio tape: John C. Spiller Call Recordings, recorded at the Travis County Correctional Complex (Nov. 27, 2018-Mar. 14, 2019) (on file in EB-TCD-18-00027781) (Spiller Call Recording).

<sup>22</sup> At the beginning of each collect call, a message notified Spiller that his calls would be recorded and monitored. *Id.*

<sup>23</sup> Memorandum of Understanding between the Federal Communications Commission and the Texas Office of the Attorney General (Oct. 15, 2019).

<sup>24</sup> See generally Spiller Call Recording.

<sup>25</sup> R Squared Subpoena Response (Aug. 16, 2019) (on file in EB-TCD-18-00027781) (Call Detail Records). Rising Eagle is a Texas entity. Rising Eagle Capital Group LLC, Certificate of Formation, Office of the Sec'y of State of Tex. (Apr. 9, 2014). The Truth in Caller ID Act prohibits unlawfully spoofed calls to U.S. and foreign recipients so long as the caller is located in the United States. 47 U.S.C. § 227(e). Rising Eagle made 2,672,424 robocalls to  
(continued....)

confirm that they were spoofed. Bureau staff determined that Rising Eagle used at least 60 caller IDs assigned to persons other than Rising Eagle or that were unassigned. Rising Eagle used these 60 caller IDs to make 113,190,325 calls. Bureau staff verified that at least 150,000 of these calls were spoofed, based on confirmation that they all came from one of these 60 spoofed caller IDs.<sup>26</sup> Bureau staff also confirmed that Rising Eagle made at least 86,864,456 robocalls to wireless phones as well as 56,635,935 robocalls to numbers listed on the National Do Not Call Registry.<sup>27</sup> Bureau staff spoke with 52 of those consumers who received robocalls from Rising Eagle.<sup>28</sup> None of the called consumers whom the Bureau contacted gave permission—written or otherwise—for the robocalls.<sup>29</sup> Bureau staff listened to a subset of the recorded messages. After reviewing at least portions of nearly 2,000 messages (and in some cases, the entire message), Bureau staff determined that the messages did not include the name of Rising Eagle or its clients at the beginning of the prerecorded voice message or a callback telephone number.<sup>30</sup>

9. On multiple occasions over the course of 2019, the Traceback Group notified Rising Eagle that its calls had generated numerous complaints and that the calls appeared to violate federal laws against unsolicited telemarketing robocalls and malicious spoofing. A consultant with the Traceback Group contacted Rising Eagle and spoke to Spiller about the robocalls on June 7, 2019; the consultant explained that the calls appeared to be unlawful.<sup>31</sup> Spiller admitted to the consultant that he made millions of robocalls daily.<sup>32</sup> He further admitted that he had disabled the function of his calling platform that prevented robocalls from going to numbers registered on the National Do Not Call Registry.<sup>33</sup> According to Spiller, he started making telemarketing robocalls to consumers who put their numbers on the National Do Not Call Registry because he “found that his sales rates . . . rose substantially” when he did so.<sup>34</sup> The Traceback Group continued to send traceback notices to Rising Eagle throughout 2019.<sup>35</sup> Rising Eagle informed the Traceback Group that the Company ceased spoofing caller ID information on September 10, 2019.<sup>36</sup> The Company, however, continued to place telemarketing robocalls.<sup>37</sup>

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Canadian consumers; however, the 150,000 robocalls that the Bureau verified only include robocalls made to U.S. consumers.

<sup>26</sup> The Enforcement Bureau selected this sample of 150,000 calls by selecting the first 2,500 calls that displayed one of each of the 60 caller IDs.

<sup>27</sup> Federal Trade Commission, National Do Not Call Registry, <https://www.donotcall.gov/>. Residential wireless numbers can also be listed on the National Do Not Call Registry. Thus there may be overlap between the two sets of calls.

<sup>28</sup> These 52 examples were those for which we were able to make contact from a sample selected by contacting the recipients of the lengthiest ten calls made from each of the 60 spoofed caller IDs.

<sup>29</sup> Declaration of { } (Apr. 8, 2020) (on file in EB-TCD-18-00027781); Declaration of { } (Apr. 6, 2020) (on file in EB-TCD-18-00027781); Declaration of { } (Mar. 12, 2020) (on file in EB-TCD-18-00027781); Declaration of { } (Mar. 10, 2020) (on file in EB-TCD-18-00027781); Declaration of { } (Mar. 9, 2020) (on file in EB-TCD-18-00027781). Material highlighted and set off by double brackets { } is redacted from the public version of this document.

<sup>30</sup> Bureau staff examined recordings provided by YouMail, a robocall identification and blocking service. YouMail Subpoena Response (Jan. 3, 2020) (on file in EB-TCD-18-00027781) (YouMail Response).

<sup>31</sup> Affidavit of David Frankel at 2 (Jan. 9, 2020) (Frankel Aff.).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 3-5.

<sup>36</sup> *Id.* at 3-4.

10. During its investigation, the Commission discovered that Spiller and Mears own and manage more than a dozen lead generation, communications, or health care-related businesses—many through Rising Eagle Capital Group.<sup>38</sup> Spiller and Mears were the sole owners and directors of Rising Eagle and, in turn, Rising Eagle was the sole owner of JSquared Telecom (an interconnected Voice over Internet Protocol provider)<sup>39</sup> and Only Web Leads LLC (a lead generator),<sup>40</sup> among other companies. Rising Eagle also operated under the assumed business names Archimedes Funding, JP’s Web Leads, Only Web Leads, Rising Phoenix Holdings, RPG Leads, Senior Med Alert, and Travel Destination Adventures Your Wish Is Our Desire.<sup>41</sup> In October 2019, Spiller and Mears formed Rising Eagle Capital Group – Cayman.<sup>42</sup> In January 2020, Spiller and Mears removed themselves as managers of Rising Eagle and appointed Rising Eagle Capital Group – Cayman as Rising Eagle’s manager.<sup>43</sup> They dissolved Rising Eagle Capital Group shortly thereafter.<sup>44</sup>

11. On June 9, 2020, the Commission adopted the *Rising Eagle Notice*. It proposed a \$225,000,000 forfeiture against Rising Eagle for its apparent willful and repeated violation of section 227(e) of the Act,<sup>45</sup> and section 64.1604 of the Commission’s rules,<sup>46</sup> by spoofing caller ID information with the intent to defraud, cause harm, and wrongfully obtain something of value.

12. On August 24, 2020, Rising Eagle filed a response to the *Notice*.<sup>47</sup> *First*, Rising Eagle claims that it did not initiate the calls because it was only a “technology consultant” for Health Advisors’s calling campaigns.<sup>48</sup> *Second*, Rising Eagle claims that it did not have the intent to defraud, cause harm, or wrongfully obtain anything of value because it only had a limited role in the calling campaigns, did not draft the robocall messages, and believed that it had consent for the calls.<sup>49</sup> *Third*, Rising Eagle argues that the *Notice* impermissibly “lumped” John Spiller, Jakob Mears, and their companies together without attributing wrongful conduct to each party.<sup>50</sup> *Fourth*, John Spiller and Jakob Mears argue that they cannot be held personally liable.<sup>51</sup> Spiller further argues that he cannot be held personally liable because he was incarcerated for much of the violations period.<sup>52</sup> *Fifth*, Rising Eagle argues that the *Notice* failed to

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<sup>37</sup> The Traceback Group continued to identify Rising Eagle as a significant spoofer throughout 2019. See Frankel Aff. at 2-4. This Order does not include robocalls made after May 14, 2019 and is without prejudice to any future enforcement action with respect to such robocalls.

<sup>38</sup> See *infra* note 211 (providing a list of Spiller’s and Mears’s business endeavors).

<sup>39</sup> JSquared Telecom LLC, Certificate of Formation, Office of the Sec’y of State of Tex. (Jan. 30, 2019).

<sup>40</sup> Only Web Leads LLC, Certificate of Formation, Office of the Sec’y of State of Tex. (Nov. 20, 2018).

<sup>41</sup> See *infra* note 211 (showing that many of Spiller’s and Mears’s businesses were managed by Rising Eagle).

<sup>42</sup> Rising Eagle Capital Group – Cayman, Search Report, Cayman Is. General Registry (Oct. 16, 2019).

<sup>43</sup> Rising Eagle Capital Group LLC, Certificate of Amendment, Office of the Sec’y of State of Tex. (Jan. 13, 2020).

<sup>44</sup> Rising Eagle Capital Group LLC, Forfeiture of Certification, Office of the Sec’y of State of Tex. (Feb. 28, 2020).

<sup>45</sup> 47 U.S.C. § 227(e).

<sup>46</sup> 47 CFR § 64.1604.

<sup>47</sup> Rising Eagle, Response to Notice of Apparent Liability (Aug. 24, 2020) (on file in EB-TCD-18-00027781) (Notice Response).

<sup>48</sup> Notice Response at 5.

<sup>49</sup> *Id.* at 9-16.

<sup>50</sup> *Id.* at 3-4.

<sup>51</sup> *Id.* at 16-19.

<sup>52</sup> *Id.* at 19.

consider Rising Eagle's inability to pay and lack of prior violations, as required by section 503 of the Act.<sup>53</sup>

### III. DISCUSSION

13. The Commission proposed a forfeiture in this case in accordance with section 503(b) of the Act,<sup>54</sup> section 1.80 of the Commission's rules,<sup>55</sup> and the Commission's *Forfeiture Policy Statement*.<sup>56</sup> We have considered Rising Eagle's response to the *Notice*, but we find none of its arguments persuasive. Rising Eagle attempts to place much of the blame on its client, but the record shows that Rising Eagle, and its owners Spiller and Mears, actively participated in the unlawful spoofing. We find that Rising Eagle knowingly intended to cause the display of inaccurate caller ID information with the intent to defraud, cause harm, and wrongfully obtain something of value. We therefore affirm the \$225,000,000 forfeiture proposed in the *Notice*.

#### A. Rising Eagle Knowingly Caused the Display of Inaccurate Caller ID Information

14. The Truth in Caller ID Act prohibits any person from causing a caller identification service "to knowingly transmit misleading or inaccurate caller identification information" with wrongful intent.<sup>57</sup> In the order implementing the Truth in Caller ID Act (*Truth in Caller ID Order*), the Commission determined that the word "knowingly" modifies the action of the person or entity engaged in caller ID spoofing with intent to defraud, cause harm, or wrongfully obtain anything of value.<sup>58</sup>

15. We find that Rising Eagle knowingly altered the display of caller ID information. The Bureau reviewed 60 distinct caller IDs that Rising Eagle used and found that none were assigned to Rising Eagle or its clients.<sup>59</sup> The *Rising Eagle Notice* asserted that Rising Eagle admitted to the Traceback Group that Rising Eagle did not stop using spoofed caller ID until September 10, 2019.<sup>60</sup> In its response, Rising Eagle admits to knowingly using unassigned numbers as caller ID, because its main client, Health Advisors, "prescribed that all of the calls made during the course of its telemarketing campaigns would be made from unassigned, inactive caller ID numbers."<sup>61</sup> Rising Eagle also admits to providing services for 525,500,000 Health Advisors calls.<sup>62</sup> Rising Eagle does not contest that it spoofed more than 500 million calls. Rising Eagle argues instead that it was acting according to its client's wishes in choosing which numbers to spoof. Further, Rising Eagle argues that it did not initiate the robocalls and only had a limited role in the calling operations.<sup>63</sup> We find these arguments unpersuasive.

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<sup>53</sup> *Id.* at 19-23.

<sup>54</sup> 47 U.S.C. § 503(b).

<sup>55</sup> 47 CFR § 1.80.

<sup>56</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

<sup>57</sup> 47 U.S.C. § 227(e)(1); 64 CFR § 64.1604(a).

<sup>58</sup> *Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, Report and Order, 26 FCC Rcd 9114, 9120, para. 17 (2011) (*Truth in Caller ID Order*).

<sup>59</sup> *Rising Eagle Notice*, 35 FCC Rcd at 5955, para. 20.

<sup>60</sup> *Id.*

<sup>61</sup> Notice Response at 5.

<sup>62</sup> Spiller Aff. at 4.

<sup>63</sup> Notice Response at 4-6.

16. *First*, the Truth in Caller ID Act imposes liability on persons who “cause” the transmission or display of inaccurate caller ID information.<sup>64</sup> Liability is not limited to the person or entity that makes the call.<sup>65</sup> Instead, the *Truth in Caller ID Order* extends liability to anyone who (1) knowingly caused the manipulation of caller ID information, and (2) intended the caller ID manipulation to defraud, cause harm, or wrongfully obtain anything of value.<sup>66</sup> Even if Health Advisors provided the spoofed numbers or directed Rising Eagle to use unassigned or inactive numbers, Rising Eagle admitted that it knew that using those numbers would cause the display of inaccurate caller ID.<sup>67</sup> Rising Eagle asserts that its client directed that “all of the calls made during the course of its telemarketing campaigns would be made from unassigned, inactive caller ID numbers.”<sup>68</sup> Even if Rising Eagle were using inaccurate caller ID at someone else’s request, that does not negate that, by acquiescing, Rising Eagle knowingly caused the display of inaccurate or misleading caller ID.<sup>69</sup> Because none of those unassigned numbers were assigned to Rising Eagle or its client, Rising Eagle necessarily knew that using those numbers would cause the display of inaccurate caller ID. Therefore, Rising Eagle is responsible for intentionally displaying inaccurate caller ID information.

17. *Second*, Rising Eagle was deeply involved in the calling campaigns. Rising Eagle states that it “was engaged by Health Advisors to arrange downstream communications services that Health Advisors used to deliver its phone calls to consumers, and to assist in the maintenance of Health Advisors’ calling and [customer relationship management] software platform.”<sup>70</sup> In this role, Rising Eagle “operate[d] Health Advisors’ calling platform and transcribe[d] the prerecorded messages” to broadcast to consumers.<sup>71</sup> On multiple occasions during the violation period, Rising Eagle purchased hundreds of thousands of leads from lead generation companies, such as Stellar Prospects, and contacted these leads on behalf of its many clients.<sup>72</sup> Thus, the evidence supports our determination that Rising Eagle was independently generating leads and calling those consumers using spoofed caller ID; it was not merely calling consumers that Health Advisors identified. Rising Eagle had significant control over the dialer. The call recordings between Spiller and Mears corroborate our finding that Rising Eagle controlled the number of robocalls made on behalf of Health Advisors.<sup>73</sup> Rising Eagle configured the

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<sup>64</sup> 47 U.S.C. § 227(e).

<sup>65</sup> In contrast, liability under the TCPA does require a determination about who made the call. *See* 47 U.S.C. § 227(b)(1)(A).

<sup>66</sup> *Truth in Caller ID Order*, 26 FCC Rcd at 9120-21, paras. 17-19.

<sup>67</sup> *See* Notice Response at 5 (stating that Health Advisors provided the phone numbers to call as well as the numbers to display as caller ID information); *Rising Eagle Notice*, 35 FCC Rcd at 5955, para. 20.

<sup>68</sup> Notice Response at 5.

<sup>69</sup> *See Kenneth Moser dba Marketing Support Systems*, Forfeiture Order, 35 FCC Rcd 13415, 13430, para. 33 (2020) (*Moser Forfeiture Order*) (rejecting the argument that Moser could not be liable because his client directed him to use spoofed numbers).

<sup>70</sup> Notice Response at 5.

<sup>71</sup> *Id.* In this case, “transcription” appears to mean hiring voice talent to record the messages and uploading the recordings into the dialer. *See* PayPal, Global Investigations Report for Dates Jan. 1, 2019 – Sept. 17, 2019 (Sep. 29, 2019) (2019 PayPal Transactions) (on file in EB-TCD-18-00027781) (paying several hundred dollars to “record a professional female [A]merican voice over”).

<sup>72</sup> *See* Bank of Am., Rising Eagle Global Payments Reporting U.S. Wire (Sep. 4, 2019) (Bank of Am. Wire Records) (on file in EB-TCD-18-00027781). Stellar Prospects sells “aged insurance leads” to insurance agents and call centers. Stellar Prospects, Aged Health Insurance Leads, [http://www.stellarprospects.com/agedhealthleads\\_17.html](http://www.stellarprospects.com/agedhealthleads_17.html) (last visited Dec. 2, 2020).

<sup>73</sup> Spiller Call Recording, 10.36.101.11-39ed10350a24650b08066bee1f06792b, at 03:30 (directing Mears to keep the call center agents busy with incoming calls); Spiller Call Recording, 10.36.101.11-949cdf00a24650b549dd67859253002, at 09:01 (“I’m really hoping that you can drive more volume to the rooms

(continued....)

dialer, managed the operations of the dialer—including the input of inaccurate caller ID information—and in many cases decided whom to call.

18. We note, too, that Rising Eagle had many clients besides Health Advisors, and Rising Eagle does not deny that it knowingly spoofed those calls. Health Advisors and Rising Eagle’s other clients may also be liable for their role in the unlawful spoofing, but that does not absolve Rising Eagle for its actions in causing the display of inaccurate caller ID information.

#### **B. Rising Eagle Acted with Wrongful Intent**

19. Rising Eagle unlawfully spoofed robocalls with the intent to cause defraud, cause harm, and wrongfully obtain something of value. Courts have recognized that direct evidence of specific intent is rarely available.<sup>74</sup> Therefore, it is reasonable and often necessary to look at a party’s actions to determine intent regarding a wrongful action.<sup>75</sup> Rising Eagle again argues that it was “under the total control” of Health Advisors.<sup>76</sup> But our review of pertinent evidence counters that assertion. *First*, the Commission has held that the fact that a client asked to use spoofed caller ID information does not vitiate a finding of unlawful intent.<sup>77</sup> *Second*, Rising Eagle is in the business of providing customer leads to health insurers.<sup>78</sup> It markets itself as a company providing services “combin[ing] cutting edge technology with premium lead generation to offer the best ‘lead to conversion’ experience for your sales organization. Our marketing team will make the dials to qualify and transfer the prospects you need to reach your production goals.”<sup>79</sup> On multiple occasions, Rising Eagle, on its own initiative, purchased hundreds of thousands of leads from lead generation companies unaffiliated with Health Advisors.<sup>80</sup> This

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that need it.”); Spiller Call Recording, 10.36.101.13-9ebc86d90a24650d4fb8896fad1a33c0, at 09:26 (“Let’s turn up the heat.”); Spiller Call Recording, 10.36.101.13-5988bf5d0a24650d44b9d37bd41479ba, at 09:56 (managing call volume).

<sup>74</sup> *United States v. Dearing*, 504 F.3d 897, 901 (9th Cir. 2007); *United States v. Marabelles*, 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)).

<sup>75</sup> *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) (“[I]ntent to defraud is ordinarily proved by circumstantial evidence.”); *see also United States v. Sullivan*, 522 F.3d 967, 974 (9th Cir. 2008) (“[T]he scheme itself may be probative circumstantial evidence of an intent to defraud.”); *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.”); *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) (“[I]ntent . . . 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).

<sup>76</sup> *See Spiller Aff.* at 5 (“At this point, Rising Eagle essentially operated under the total control of Mr. Shapiro and Health Advisors, with Mr. Shapiro sending orders to Mr. Mears multiple times per day with instructions on how to conduct Health Advisors’ calling operations.”); Notice Response at 9.

<sup>77</sup> *Moser Forfeiture Order*, 35 FCC Rcd at 13430, para. 33; *see also Dialing Services, LLC*, Forfeiture Order, 32 FCC Rcd 6192, 6199-200, para. 21 (2017) (finding that both the telemarketer and its client can be found liable for TCPA violations).

<sup>78</sup> RPG Leads, *Health Insurance Leads*, <https://rpgleads.com/health-insurance-leads/> (last visited Dec. 2, 2020).

<sup>79</sup> RPG Leads, *Live Transfer Leads*, <https://rpgleads.com/live-transfer-leads/> (last visited Dec. 2, 2020).

is more than acting as “merely a consultant.”<sup>81</sup> The conversations between Spiller and Mears corroborate the other evidence that Rising Eagle had significant involvement in and control over the calls. Spiller frequently instructed Mears how to manage call volume to improve sales performance.<sup>82</sup> For example, in one conversation with Mears, Spiller said, “go ahead and run the dialer kinda high this morning so you ... keep everyone on the phone.”<sup>83</sup> *Third*, Rising Eagle had multiple clients in addition to Health Advisors.<sup>84</sup> Rising Eagle’s response alleges that Rising Eagle was under the “total control” of Health Advisors,<sup>85</sup> but does not allege that it was under the control of its other clients. Moreover, Rising Eagle is responsible for its actions on behalf of Health Advisors and its other clients. Thus, we conclude that Rising Eagle was an active participant in the robocalls.

### 1. Rising Eagle Intended to Defraud Call Recipients

20. Rising Eagle placed spoofed robocalls with the intent to defraud call recipients into believing that Rising Eagle and its clients were offering health insurance policies from well-known companies such as Blue Cross Blue Shield and Cigna. The Truth in Caller ID Act and the Commission’s rules prohibit knowingly displaying misleading or inaccurate caller ID information with the intent to defraud.<sup>86</sup> The Commission has previously defined a fraudulent scheme as “a plan to deceive persons as to the substantial identity of the things they are to receive in exchange.”<sup>87</sup> Similarly, common law fraud consists of the following elements: “(1) a false representation (2) in reference to a material fact (3) made with knowledge of its falsity (4) and with the intent to deceive . . . .”<sup>88</sup> The wrongdoer must know that the representation was false or have asserted the representation without knowledge of its truth.<sup>89</sup> The factual false representation is material “if it would likely affect the conduct of a reasonable person concerning the transaction.”<sup>90</sup> Intent can be inferred from the totality of the circumstances rather than direct evidence.<sup>91</sup>

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<sup>80</sup> See Bank of Am., Rising Eagle Global Payments Reporting U.S. Wire (Sep. 4, 2019) (Bank of Am. Wire Records) (on file in EB-TCD-18-00027781). Stellar Prospects sells “aged insurance leads” to insurance agents and call centers. Stellar Prospects, Aged Health Insurance Leads, [http://www.stellarprospects.com/agedhealthleads\\_17.html](http://www.stellarprospects.com/agedhealthleads_17.html) (last visited Dec. 2, 2020).

<sup>81</sup> Notice Response at 9.

<sup>82</sup> See Spiller Call Recording, 10.36.101.11-39ed10350a24650b08066bee1f06792b, at 03:30 (directing Mears to keep the call center agents busy with incoming calls); Spiller Call Recording, 10.36.101.11-949cdf00a24650b549dd67859253002, at 09:01 (“I’m really hoping that you can drive more volume to the rooms that need it.”); Spiller Call Recording, 10.36.101.13-9ebc86d90a24650d4fb8896fad1a33c0, at 09:26 (“Let’s turn up the heat.”); Spiller Call Recording, 10.36.101.13-5988bf5d0a24650d44b9d37bd41479ba, at 09:56 (managing call volume); Spiller Call Recording, 10.36.101.11-9a3000460a24650b2512cb1df7f9682c, at 02:30 (instructing Mears to not send calls to certain clients).

<sup>83</sup> Spiller Call Recording, 10.36.101.13-4e91201b0a24650d07c7da55540a1915, at 12:04.

<sup>84</sup> See Bank of Am. Wire Records (showing payments from multiple clients); see also Spiller Call Recording, 10.36.101.13-10.36.101.11-949cdf00a24650b549dd67859253002, at 12:30 (discussing Rising Eagle’s clients: “Scott” [Health Advisors], “Roberto,” “Room 2,” “Justin,” and “Eric”).

<sup>85</sup> Spiller Aff. at 5.

<sup>86</sup> 47 U.S.C. § 227(e); 47 CFR § 64.1604.

<sup>87</sup> *Network Services Solutions, LLC, Scott Madison*, Notice of Apparent Liability for Forfeiture and Order, 31 FCC Rcd 12238, 12276, para. 112 (2016) (*Network Services Solutions Notice*).

<sup>88</sup> *Pence v. United States*, 316 U.S. 332, 338 (1942).

<sup>89</sup> *Johnson & Higgins of Texas, Inc. v. Kenneco Energy, Inc.*, 962 S.W.2d 507, 527 (Tex. 1998).

<sup>90</sup> *In re Primera Energy, LLC*, 579 B.R. 75, 145 (Bankr. W.D. Tex. 2017) (quoting *Coldwell Banker Whiteside Assocs. v. Ryan Equity Partners, Ltd.*, 181 S.W.3d 879, 888 (Tex. App. 2006)).

<sup>91</sup> See *United States v. Alston*, 609 F.2d 531, 538 (D.C. Cir. 1979), *cert. denied*, 445 U.S. 918 (1980).

Although common law fraud also requires actual and justified reliance by the victim,<sup>92</sup> the Truth in Caller ID Act requires only a showing of *intent* to defraud rather than actual reliance and harm. We find that Rising Eagle acted with intent to defraud by planning and executing a telemarketing campaign in which it deceived call recipients with respect to the health insurance products being offered.

21. *Rising Eagle made false representations.* Rising Eagle included material, affirmative misrepresentations in its spoofed, prerecorded voice message calls in order to direct consumers toward Rising Eagle's clients. These misrepresentations created a false impression that the robocalls were made by, or were otherwise affiliated with, specific health insurance companies.<sup>93</sup> Rising Eagle falsely represented that the called party was receiving an offer to purchase health insurance from a well-known company such as Blue Cross Blue Shield and Cigna: "Policies have all been reduced nationwide such as Cigna, Blue Cross, Aetna, and United[,] just a quick phone call away."<sup>94</sup> We have affidavits from Blue Cross Blue Shield and Cigna that they did not authorize Rising Eagle to sell their insurance policies, and Rising Eagle does not allege that it was authorized to represent any of the other well-known insurance companies.<sup>95</sup>

22. *The misrepresentations were material.* The Commission has held that referring to name-brand companies can be critical to inducing consumers to respond to the robocall and listen to a sales pitch.<sup>96</sup> Rising Eagle made a material misrepresentation by falsely implying that the products were from name-brand insurers. Rising Eagle also materially misled consumers as to the type of insurance products being offered. Rising Eagle contends that these insurance policies are no different than the plans offered by the companies mentioned in the robocalls.<sup>97</sup> The facts are to the contrary: Rising Eagle's clients offered only short-term, limited duration health insurance policies.<sup>98</sup> These plans typically feature less

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<sup>92</sup> *Grant Thornton LLP v. Prospect High Income Fund*, 314 S.W.3d 913, 923 (Tex. 2010). See also *Pence v. United States*, 316 U.S. 332, 338 (1942); *Zorrilla v. Aypco Constr. II, LLC*, 469 S.W.3d 143, 153 (Tex. 2015) ("[A] material misrepresentation, which was false, and which was either known to be false when made or was asserted without knowledge of its truth, which was intended to be acted upon, which was relied upon, and which caused injury.").

<sup>93</sup> *Rising Eagle Notice*, 35 FCC Rcd at 5956, para. 22.

<sup>94</sup> *Nomorobo, (678) 261-1817 Is a Health Insurance Scam* (Feb. 6, 2019), <https://www.nomorobo.com/lookup/678-261-1817>.

<sup>95</sup> *Blue Cross Aff.* at 1-2; *Cigna Aff.* at 2 ("John Caldwell Spiller (NPN 1109422) does not appear to have ever been appointed by Cigna.").

<sup>96</sup> The Commission encountered a nearly identical scheme in *Abramovich* where the spoofer misappropriated names of well-known companies to induce consumers to listen to the sales pitch. *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4668, para. 15 (2017) (*Abramovich Forfeiture Order*).

<sup>97</sup> Notice Response at 10-11.

<sup>98</sup> Neither Cigna nor Blue Cross Blue Shield authorized Rising Eagle's largest client, Health Advisors, to sell their products. *Cigna Aff.* at 1-2; *Blue Cross Aff.* at 1. Michael T. Smith, Jr., P112070, Licensee Detail, Florida Department of Financial Services, <https://licenseesearch.fldfs.com/Licensee/933080> (last visited Dec. 2, 2020); Zachary Cox, W413251, Licensee Detail, Florida Department of Financial Services, <https://licenseesearch.fldfs.com/Licensee/1661313> (last visited Dec. 2, 2020). Instead, Health Advisors sold health insurance through Health Insurance Innovations, Inc. (HII), an online distributor of short-term, limited-duration health plans. Health Insurance Innovations, Inc., Annual Report (Form 10-K) (Mar. 14, 2019) (HII 10-K); see also Zeke Faux, Polly Mosendz, and John Tozzi, *Health Insurance That Doesn't Cover the Bills Has Flooded the Market Under Trump*, Bloomberg Businessweek (Sept. 17, 2019), <https://www.bloomberg.com/news/features/2019-09-17/under-trump-health-insurance-with-less-coverage-floods-market> (noting HII's central role in the short-term, limited-duration health market). HII admits in filings with the Securities Exchange Commission that its third-party distributors engage in telemarketing to sell HII products. See HII 10-K. In some cases, HII provides advanced commission arrangements to its third-party distributors to assist with the cost of lead acquisition. *Id.* Zachary Cox (continued....)

coverage than plans that consumers receive through their employers or on the individual market.<sup>99</sup> For example, Cigna does not offer short-term, limited duration health insurance policies at all.<sup>100</sup> A consumer who listened to Rising Eagle's message and wanted to purchase a Cigna policy would not have been able to do so from Rising Eagle's clients. The relevant inquiry is whether the offered plans were materially different from what the consumer expected after listening to the robocall, and we find that they were.<sup>101</sup>

23. *Rising Eagle intended to deceive consumers.* Rising Eagle took an active role in using spoofed caller ID to leave messages that falsely conveyed that consumers who responded to the messages could purchase products from name-brand insurance companies. Rising Eagle does not dispute that the products were falsely represented. In addition to arguing that the misrepresentations were not material, Rising Eagle argues that (1) Rising Eagle was merely doing the bidding of Health Advisors by transmitting the messages, and (2) Rising Eagle did not know that the messages were false at the time of the calls.<sup>102</sup> We find that Rising Eagle may not escape liability by claiming that it was merely a conduit for Health Advisors. *First*, Rising Eagle admits that it was involved in crafting the content of the prerecorded messages that contained false statements suggesting the calls were associated with insurance companies such as Blue Cross Blue Shield or Cigna.<sup>103</sup> *Second*, we also find unpersuasive Rising Eagle's claim that it was not aware of the misrepresentations at the time it made the calls. Direct knowledge is not required to show fraud.<sup>104</sup> "One who acts with reckless indifference to whether a representation is true or false is chargeable with knowledge of its falsity."<sup>105</sup> Even if we accepted Rising Eagle's claim that it was unaware of the content, the Company sent more than a billion robocalls without any consideration of the veracity of the messages. This shows a reckless indifference to the truth. Rising Eagle participated in crafting the messages as well as deciding whom to call and the frequency of the calls. In light of the Company's participation in calls, we find that, even if Rising Eagle was unaware that the messages were false, it acted with reckless indifference to the truth of its statements, and thus may be deemed to have been aware of the falsity. *Third*, Rising Eagle made hundreds of millions of calls on behalf of other clients. Rising Eagle offers no defense for the misrepresentations in messages it made for its other clients. We find convincing evidence Rising Eagle intended to deceive consumers through its spoofed messages.

24. *Caller ID spoofing furthered the scheme.* We conclude that the spoofing was integral to the fraud; consumers were more likely to answer the phone and listen to the fraudulent sales pitch for two

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entered such a financing arrangement with HII on January 8, 2018. *See* Doc. No. 201803963148, Florida Secured Transaction Registry (Jan. 25, 2018).

<sup>99</sup> Centers for Medicare & Medicaid Services, Fact Sheet, Short-Term, Limited-Duration Insurance Final Rule (Aug. 1, 2018), <https://www.cms.gov/newsroom/fact-sheets/short-term-limited-duration-insurance-final-rule>.

<sup>100</sup> Cigna Aff. at 2.

<sup>101</sup> *See United States v. Brien*, 617 F.2d 299, 307 (1st Cir. 1980) ("The essence of a scheme is a plan to deceive persons as to the substantial identity of the things they are to receive in exchange.").

<sup>102</sup> Notice Response at 10-11.

<sup>103</sup> Rising Eagle admits to some degree of participation in the creation of the messages. Notice Response at 10. A review of the call recordings between Spiller and Mears reveals that Rising Eagle's role was much more substantial. *See* Spiller Call Recording, 10.36.101.13-5988bf5d0a24650d44b9d37bd41479ba, at 03:55 (showing Rising Eagle's involvement in crafting the messages). Moreover, one of those conversations suggests that Spiller and Mears were aware that Health Advisors notified the Company that it was "not allowed" to include the names of the well-known insurance companies. Spiller Call Recording, 10.36.101.25-c44d35790a2465192dcc48922a136847, at 03:27.

<sup>104</sup> *United States v. Beecroft*, 608 F.2d 753, 757 (9th Cir. 1979); *see also United States v. Frick*, 588 F.2d 531, 536 (5th Cir. 1979); *Johnson & Higgins of Texas, Inc. v. Kenneco Energy, Inc.*, 962 S.W.2d at 527. Moreover, there were enough complaints that Rising Eagle should have done some due diligence about the veracity of the messages.

<sup>105</sup> *Beecroft*, 608 F.2d at 757.

reasons. *First*, because the calls were spoofed, consumers could not accurately identify the caller and decide not to answer the phone. *Second*, because Rising Eagle relied on a large array of spoofed numbers, consumers could not readily correlate the caller ID information to Rising Eagle or choose to ignore or block the future calls from the Company. Thus, Rising Eagle engaged in spoofing in furtherance of the fraudulent scheme. We therefore conclude that Rising Eagle altered caller ID information with the intent to defraud in violation of the Truth in Caller ID Act and our rules.

## 2. Rising Eagle Intended to Cause Harm

25. The Commission has said that intent to harm under the Truth in Caller ID Act can be demonstrated when the harms are “consequences which are desired” or “substantially certain.”<sup>106</sup> Furthermore, the Commission has found that when illegal robocalls are combined with spoofing, there is evidence of intent to cause harm.<sup>107</sup> Under the Truth in Caller ID Act, “harm” includes emotional, physical, and financial harm.<sup>108</sup> Rising Eagle argues that the harms that the Commission identified in the *Notice* were not “consequences which are desired” or “substantially certain.”<sup>109</sup> We find that Rising Eagle knew with substantial certainty that making large volumes of spoofed robocalls would adversely impact the consumers who were called, the health insurance companies named in the calls, the subscribers of the spoofed numbers, and telephone carriers.

26. *Intent to Harm Consumers.* Rising Eagle intended to harm consumers by placing calls without prior express consent and failing to include the required identification disclosures for prerecorded voice message calls. The TCPA prohibits transmitting prerecorded or artificial voice messages to wireless phone numbers unless the called party has given prior express consent, or the call is for an emergency purpose.<sup>110</sup> The TCPA also prohibits telemarketing calls without consent to residential numbers listed on the National Do Not Call Registry.<sup>111</sup> Rising Eagle violated both of these rules. In fact, Rising Eagle told the Traceback Group that the Company knew it was potentially calling numbers on the National Do Not Call Registry because it intentionally disabled its ability to identify numbers listed on the registry.<sup>112</sup> Rising Eagle also failed to include the identifying information that the TCPA and our rules mandate.<sup>113</sup> In *Roesel*, the Commission stated that “when spoofing is done in conjunction with an illegal robocalling campaign (itself a harmful practice), it indicates an intent to cause harm.”<sup>114</sup> Specifically, “the placement of illegal robocalls causes consumers significant harm, including that such calls are a

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<sup>106</sup> *Affordable Enterprises of Arizona, LLC*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 9233, 9242-43, para. 26 & n.70 (2018) (*Affordable Notice*) (citing Restatement (Second) of Torts § 8A, comment b, p. 15 (“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.”). Cf. *Burr v. Adam Eidemiller, Inc.*, 386 Pa. 416 (1956) (intentional invasion can occur when the actor knows that it is substantially certain to result from his conduct); *Garratt v. Dailey*, 13 Wash. 2d 197 (1955) (finding defendant committed an intentional tort when he moved a chair if he knew with “substantial certainty” that the plaintiff was about to sit down).

<sup>107</sup> *Roesel Forfeiture Order*, 33 FCC Rcd at 9217-19, paras. 38-40. See also *Abramovich Notice*, 32 FCC Rcd at 5423, para. 16.

<sup>108</sup> *Truth in Caller ID Order*, 26 FCC Rcd at 9122, para. 22.

<sup>109</sup> Notice Response at 11.

<sup>110</sup> 47 U.S.C. § 227(b)(1)(A)(iii); 47 CFR § 64.1200(a)(1).

<sup>111</sup> 47 U.S.C. § 227(c); 47 CFR § 64.1200(c)(2).

<sup>112</sup> Frankel Aff. at 1-2.

<sup>113</sup> 47 U.S.C. § 227(d)(3); 47 CFR § 64.1200(b).

<sup>114</sup> See *Roesel Forfeiture Order*, 33 FCC Rcd at 9218-19, para. 40; *Abramovich Forfeiture Order*, 33 FCC Rcd at 4671, para. 27; *Abramovich Notice of Apparent Liability*, 32 FCC Rcd at 5423, para. 16.

nuisance and [an] invasion of privacy.”<sup>115</sup> Spoofing exacerbates the harm from TCPA violations. It makes it impossible for consumers to accurately screen illegal calls and may be effective in persuading National Do Not Call Registry listed consumers to answer the phone.

27. Rising Eagle made at least 86,864,456 calls to wireless numbers and 56,635,935 calls to numbers on the National Do Not Call Registry using a prerecorded voice message without consent.<sup>116</sup> Rising Eagle argues that there was no intent to harm consumers because Health Advisors represented that the consumers had given prior express consent to be called.<sup>117</sup> Rising Eagle did not, however, provide any empirical evidence of consent to buttress this assertion. Nor did Rising Eagle allege that its other clients had obtained consent. *First*, even if Rising Eagle reasonably believed that Health Advisors had obtained consent, the Company does not assert that it had consent for the calls made on behalf of clients other than Health Advisors.<sup>118</sup> *Second*, the Commission has said that a caller remains liable for TCPA violations even if it relied on a third party’s assertion that the consumer consented to the call.<sup>119</sup> Finally, Commission staff spoke with 52 consumers called by Rising Eagle and none recalled giving Rising Eagle or Health Advisors permission to call them on their wireless phones. In fact, 41 of these consumers affirmatively said they did not give consent.<sup>120</sup> Thus, we conclude that Rising Eagle did not have consent for its calls, and we reiterate that spoofing in conjunction with such an unlawful robocalling campaign is an indicator of intent to harm.

28. Rising Eagle further intended to harm consumers by not including required identification information in its prerecorded voice message calls. Section 227(d)(3)(A) of the Act and section 64.1200(b) of the Commission’s rules require that all artificial or prerecorded voice message calls clearly state the identity of the business, individual, or other entity initiating the call at the beginning of the message.<sup>121</sup> The prerecorded voice message calls must also, “during or after the message, state clearly the telephone number or address of [the] business, other entity, or individual . . . .”<sup>122</sup> The Commission has

<sup>115</sup> See *Roesel Forfeiture Order*, 33 FCC Rcd at 9218, para. 40.

<sup>116</sup> Call Detail Records. Calls to wireless numbers and National Do Not Call Registry listed numbers may overlap as consumers may register wireless numbers that are used for residential purposes. *2003 TCPA Order*, 18 FCC Rcd at 14039, para. 36.

<sup>117</sup> Notice Response at 12. Rising Eagle claims that Health Advisors operated a website, *healthcarenow.online*, which was used to obtain consumer leads. See *Spiller Aff.* at 2.

<sup>118</sup> Rising Eagle’s response only acknowledges calls made on behalf of Health Advrsors. Notice Response at 8.

<sup>119</sup> *GroupMe, Inc./Skype Communications S.A.R.L. Petition for Expedited Declaratory Ruling*, CG Docket No. 02-278, 29 FCC Rcd 3442, 3447, para. 14 (2014) (*GroupMe Declaratory Ruling*) (“[W]e confirm that a caller remains liable for TCPA violations when it relies upon the assertion of an intermediary that the consumer has given such prior express consent. We emphasize that the intermediary may only convey consent that has actually been provided by the consumer; the intermediary cannot provide consent on behalf of the consumer.”); see also *id.* at n.36 (“In the context of the conveyance of consent between the intermediary obtaining consent and the autodialer user, we expect that the intermediary and autodialer user will already have some established relationship, contractual or otherwise, which lays out the responsibilities of each/ provides assurance that actual consent has been obtained, and, if consent was not actually obtained, provides the autodialer user legal recourse against the party who falsely claimed that consent had been given. To be clear, the existence or scope of recourse between these parties in no way affects the liability of the autodialer user to the consumer.”).

<sup>120</sup> Declaration of { } (Apr. 8, 2020) (on file in EB-TCD-18-00027781); Declaration of { } (Apr. 6, 2020) (on file in EB-TCD-18-00027781); Declaration of { } (Mar. 12, 2020) (on file in EB-TCD-18-00027781); Declaration of { } (Mar. 10, 2020) (on file in EB-TCD-18-00027781); Declaration of { } (Mar. 9, 2020) (on file in EB-TCD-18-00027781).

<sup>121</sup> 47 U.S.C. § 227(d)(3)(A); 47 CFR § 64.1200(b)(1). The Commission’s rules further require that businesses must use the name under which the entity is registered to conduct business. 47 CFR § 64.1200(b)(1).

<sup>122</sup> 47 U.S.C. § 227(d)(3)(A). See also 47 CFR § 64.1200(b)(2).

recognized that adequate identification information is vital so that consumers can determine the purpose of the call and make a do-not-call request, if desired.<sup>123</sup> However, Rising Eagle failed to identify itself in its prerecorded voice messages calls throughout the violation period.<sup>124</sup> The robocalls did not provide a telephone number or address for Rising Eagle or its clients in any of its messages.<sup>125</sup> Rising Eagle did not refute these findings, set forth in the *Notice*, except to argue that it had no role in the content of the messages.<sup>126</sup> But we reject that argument. *First*, as discussed above, Rising Eagle may not hide behind its clients to evade liability.<sup>127</sup> It had a responsibility to ensure that its calls complied with statutory and regulatory requirements.<sup>128</sup> *Second*, Rising Eagle was not an unwitting transmitter. Evidence reflects that the Company was aware of the call content. And even if the Company had no involvement in the content of the messages, it needed to ensure that the calls met the identification requirements.<sup>129</sup> By using spoofed caller ID to induce consumers to answer the calls, and by willfully violating the TCPA provisions that are intended to protect consumers, we conclude that Rising Eagle intended to harm consumers and make it more difficult to ascertain the identity of the caller.

29. *Intent to Harm to Health Insurance Companies.* It was substantially certain that mentioning the names of the insurance companies when Rising Eagle had no connection to them would cause significant reputational harm to the companies.<sup>130</sup> In *Abramovich*, the Commission concluded that Abramovich’s robocalls, which used the names of well-known travel and hospitality brands, demonstrated an intent to harm, and in fact did harm those companies and the goodwill of their brands.<sup>131</sup> Rising Eagle’s calls followed the Commission’s decision in *Abramovich*. Thus, Rising Eagle may be presumed to have understood not only the consequences of its actions,<sup>132</sup> but the Commission’s view that falsely referencing unaffiliated companies demonstrates an intent to harm those companies.

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<sup>123</sup> See 2003 TCPA Order, 18 FCC Rcd at 14099, para. 144.

<sup>124</sup> YouMail Response; Nomorobo, (678) 261-1817 Is a Health Insurance Scam (Feb. 6, 2019), <https://www.nomorobo.com/lookup/678-261-1817>. Rising Eagle did not add any identifying information until September 12, 2019 after being told by the Traceback Group that its robocalls violated the TCPA. Frankel Affidavit at 4.

<sup>125</sup> See YouMail Response; Nomorobo, (678) 261-1817 Is a Health Insurance Scam (Feb. 6, 2019), <https://www.nomorobo.com/lookup/678-261-1817>. Rising Eagle only added a toll-free number in its robocalls after October 7, 2019 according to statements that Spiller made to the Traceback Group. Frankel Affidavit at 4.

<sup>126</sup> Notice Response at 14.

<sup>127</sup> See *supra* para. 19.

<sup>128</sup> See *GroupMe Declaratory Ruling*, 29 FCC Rcd at 3447, para. 14 (determining that a caller is liable for TCPA violations despite assertions from intermediaries that the called parties had consented to receive the calls).

<sup>129</sup> *Id.*

<sup>130</sup> The robocalls clearly named well-known health insurance companies, resulting in consumers’ attributing the calls those companies. One transcribed call states, “Are you looking for affordable health insurance with benefits from a company you know? Policies have all been reduced nationwide such as Cigna, Blue Cross, Aetna, and United[,] just a quick phone call away. Press 3 to get connected to a licensed agent or press 7 to be added to the Do Not Call list.” See Nomorobo, (678) 261-1817 Is a Health Insurance Scam (Feb. 6, 2019), <https://www.nomorobo.com/lookup/678-261-1817>.

<sup>131</sup> *Abramovich Forfeiture Order*, 33 FCC Rcd at 4668, para. 16.

<sup>132</sup> Restatement (Second) of Torts § 8A, comment b, p. 15 (“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.”). Cf. *Burr v. Adam Eidemiller, Inc.*, 386 Pa. 416 (1956) (intentional invasion can occur when the actor knows that it is substantially certain to result from his conduct); *Garratt v. Dailey*, 13 Wash. 2d 197 (1955) (finding defendant committed an intentional tort when he moved a chair if he knew with “substantial certainty” that the plaintiff was about to sit down).

30. The harm to the insurance companies arises from the spoofed calls. Rising Eagle argues that it never spoke with consumers regarding the sale of insurance policies,<sup>133</sup> but this is of no consequence. In *Abramovich*, the lead generator never spoke with consumers, but the Commission found that Abramovich intended to harm the companies mentioned in his robocalls; in both cases, the lead generators (Abramovich and Rising Eagle) invoked the names of well-known brands to entice consumers to listen to sales pitches.<sup>134</sup> The consumers might reasonably (but erroneously) have believed that the offers were from Blue Cross Blue Shield, Cigna, or other well-known insurers, thereby harming those companies.<sup>135</sup> In fact, as a result of Rising Eagle's incessant calls, consumers mistakenly attributed the calls to one insurance company that later became the subject of litigation.<sup>136</sup> Blue Cross Blue Shield stated:

[The robocalls had] a deleterious impact on the BCBSA brand caused by consumers' misattribution of health care-related robocalls to BCBSA and its member plans. BCBSA and its member plans have been named in a number of class action lawsuits charging BCBSA and its licensees with responsibility for making robocalls . . . BCBSA has also received hundreds of phone calls, emails, Twitter messages, and complaints from aggrieved consumers . . . BCBSA has attempted to inform consumers of the fraudulent nature of these unauthorized robocalls . . . through social media . . . and through our website. Despite our efforts, the robocalls and consumer complaints persist.<sup>137</sup>

Thus, we determine that Rising Eagle's actions demonstrate an intent to harm the health insurance companies mentioned in the calls.

31. *Intent to Harm to Subscribers of Spoofed Numbers and to Numbering Resources.* Our investigation showed that every Rising Eagle caller ID number was either unassigned or assigned to a third party unaffiliated with Rising Eagle or its clients. It was substantially certain that Rising Eagle's unauthorized use of spoofed numbers as part of a massive robocalling campaign would result in unwanted attention to those numbers.<sup>138</sup> Consumers frequently redial the spoofed number to determine who called or to express outrage.<sup>139</sup> A large number of these "call-backs" may even disable the number, as we found in this case.<sup>140</sup>

32. The Commission has held that repeated use of unassigned numbers is a strong indication that the caller has the intent to cause harm.<sup>141</sup> In fact, the Commission made this finding in *Roesel*, before

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<sup>133</sup> Notice Response at 12.

<sup>134</sup> *Abramovich Forfeiture Order*, 33 FCC Rcd at 4668, para. 16.

<sup>135</sup> See e.g., FCC Complaint #3070502 (Feb. 21, 2019). The harm may result from consumer ill-will from being bombarded by unwanted calls. The harm also may result from the misrepresentation that the name-brand insurers were proffering shorter-term, less comprehensive coverage than they in fact offer.

<sup>136</sup> Blue Cross Affidavit at 1-2.

<sup>137</sup> *Id.*

<sup>138</sup> *Rising Eagle Notice*, 35 FCC Rcd at 5958-60, paras. 25-28.

<sup>139</sup> *Affordable Enterprises of Arizona, LLC*, Forfeiture Order, 35 FCC Rcd 12142, 12162, para. 52 (2020) (*Affordable Forfeiture Order*); *Affordable Notice*, 33 FCC Rcd at 9243, para. 28; *Abramovich Notice*, 32 FCC Rcd at 5424, para. 18.

<sup>140</sup> See *Rising Eagle Notice*, 35 FCC Rcd at 5959, para. 26 (describing how callbacks related to Rising Eagle's robocalls disabled some telephone lines belonging to Genworth).

<sup>141</sup> *Affordable Forfeiture Order*, 35 FCC Rcd at para. 52; *Roesel Forfeiture Order*, 33 FCC Rcd at 9215-16, para. 33, n.85; see also *Roesel Notice*, 32 FCC Rcd at 6411, para. 23; *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, 9713, para. 18 (2017) ("Use of an unassigned number provides a strong indication that the calling party is

(continued....)

Rising Eagle made the calls at issue here.<sup>142</sup> Thus Rising Eagle had cause to know that the Commission would interpret its use of unassigned numbers as an intent to harm numbering resources, and we are unpersuaded by the Company's claim that, because it intended only to use unassigned numbers in its spoofed caller ID, it lacked the intent to harm.<sup>143</sup>

33. Rising Eagle argues that it did not intend to cause harm because, "during the relevant period, Health Advisors required the use of only unlisted numbers when making calls."<sup>144</sup> *First*, Rising Eagle may not avoid liability simply by claiming that it was directed by its client to use spoofed caller ID information, or specifically to use unassigned numbers.<sup>145</sup> *Second*, there is no reliable mechanism for an individual to ascertain whether or not a specific number is assigned.<sup>146</sup> A numbering administrator allocates blocks of telephone numbers to service providers, which can then assign those numbers to its customers. The Commission reviewed 60 of the spoofed caller ID numbers, each of which Rising Eagle used to make at least a million calls, and found that each number was allocated to a telephone service provider and was not assigned to Rising Eagle or its clients.<sup>147</sup> Neither Health Advisors nor Rising Eagle would have been able to determine reliably which of those numbers the service providers then assigned to customers. Indeed, the evidence shows that some of Rising Eagle's caller ID numbers were assigned to innocent third parties. Of the 60 spoofed caller IDs, we found that 21 of those numbers were assigned to third parties unaffiliated with Rising Eagle.<sup>148</sup>

34. Although we need not find that the intended harm occurred, in this case, it did. According to Rising Eagle, the calls were all solicited, and thus there were no angry call recipients

(Continued from previous page) \_\_\_\_\_  
spoofing the Caller ID to potentially defraud and harm a voice service subscriber. Such calls are therefore highly likely to be illegal.”)

<sup>142</sup> See *Roesel Forfeiture Order*, 33 FCC Rcd at 9217, paras. 37-38 (finding that Roesel intended to cause harm to the numbers displayed as caller ID, and explaining that among other things Roesel's use of unassigned numbers was evidence of his intent "to protect his own phone number from the same kind of disruption he was imposing on consumers. Further, he had no right to use unassigned numbers.”).

<sup>143</sup> Notice Response at 12-13.

<sup>144</sup> *Id.* at 13. Rising Eagle uses the terms "unlisted" and "unassigned" interchangeably.

<sup>145</sup> See *Moser Forfeiture Order*, 35 FCC Rcd at 13430, para. 33.

<sup>146</sup> See *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, 9718, para. 34 (2017) ("The record clearly shows 'an industry-wide recognition that there is currently no technical solution that allows providers to accurately and promptly identify numbers that have been allocated to a carrier but not yet assigned to a subscriber.'").

<sup>147</sup> { [redacted] } Subpoena Response (Feb. 6, 2020) (on file in EB-TCD-18-00027781); { [redacted] } Subpoena Response (Dec. 16, 2019) (on file in EB-TCD-18-00027781); { [redacted] } Subpoena Response (Dec. 10, 2019) (on file in EB-TCD-18-00027781); { [redacted] } Subpoena Response (Dec. 10, 2019) (on file in EB-TCD-18-00027781); { [redacted] } Subpoena Response (Dec. 9, 2019) (on file in EB-TCD-18-00027781); { [redacted] } Subpoena Response (Dec. 6, 2019) (on file in EB-TCD-18-00027781); { [redacted] } Subpoena Response (Dec. 4, 2019) (on file in EB-TCD-18-00027781); { [redacted] } Subpoena Response (Dec. 4, 2019) (on file in EB-TCD-18-00027781); { [redacted] } Subpoena Response (Dec. 4, 2019) (on file in EB-TCD-18-00027781); { [redacted] } Subpoena Response (Dec. 3, 2019) (on file in EB-TCD-18-00027781); { [redacted] } Subpoena Response (Dec. 2, 2019) (on file in EB-TCD-18-00027781); { [redacted] } Subpoena Response (Nov. 27, 2019) (on file in EB-TCD-18-00027781); { [redacted] } Subpoena Response (Nov. 21, 2019) (on file in EB-TCD-18-00027781); { [redacted] } Subpoena Response (Nov. 21, 2019) (on file in EB-TCD-18-00027781); { [redacted] } Subpoena Response (Nov. 21, 2019) (on file in EB-TCD-18-00027781); { [redacted] } Subpoena Response (Nov. 19, 2019) (on file in EB-TCD-18-00027781); { [redacted] } Subpoena Response (Oct. 18, 2019) (on file in EB-TCD-18-00027781).

<sup>148</sup> See *supra* note 147 (listing responses from voice service providers on number assignment).

inundating the true subscribers of the spoofed numbers with calls expressing their frustration.<sup>149</sup> The evidence shows that subscribers of the spoofed numbers did, in fact, receive angry callbacks from Rising Eagle's victims. For example, Rising Eagle spoofed numbers belonging to Genworth North America Corporation (Genworth) 9,861,464 times.<sup>150</sup> The resulting call-backs from angry consumers overwhelmed Genworth's telephone network, making it unusable for some employees.<sup>151</sup> We conclude that Rising Eagle knew the consequences of its actions with substantial certainty and thus acted with intent to harm the subscribers of the spoofed numbers.

35. *Intent to Harm Service Providers.* Rising Eagle intended to harm the providers that delivered the spoofed robocalls to consumers. In *Abramovich*, the Commission determined that spoofing in conjunction with a large-scale illegal robocalling campaign harms the providers that handle the calls by (1) burdening the providers' networks with illegal calls, and (2) inducing enraged recipients of the illegal robocalls to complain to the providers, thereby adding to the workload of customer service agents, decreasing the perceived value of the service, and increasing providers' costs.<sup>152</sup> Additionally, spoofing robocalls makes it harder for providers to detect those calls and take remedial action.<sup>153</sup> Rising Eagle argues that it had no intent to harm providers because the Commission did not show that any provider was harmed.<sup>154</sup> The Truth in Caller ID Act requires a showing of *intent* to harm rather than actual harm.<sup>155</sup> Thus, we need not prove actual harm. We find ample evidence of an intent to harm. The Commission has held on multiple occasions that large-scale spoofing in conjunction with illegal robocalls demonstrates an intent to harm service providers.<sup>156</sup> The unprecedented scale of Rising Eagle's spoofed robocalling scheme made it even more certain that its actions would have a deleterious impact on providers.<sup>157</sup> Indeed, as a VoIP provider,<sup>158</sup> Rising Eagle is presumptively aware of the costs to providers associated with high volume, short duration calls. It was substantially certain that transmitting a large volume of spoofed robocalls into the national telephone network would burden providers. Notwithstanding Rising Eagle's claim that the calls did not in fact harm providers,<sup>159</sup> the law requires us

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<sup>149</sup> Notice Response at 12 (“[H]ere all numbers that Health Advisors provided were done so with the express representation that the consumers *had* given prior express consent to be called. Accordingly the purported harm—that consumers who had not requested to be called would inundate the owner of the spoofed telephone number with calls expressing anger at receiving unsolicited robocalls—is not present because the calls in this matter had been solicited according to Health Advisors, the initiator of the calls at issue here.”).

<sup>150</sup> *Rising Eagle Notice*, 35 FCC Rcd at 5959, para. 26.

<sup>151</sup> *Id.*

<sup>152</sup> *Abramovich Forfeiture Order*, 33 FCC Rcd at 4671-72, para. 27; *Abramovich Notice*, 32 FCC Rcd at 5424, para. 19.

<sup>153</sup> *Abramovich Forfeiture Order*, 33 FCC Rcd at 4671, para. 27. *See, e.g.*, Frankel Aff. at 2 (“I called Spiller . . . I explained that I was tracing back robocalls offering health insurance. Spiller asked how I got his contact information; he indicated that it was supposed to be private. I told him that I got it from the FCC’s Intermediate Provider Registry.”).

<sup>154</sup> Notice Response at 14-15.

<sup>155</sup> 47 U.S.C. § 227(e).

<sup>156</sup> *See Roesel Forfeiture Order*, 33 FCC Rcd at 9217, para. 37; *Abramovich Forfeiture Order*, 33 FCC Rcd at 4668, para. 17.

<sup>157</sup> The *Notice* cited to information from the Traceback Group that showed its considerable efforts on tracebacks to identify and mitigate the harm caused by Rising Eagle's robocalls. *See Rising Eagle Notice*, 35 FCC Rcd at 5961, para. 33 (citing E-mail from Jessica Thompson, Manager, Policy & Advocacy, USTelecom, to Daniel Stepanicich, Attorney Advisor, FCC Enforcement Bureau (Mar. 17, 2020, 16:09 ET) (on file in EB-TCD-18-00027781)).

<sup>158</sup> FCC Form 499 Filer Database, JSquared Telecom LLC (Apr. 1, 2020), <https://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=833136>.

<sup>159</sup> Notice Response at 14-15.

to evaluate whether there was an *intent* to harm. We find ample evidence that, by making hundreds of millions of unsolicited calls during a four and a half month period, Rising Eagle intended to harm the providers forced to handle its robocall traffic.

### 3. Rising Eagle Intended to Wrongfully Obtain Something of Value

36. We find that Rising Eagle intended to wrongfully obtain something of value in the form of compensation from Health Advisors and a shield from TCPA liability.<sup>160</sup> The evidence demonstrates that Rising Eagle spoofed its calls both to increase the compensation it received for its unlawful telemarketing campaign and to avoid detection. Thus, we conclude that Rising Eagle spoofed calls with the intent to wrongfully obtain something of value.

37. *Compensation for Illegal Calls.* Rising Eagle’s business model involves generating leads for call centers, like Health Advisors, using illegal, and therefore wrongful, robocalls. Bank records show that Health Advisors paid Rising Eagle during the relevant period to place illegal spoofed robocalls.<sup>161</sup> Rising Eagle received commissions from sales its clients made as a result of the spoofed robocalls.<sup>162</sup> Moreover, Rising Eagle admits in its response that Health Advisors paid it to configure the dialer and alter caller ID information.<sup>163</sup> Therefore, we conclude that Rising Eagle knowingly spoofed numbers to wrongfully obtain something of value in the form of financial compensation.

38. *Liability Shield.* Rising Eagle also spoofed caller ID information to avoid detection. The Commission has found that “[a]voidance of culpability is a benefit that qualifies as a ‘thing of value.’”<sup>164</sup> Spoofing using unassigned numbers makes it difficult to identify the caller. Rising Eagle offered the fact that “as part of its efforts to cooperate with the Traceback Group’s investigations . . . [it] actively inserted an identifier in *all* of its messages” to show that it was not attempting to evade liability.<sup>165</sup> However,

<sup>160</sup> Several courts have determined that “a thing of value” can include intangible objections. See *Scott Rhodes Notice*, 35 FCC Rcd at 896, para. 38 n.129 (citing *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. 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 *United States v. Picquet*, 963 F.2d 54, 55-56 (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. 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); *United States v. Draves*, 103 F.3d 1328, 1332 (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. Williams*, 705 F.2d 603, 622-23 (2nd 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”); *United States v. Sheker*, 618 F.2d 607, 609-10 (9th Cir. 1980) (holding that “value” includes anything recognized or appreciated by others).

<sup>161</sup> See Bank of Am. Wire Records (on file in EB-TCD-18-00027781) (revealing that Health Advisors of America paid Rising Eagle Capital Group \$3,219,153 between May 2018 and August 2019).

<sup>162</sup> See Bank of Am. Wire Records (showing client payments to Rising Eagle); see also Spiller Call Recording, 10.36.101.28-2a5907c50a24651c663612cc95c8847b (discussing how Rising Eagle is paid based on the number of sales that their clients make per day).

<sup>163</sup> Notice Response at 5.

<sup>164</sup> *Moser Forfeiture Order*, FCC 20-163, para. 32 n.137; *Affordable Forfeiture Order*, FCC 20-149, para. 54; *Scott Rhodes a.k.a. Scott David Rhodes, Scott D. Rhodes, Scott Platek, Scott P. Platek*, Notice of Apparent Liability, 35 FCC Rcd 882, 896, para. 39 (2020); *Kenneth Moser dba Marketing Support Systems*, Notice of Apparent Liability, 34 FCC Rcd 12753, 12762, para. 26 (2019); *Roesel Forfeiture Order*, 33 FCC Rcd at 9212, para. 22; *Roesel Notice*, 32 FCC Rcd at 6413, para. 27.

<sup>165</sup> Notice Response at 16.

Rising Eagle's remedial efforts took place after it had made the calls at issue in this case and several months after the Traceback Group informed Spiller that Rising Eagle was potentially in violation of federal laws.<sup>166</sup> The Traceback Group had to conduct eight tracebacks to find Spiller's contact information, illustrating how effectively spoofing creates a shield from accountability.<sup>167</sup>

39. Rising Eagle's attempt to evade TCPA liability has an ascertainable dollar value: up to \$20,489 per unlawful call in a forfeiture action brought by the Commission.<sup>168</sup> This is in addition to liabilities arising out of any private actions. If a court finds that a defendant in such a private right of action willfully or knowingly violated the TCPA or its implementing rules, it may be liable for up to \$1,500 per illegal robocall.<sup>169</sup> Spoofing prevents consumers from using the caller ID information to identify the caller, thereby impeding detection and facilitating evasion from legal action; Rising Eagle's prerecorded voice messages offered no name or contact information, which consumers needed to file private rights of action in the form of grievances or lawsuits. Thus, we conclude that Rising Eagle violated the Truth in Caller ID Act with the intent to evade liability for its illegal spoofed robocalls.

**C. Rising Eagle, Spiller, Mears, and Their Affiliated Companies Are Liable for Rising Eagle's Violations of the Truth in Caller ID Act**

40. As explained above, we find that Rising Eagle Capital Group LLC is liable for spoofing caller ID information to facilitate its client's sale of health insurance plans in violation of the Truth in Caller ID Act and the Commission's rules. We also find, however, that it is necessary and appropriate to pierce the corporate veil and hold John C. Spiller and Jakob A. Mears personally liable for their actions as Rising Eagle's officers. In addition, for the reasons discussed below, we find that Spiller, Mears, JSquared Telecom LLC, Only Web Leads LLC, Rising Phoenix Group, Rising Phoenix Holdings, RPG Leads, and Rising Eagle Capital Group – Cayman are jointly and severally liable with Rising Eagle Capital Group LLC.

**1. John Spiller and Jakob Mears Are Personally Liable**

41. We find both John Spiller and Jakob Mears personally liable for orchestrating the unlawful spoofed robocalling scheme described in this *Order*. The Commission may pierce the corporate veil when "reliance on [the] corporate form" would "frustrate our efforts to implement core statutory provisions."<sup>170</sup> The Supreme Court has also found that the "corporate form may be disregarded in the interests of justice where it is used to defeat an overriding public policy."<sup>171</sup> Under federal common

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<sup>166</sup> Rising Eagle's violations subject to this forfeiture order occurred between January 1, 2019 and May 14, 2019. Rising Eagle's remedial actions did not begin until September 10, 2019. Frankel Aff. at 3.

<sup>167</sup> As previously stated, we decline to recognize Rising Eagle's ill-timed "efforts to cooperate with the Traceback Group's investigations," which still fell short of becoming fully compliant with federal laws. For example, the identifier that Rising Eagle added was placed at the end of the recorded message, not at the beginning, as the TCPA requires. An 800 number was not added until Oct 7, 2019. See Frankel Aff. at 4.

<sup>168</sup> See 47 CFR § 1.80. *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 34 FCC Rcd 12824 (EB 2019).

<sup>169</sup> 47 U.S.C. § 227(b)(3).

<sup>170</sup> *Telseven, LCC, Patrick Hines*, Forfeiture Order, 31 FCC Rcd 1629, 1634 (2016); see also *United States Through Small Business Admin. v. Pena*, 731 F.2d 8, 12 (D.C. Cir. 1984) ("Where the statutory purpose could be easily frustrated through the use of separate corporate entities a regulatory commission is entitled to look through corporate entities and treat the separate entities as one for purposes of regulation." (quoting *Capital Tel. Co., Inc. v. FCC*, 498 F.2d 734, 738 & n.10 (D.C. Cir. 1974))); *General Tel. Co. of Southwest v. United States*, 449 F.2d 846, 855 (5th Cir. 1971).

<sup>171</sup> *Bangor Punta Operations, Inc. v. Bangor & A. R. Co.*, 417 U.S. 703, 713 (1974) (refusing to "blindly adhere to the corporate form" when to do so would circumvent federal law).

law,<sup>172</sup> piercing the corporate veil is appropriate under an alter ego theory where, as here, (1) there is a unity of interest and ownership such that “the personalities and assets of the corporation and the individual are indistinct,” and (2) “adherence to the corporate [form would] sanction a fraud, promote injustice, or lead to an evasion of legal obligations.”<sup>173</sup>

**a. Rising Eagle, Spiller, and Mears Possess a Unity of Interest and Ownership**

42. To determine whether there is a unity of interest between Rising Eagle, Spiller, and Mears, we consider the “total dealings of the corporation and the individual.”<sup>174</sup> The factors include, among others: (1) whether the officers of the corporation diverted corporate funds for personal use,<sup>175</sup> (2) whether the officers failed to maintain an arm’s-length relationship among related entities,<sup>176</sup> (3) whether the officers exerted managerial control over the corporation or directed its daily operations,<sup>177</sup> (4) whether the companies have shared ownership,<sup>178</sup> and (5) whether the entities failed to maintain adequate corporate records and legal formalities.<sup>179</sup>

43. *Spiller and Mears Diverted Corporate Funds for Personal Use.* Spiller and Mears both used Rising Eagle’s corporate bank account to make numerous personal expenditures. Based on the

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<sup>172</sup> Federal common law, not state law, applies when the Commission pierces the corporate veil while enforcing a federal statute. *Telseven, LCC Forfeiture Order*, 31 FCC Rcd at 1635 (“As an initial matter, the Commission is enforcing federal law . . . . Therefore, it is appropriate for the Commission to rely on federal common law, which clearly supports the Commission’s decision to pierce the corporate veil.”).

<sup>173</sup> *N.L.R.B. v. Bolivar-Tees, Inc.*, 551 F.3d 722, 728 (8th Cir. 2008) (“We have adopted the following two-prong test as the ‘federal common law standard’ . . . .” (quoting *N.L.R.B. v. Greater Kan. City Roofing*, 2 F.3d 1047, 1052 (2001))); *N.L.R.B. v. West Dixie Enterprises, Inc.*, 190 F.3d 1191, 1194 (11th Cir. 1999) (quoting *White Oak Coal Co.*, 318 N.L.R.B. 732, 735 (1995), *enforced*, 81 F.3d 150 (4th Cir. 1996)).

<sup>174</sup> See *Mancorp, Inc. v. Culpepper*, 802 S.W.2d 226, 228 (Tex. 1990) (“[S]howing [an alter ego relationship] may include evidence of ‘the degree to which corporate formalities have been followed and corporate and individual property have been kept separately, the amount of financial interest, ownership and control the individual maintains over the corporation, and whether the corporation has been used for personal purposes.’” (quoting *Castleberry v. Branscum*, 721 S.W.2d 270, 272 (Tex. 1986))). Alter ego tests vary across state and federal jurisdictions and typically include a non-exhaustive set of factors for consideration, but they tend to include similar factors. See, e.g., *N.L.R.B. v. Bolivar-Tees, Inc.*, 551 F.3d at 728 (citing *White Oak Coal Co.*, 318 N.L.R.B. at 735); *Pearson v. Component Tech. Corp.*, 247 F.3d 471, 484-85 (3d Cir. 2001) (“The Third Circuit alter ego test is fairly typical of the genre. It requires that the court look to the following factors: gross undercapitalization, failure to observe corporate formalities, nonpayment of dividends, insolvency of debtor corporation, siphoning of funds from the debtor corporation by the dominant stockholder, nonfunctioning of officers and directors, absence of corporate records, and whether the corporation is merely a facade for the operations of the dominant stockholder.”); *id.* at 485, n.3 (“The Illinois version considers the failure to maintain records and formalities, commingling of funds, undercapitalization, and one corporation treating the assets of the other as its own.”); *Arnold v. Browne*, 103 Cal.Rptr. 775, 781 (Cal. Ct. App. 1972) (“[Courts should consider] commingling of funds and other assets, failure to segregate funds of the separate entities, and the unauthorized diversion of corporate funds or assets to other than corporate uses; [and] the treatment by an individual of the assets of the corporation as his own . . . .”).

<sup>175</sup> See *N.L.R.B. v. Bolivar-Tees, Inc.*, 551 F.3d at 728; *N.L.R.B. v. West Dixie Enterprises, Inc.*, 190 F.3d at 1194.

<sup>176</sup> See, e.g., *N.L.R.B. v. Bolivar-Tees, Inc.*, 551 F.3d at 728; *Pearson v. Component Tech. Corp.*, 247 F.3d at 484-85; *Van Dorn Co. v. Future Chem. & Oil Corp.*, 753 F.2d 565, 570 (7th Cir. 1985).

<sup>177</sup> See *N.L.R.B. v. Bolivar-Tees, Inc.*, 551 F.3d at 724, 728-29; *N.L.R.B. v. West Dixie Enterprises, Inc.*, 190 F.3d at 1192.

<sup>178</sup> See, e.g., *N.L.R.B. v. Bolivar-Tees, Inc.*, 551 F.3d at 728; *N.L.R.B. v. West Dixie Enterprises, Inc.*, 190 F.3d at 1194; *Mancorp, Inc. v. Culpepper*, 802 S.W.2d at 228.

<sup>179</sup> See *N.L.R.B. v. Bolivar-Tees, Inc.*, 551 F.3d at 728; *N.L.R.B. v. West Dixie Enterprises, Inc.*, 190 F.3d at 1194; *Mancorp, Inc. v. Culpepper*, 802 S.W.2d at 228.

Commission's examination of banking records, such expenditures included more than \$38,000 in civil settlements and criminal defense fees for litigation unrelated to the operations of Rising Eagle; more than \$125,000 in gifts to Spiller's girlfriend, including a trip to Mexico and a course on stock trading; thousands of dollars for personal video visits from Spiller's girlfriend while he was incarcerated; and many thousands of dollars in gifts for Spiller's and Mears's family members and friends.<sup>180</sup> Between March 14, 2019 and May 20, 2019, Spiller used funds from a business PayPal account to make 73 separate in-app purchases of digital "gems" (a form of in-game currency) from his mobile device, spending a total of approximately \$4,770.<sup>181</sup> Spiller also purchased watches, jewelry, furniture, guided meditations, hundreds of comic books, an online dating subscription, pet supplies, automobile accessories, and a breathalyzer disguise.<sup>182</sup> Although Rising Eagle disputes that it disregarded the corporate form and argues that it merely covered housing and certain living expenses of its officers and employees, the evidence shows that the Company paid for an employee's mother's stay in a residential rehabilitation facility. Rising Eagle does not dispute our investigative findings or explain why these expenditures were business expenses.<sup>183</sup>

44. *Rising Eagle and Its Related Entities Failed to Maintain an Arm's-Length Relationship.* Courts have found that piercing may be appropriate where owners fail to segregate the operations and assets of allegedly separate entities.<sup>184</sup> Rising Eagle's corporate bank account funded the expenses of Spiller's and Mears's other business endeavors, including JSquared Telecom and Rising Phoenix Group.<sup>185</sup> Spiller and Mears used funds from Rising Eagle's account 117 times, for a total of more than \$1,118,461, between August 2018 and May 2019 to cover Rising Phoenix Group's expenses.<sup>186</sup> Spiller would also frequently use his businesses' names and his personal name interchangeably in transactions with business associates. For example, Rising Eagle made numerous payments to communications service providers with instructions to use the funds for "JSquared Telecom Rising Eagle Capital G[roup]" or "JSquared Telecom or Rising Eagle Cap[ital] Pop Services" or "Rising Phoenix Group John Spiller" or "Rising Eagle Capital Group or John Spiller," which implies that these are not distinct legal entities separate from one another.<sup>187</sup>

45. *Rising Eagle and the Other Named Business Entities Share Identical Equitable Ownership.* Spiller and Mears, either individually or through Rising Eagle, own every company named in the *Notice* and this *Order*. Courts have found that the nature of an entity's ownership may justify piercing

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<sup>180</sup> See Bank of Am. Wire Records; see also Cashier's Check No. 1646710735 from Rising Eagle Capital Group to Margarita Casanova (June 15, 2019) (on file in EB-TCD-18-00027781). Mears initiated all non-recurring payments from Rising Eagle's corporate bank account between November 27, 2018 and March 25, 2019.

<sup>181</sup> 2019 PayPal Transactions. While Spiller spent \$4,770 during the time period of our investigation, the relevant records show that Spiller spent at least \$30,000 on mobile gaming applications from Rising Eagle's PayPal account between January 2018 and September 2019. *Id.*

<sup>182</sup> See *id.*; PayPal, Global Investigations Report for Dates May 1, 2018 – Dec. 30, 2018 (Sep. 29, 2019) (2018 PayPal Transactions) (on file in EB-TCD-18-00027781). Only Spiller, not Mears, apparently diverted funds from the business PayPal account. However, both Spiller and Mears frequently diverted funds from Rising Eagle's corporate bank account for personal use.

<sup>183</sup> See *Rising Eagle Notice*, 35 FCC Rcd at 5965, para. 43 n.134. Courts have found that payment of an officer's living expenses directly from corporate funds is indicative of an inappropriate diversion of assets for personal use. *N.L.R.B. v. West Dixie Enterprises, Inc.*, 190 F.3d at 1192, 1194.

<sup>184</sup> See, e.g., *N.L.R.B. v. Bolivar-Tees, Inc.*, 551 F.3d at 728; *Pearson v. Component Tech. Corp.*, 247 F.3d at 484-85; *Van Dorn Co. v. Future Chem. & Oil Corp.*, 753 F.2d 565, 570 (7th Cir.1985); *Arnold v. Browne*, 103 Cal.Rptr. at 781.

<sup>185</sup> See Bank of Am. Wire Records.

<sup>186</sup> See *id.*

<sup>187</sup> See *id.*

the corporate veil.<sup>188</sup> In this case, Spiller served as founder, managing member, and director of Rising Eagle Capital Group, while Mears served as director, managing member, and agent for service of legal process on the company.<sup>189</sup> Spiller and Mears served as the Company's only two directors and officers.<sup>190</sup> In turn, Rising Eagle served as the sole manager of JSquared, with Spiller listed as the company's registered agent.<sup>191</sup> When JSquared substituted Rising Eagle as its manager for the newly-formed Rising Eagle Capital Group – Cayman, Mears filed the paperwork.<sup>192</sup> When Rising Eagle's officers conducted business transactions for JSquared, they did so through Rising Eagle's PayPal account and corporate bank account.<sup>193</sup> When Rising Eagle's officers made payments to voice service providers, they used Rising Eagle's and JSquared's names interchangeably.<sup>194</sup> When Rising Eagle made payments to R Squared, it frequently did so with instructions that the payments were from Rising Phoenix Group,<sup>195</sup> an entity with no corporate filings that does not exist apart from the person of Spiller. Spiller and Mears formed a large number of businesses and made Rising Eagle the owner of many of them.<sup>196</sup> Lastly, Spiller and Rising Eagle share the same Houston address, which, according to Texas property records, is a single-family residence owned by Spiller's girlfriend.<sup>197</sup>

46. *Spiller and Mears Exerted Managerial Control Over the Unlawful Robocalling Campaign.* When determining whether a corporation and its officers failed to maintain their separate identities, courts may also consider the officers' degree of control over the actions of the corporation.<sup>198</sup>

<sup>188</sup> See, e.g., *N.L.R.B. v. Bolivar-Tees, Inc.*, 551 F.3d at 728; *Mancorp, Inc. v. Culpepper*, 802 S.W.2d at 228; *White Oak Coal Co.*, 318 N.L.R.B. 732, 735 (1995).

<sup>189</sup> See Rising Eagle Capital Group LLC, Certificate of Formation, Office of the Sec'y of State of Tex. (Apr. 9, 2014); Rising Eagle Capital Group LLC, Certificate of Amendment, Office of the Sec'y of State of Tex. (June 1, 2018) (adding Jakob Mears as a member and director); Rising Eagle Capital Group LLC, Public Information Report, Office of the Sec'y of State of Tex. (2018).

<sup>190</sup> Rising Eagle Capital Group LLC, Certificate of Amendment, Office of the Sec'y of State of Tex. (June 1, 2018).

<sup>191</sup> JSquared Telecom LLC, Certificate of Formation, Office of the Sec'y of State of Tex. (Jan. 30, 2019).

<sup>192</sup> JSquared Telecom LLC, Certificate of Amendment, Office of the Sec'y of State of Tex. (Jan. 13, 2020).

<sup>193</sup> See Bank of Am. Wire Records; 2019 PayPal Transactions; 2018 PayPal Transactions.

<sup>194</sup> See Bank of Am. Wire Records; see also 2019 PayPal Transactions; 2018 PayPal Transactions.

<sup>195</sup> See Bank of Am. Wire Records.

<sup>196</sup> See *infra* note 211211 (providing corporate filings for a number of entities formed by Spiller and Mears); see also Spiller Call Recording, 10.36.101.23-75f53deb0a246517782d5c8516f266e5, at 14:55 ("Rising Eagle Capital Group is going to own . . . both of those companies. . . . And that's how we avoid taxes my friend. That's how we avoid taxes.").

<sup>197</sup> Compare Real Property Records, Account No. 1263930010025, Harris Cty. Appraisal Dist. (providing ownership and property information for { [redacted] }), with Rising Eagle Capital Group LLC, Statement of Change of Registered Office/Agent, Office of the Sec'y of State of Tex. (June 10, 2019) (showing that the personal address of Spiller's girlfriend is also the business address of Rising Eagle Capital Group LLC). Though not evidence of a unity of interest on its own, maintaining an identical corporate and personal address may provide evidence in favor of piercing the corporate veil when considered in conjunction with other factors. See *Roesel Forfeiture Order*, 33 FCC Rcd at 9221, paras. 45-46.

<sup>198</sup> *White Oak Coal Co.*, 318 N.L.R.B. 732, 734 n.17, 735 (1995) ("[The Deals] carefree use of assets and the various positions of control they hold in White Oak, Paroki, and J.A.P., including the hands-on supervision of the operations of White Oak, of which J.A.P. is but an appendage, and Paroki are enough to show the primary operators and beneficiaries of all these organizations are Jerry and Arlene Deel who are in fact the alter egos of White Oak, J.A.P., and Paroki, and controlled or operated these entities for their personal benefits."); *Labadie Coal Co. v. Black*, 672 F.2d 92, 97 (D.C.C. 1982) ("The question before the court in a case like this is whether the corporation, rather than being a distinct, responsible entity, is in fact the alter ego or business conduit of the person in control. In many

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As Rising Eagle's sole directors, Spiller and Mears exercised exclusive control over Rising Eagle's operations.<sup>199</sup> Spiller spoke on behalf of Rising Eagle, possessed intimate knowledge of the details of the unlawful robocalling campaign, and both Spiller and Mears acted as points of contact for inquiries into Rising Eagle's business practices.<sup>200</sup> Spiller and Mears also directed the company's daily operations, including the implementation of Rising Eagle's unlawful robocalling campaigns.<sup>201</sup> Spiller and Mears personally controlled and configured the robocall dialer, including the number of robocalls made on behalf of their clients, frequently managed call volume to optimize performance,<sup>202</sup> and initiated Health Advisor's calls to consumers.<sup>203</sup> Spiller and Mears also loaded caller ID information into the dialer and even provided input into the content of the robocall messages.<sup>204</sup> Although officers' involvement is not unusual—and may even be necessary—in a small business, Spiller's and Mears's extensive involvement in the Company's operations is one factor among many that supports piercing the corporate veil.

47. *Rising Eagle Failed to Maintain Adequate Corporate Records.* The Commission notified Rising Eagle that it intended to pierce the corporate veil.<sup>205</sup> Rising Eagle argues that the Commission must consider “the degree to which formalities have been followed to maintain a separate corporate identity.”<sup>206</sup> But the Commission was unable to find, and Rising Eagle elected not to provide, any evidence of a single formality to demonstrate that Rising Eagle, JSquared, or Rising Phoenix Group maintained separate corporate identities from one another and their owners. For example, for the purpose of showing an inability to pay, we provided Rising Eagle the opportunity to submit “(1) federal tax returns for the past three years; (2) financial statements for the past three years prepared according to

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instances, the person “controlling” a close corporation is also the sole, or at least a dominant, shareholder. . . . The question is one of control, not merely paper ownership.”)

<sup>199</sup> Spiller Call Recording, 10.36.101.13-71d86a3a0a24650d2b3b2ed80560090c, at 05:47, 06:15, 06:46 (Spiller assuring Mears that he did not need to cater to Health Advisors); Spiller Call Recording, 10.36.101.25-50a9e66e0a2465192c9a30b15f41aac2, at 08:05 (“[Rising Eagle] is you . . .”) (implying that Rising Eagle is not a separate entity from the person of Spiller).

<sup>200</sup> Frankel Aff. at 4-5; USTelecom Subpoena Response (Oct. 23, 2019) (on file in EB-TCD-18-00027781).

<sup>201</sup> On a near daily basis—and often multiple times per day—Mears shared sales updates with Spiller and discussed how to improve the performance of Rising Eagle's operations. *See, e.g.*, Spiller Call Recording, 10.36.101.11-021e7dff0a24650b2512cb1d9f49bdab, at 09:50 (discussing leads); Spiller Call Recording, 10.36.101.11-34e0ca9c0a24650b4d6dc755ea1dd756, at 16:10 (discussing expenditures on leads); Spiller Call Recording, 10.36.101.13-95ff9b3d0a24650d2b3b2ed84796bc81, at 04:55 (sourcing leads); Spiller Call Recording, 10.36.101.25-c7fa0c7d0a2465192dcc4892bdc766f1, at 15:22 (directing a Rising Eagle affiliate concerning the content of a prerecorded message used to sell health insurance); Spiller Call Recording, 10.36.101.25-c44d35790a2465192dcc48922a136847, at 02:10 (discussing the content of various prerecorded messages and Rising Eagle's ability to decide which message to use in a campaign); *id.* at 03:00 (explaining how Mears edited the content of the prerecorded health insurance messages “so that [the message] doesn't say that it's [Rising Eagle making the calls]”); *see also supra* notes 82-84 and accompanying text (discussing clients and how to manipulate call volume to increase sales).

<sup>202</sup> *See id.*

<sup>203</sup> Mears Aff. at 2, para. 9.

<sup>204</sup> *See* Spiller Call Recording, 10.36.101.25-c7fa0c7d0a2465192dcc4892bdc766f1, at 15:22 (directing a Rising Eagle affiliate concerning the content of a prerecorded message used to sell health insurance); Spiller Call Recording, 10.36.101.25-c44d35790a2465192dcc48922a136847, at 02:10 (discussing the content of various prerecorded messages and Rising Eagle's ability to decide which message to use in a campaign); *id.*, at 03:00 (explaining how Mears edited the content of the prerecorded health insurance messages “so that [the message] doesn't say that it's [Rising Eagle making the calls]”).

<sup>205</sup> *Rising Eagle Notice*, 35 FCC Rcd at 5965, para. 42.

<sup>206</sup> Notice Response at 16-17, n.61.

generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status."<sup>207</sup> Rising Eagle declined to provide any reliable and objective documents concerning its business operations, and stated that maintaining accounting records would be "unduly burdensome."<sup>208</sup> Although Rising Eagle was not obligated to submit documents to demonstrate a purported inability to pay, its statement that maintaining such documents would have been unduly burdensome indicates that it did not maintain corporate records, including financial records prepared according to generally accepted accounting practices, which is a factor relevant to determining whether we may pierce the corporate veil.<sup>209</sup> Nor did Rising Eagle provide any other corporate filings, including documents related to its formation of a limited liability company. The weight of the evidence shows that the businesses and businesses' owners all used the same corporate accounts and often acted as if the companies were interchangeable. We therefore find that Rising Eagle failed to maintain adequate corporate records or separation of the corporate form.

48. We find that Spiller and Mears diverted Rising Eagle's funds for personal use, treated the assets of the companies as their own, failed to maintain arm's-length relationships among their related entities, held identical equitable ownerships and exercised complete supervisory and management control over the day-to-day operations of Rising Eagle and its affiliated companies, and kept inadequate corporate records. Thus, we regard Rising Eagle Capital Group, JSquared Telecom, Only Web Leads, Rising Phoenix Group, Rising Phoenix Holdings; RPG Leads; and Rising Eagle Capital Group – Cayman as mere alter egos of Spiller and Mears.

**b. Piercing the Corporate Veil Will Promote Public Policy Objectives and Prevent Injustice and Evasion of Legal Obligations**

49. Preventing unlawful spoofed calls is a public policy concern, and shutting down such calls is one of the Commission's consumer protection priorities.<sup>210</sup> Piercing the corporate veil and holding Spiller and Mears personally liable is essential to serving this policy goal. Spiller and Mears have demonstrated that they are willing and able to dissolve one business and form another, without curbing their robocalling operations.<sup>211</sup> Spiller and Mears have formed at least a dozen companies, using

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<sup>207</sup> *Rising Eagle Notice*, 35 FCC Rcd at 5970, para. 53. We explained that these financial documents would help us evaluate a request to reduce or cancel the proposed forfeiture. *Id.*

<sup>208</sup> Notice Response at 21.

<sup>209</sup> Indeed, Internal Revenue Service requires maintenance of reliable and objective documentation depicting an entity's financial status for tax purposes, and thus these documents should have been readily available. Dep't of the Treasury, Internal Revenue Serv., *Starting a Business and Keeping Records* at 12 (2015), <https://www.irs.gov/pub/irs-pdf/p583.pdf> ("If you are in more than one business, you should keep a complete and separate set of records for each business. . . . Your books must show your gross income, as well as your deductions and credits. For most small businesses, the business checkbook . . . is the main source for entries in the business books. In addition, you must keep supporting documents . . . ."); *see also Smoothline Ltd. v. North America Foreign Trading Corp.*, 2002 WL 31885795, at \*10 (S.D.N.Y. Dec. 27, 2002) ("Plaintiffs' failure to produce standard accounting documents . . . is further evidence that these companies were not independent, fully-functioning firms, but were rather divisions in a larger organization.") (*recon. denied*, 2003 WL 941442 (S.D.N.Y. Mar. 7, 2003)).

<sup>210</sup> Congress also passed the TRACED Act to increase the penalties for TCPA violations, further solidifying the effort to combat unlawful robocalling as a key public policy objective of both Congress and the Commission. Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274 (2019) (TRACED Act).

<sup>211</sup> *See* Ciw Group LLC, Certificate of Formation, Office of the Sec'y of State of Tex. (May 7, 2013) (terminated Mar. 12, 2014); Developing Group, Certificate of Formation, Office of the Sec'y of State of Tex. (Jan. 15, 2014) (terminated Jan. 26, 2018); Rising Eagle Capital Group LLC, Certificate of Formation, Office of the Sec'y of State of Tex. (Apr. 9, 2014) (also conducted business as Archimedes Funding, JP's Web Leads, Only Web Leads, Rising Phoenix Holdings, RPG Leads, Senior Med Alert LLC, and Travel Destination Adventures Your Wish Is Our Desire) (terminated Feb. 28, 2020); Lightning Strikes Lead Generation LLC, Certificate of Formation, Office of the  
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at least 26 businesses names, that have characteristics similar to Rising Eagle.<sup>212</sup> In fact, although Spiller and Mears dissolved Rising Eagle in February 2020, they have continued to engage in a number of large-scale robocalling campaigns through their other companies.<sup>213</sup> We have found that similar behavior warranted veil piercing in other cases.<sup>214</sup> Adherence to the corporate form would allow Spiller and Mears to easily shut down and open new companies like Rising Eagle with impunity.<sup>215</sup> To prevent Rising Eagle's continued abuse of a core public policy objective, it is necessary to pierce the corporate veil.

**c. John Spiller and Jakob Mears Are Personally Liable for Rising Eagle's Unlawful Conduct**

50. The Commission has found that officers may be held personally liable for violations of the Truth in Caller ID Act.<sup>216</sup> Rising Eagle alleges that, even if we have cause to pierce the corporate veil, we should not hold Spiller and Mears personally liable because the TCPA does not expressly provide for personal liability.<sup>217</sup> But the Commission and the majority of courts have determined that individual officers may be liable for violations of the TCPA.<sup>218</sup> Likewise, the Supreme Court has upheld other

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Sec'y of State of Tex. (Oct. 27, 2015) (terminated Jan. 27, 2017); L&J Lead Generation LLC, Electronic Articles of Organization, Fla. Dep't of State, Division of Corporations (Mar. 22, 2016); Anmac Roofing LLC, Certificate of Formation, Office of the Sec'y of State of Tex. (Mar. 30, 2018) (also doing business as Anmac Construction); Right Start Health & Life Insurance LLC, Electronic Articles of Organization, Fla. Dep't of State, Division of Corporations (Apr. 17, 2018); Only Web Leads LLC, Certificate of Formation, Office of the Sec'y of State of Tex. (Nov. 20, 2018); JSquared Telecom LLC, Certificate of Formation, Office of the Sec'y of State of Tex. (Jan. 30, 2019) (also doing business as Connect Express, Express Connect, and Jump Start Business Ventures); Jakobs M Group, Certificate of Formation, Office of the Sec'y of State of Tex. (June 4, 2019); MJ Capital Investment LLC, Certificate of Formation, Office of the Sec'y of State of Tex. (Oct. 12, 2019); Rising Eagle Capital Group – Cayman, Search Report, Cayman Is. General Registry (Oct. 16, 2019); Mental Health Care Solutions LLC, Certificate of Formation, Office of the Sec'y of State of Tex. (Jan. 9, 2020) (also doing business as Elderly Care Solutions and Give a Heart for the Homeless).

<sup>212</sup> *Rising Eagle Notice*, 35 FCC Rcd at 5959, para. 26.

<sup>213</sup> See *YouMail, And the Robocaller Reaction to the FCC's \$225 Million Fine Is...* (June 18, 2020), <https://blog.youmail.com/2020/06/fcc255millionfine/>. The companies make millions of calls each day.

<sup>214</sup> See *Abramovich Notice*, 32 FCC Rcd at 5428, para. 27; *Travel Club Marketing, Inc. dba Diamond Vacations dba Great Vacations, Travellink Corp., Proven Results Direct Marketing Inc., Direct Marketing Travel Services Incorporated, Olen Miller*, Forfeiture Order, 30 FCC Rcd 8861, 8861, para. 2 n.2 (2015) (*Miller Forfeiture Order*).

<sup>215</sup> See *Abramovich Notice*, 32 FCC Rcd at 5428, para. 27; *Rising Eagle Capital Group LLC*, Certificate of Amendment, Office of the Sec'y of State of Tex. (Jan. 13, 2020) (replacing Spiller and Mears as directors with Rising Eagle Capital Group Cayman and terminating Rising Eagle Capital Group LLC shortly thereafter). See generally *supra* note 211 (evincing a pattern of frequent formation and termination of business entities).

<sup>216</sup> See *Abramovich Forfeiture Order*, 33 FCC Rcd at 4675, para. 33; *Roesel Forfeiture Order*, 33 FCC Rcd at 9221, paras. 45-46; *Moser Forfeiture Order*, 35 FCC Rcd at 13431, para. 36; see also *Roesel Notice*, 32 FCC Rcd at 6416, para. 34 (“[P]ersonal liability is appropriate (and the Commission will pierce the corporate veil) where the individual . . . is an officer of a closely held corporation and directly participates in, oversees, authorizes or otherwise directs the commission of the wrongful act.”).

<sup>217</sup> As a preliminary matter, our determination of personal liability derives from the Truth in Caller ID Act. In any event, numerous cases support a finding of personal liability under the TCPA. Indeed, Rising Eagle cites to such cases. See *Appelbaum v. Rickenbacker Group Inc.*, 2013 WL 12121104, at \*2 (S.D. Fla. 2013) (“The majority of courts faced with the issue, however, have held that personal liability may extend to corporate officers under the TCPA.”).

<sup>218</sup> See, e.g., *Miller Forfeiture Order*, 30 FCC Rcd at 8862; *Bais Yaakov of Spring Valley v. Graduation Source, LLC*, 2016 WL 1271693, at \*5 (S.D. N.Y. 2016) (agreeing with “a number of other federal district courts . . . that individuals acting on behalf of a corporation may be held personally liable under the TCPA when they directly participated in, or personally authorized, the violative conduct.”); *Texas v. American Blastfax, Inc.*, 164 F.Supp.2d

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federal agencies' findings of personal liability even when the applicable statutes were silent on whether officers may be held personally liable.<sup>219</sup>

51. Rising Eagle further claims that Spiller and Mears had limited roles in the spoofing operations, and thus it is not appropriate to hold them personally liable. In particular, Rising Eagle asserts that "Spiller did not oversee, direct, or have substantial knowledge of Rising Eagle's operations [while imprisoned]."<sup>220</sup> The evidence overwhelmingly refutes this claim. While incarcerated, Spiller oversaw Rising Eagle's daily operations. Spiller said that he was "still able to run [his] business from in here through [Mears],"<sup>221</sup> and required that Mears answer his calls at any time during the day.<sup>222</sup> Spiller made more than 600 collect calls while incarcerated and discussed Rising Eagle's daily business operations on hundreds of occasions with Mears, Health Advisors' owners, other business associates, and his girlfriend.<sup>223</sup> During these daily calls, Spiller discussed health insurance leads and sales figures with

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892, 898 (W.D. Tex. 2001) (finding that personal liability for officers who "directly participate in or authorize the commission of a wrongful act" is a "well-settled" rule) (citation omitted); *Physicians Healthsource, Inc. v. A-S Medication Solutions, LLC*, 324 F.Supp.3d 973, 983 (2018) ("Neither the TCPA nor the common law requires knowing or willful violations of the TCPA to as [sic] a prerequisite to officer liability. Direct participation or authorization is sufficient."), *aff'd*, 950 F.3d 959, 962, 962 n.1, 968 (7th Cir. 2020). The case to which Rising Eagle cites in its response, *City Select Auto Sales, Inc. v. David Randall Assocs.*, 885 F.3d 154, 160-61 (3d Cir. 2018), posits in dicta that officers *might* not be liable for TCPA violations but does not make such a finding. See Notice Response at 17.

<sup>219</sup> See *United States v. Bestfoods*, 524 U.S. 51, 61-64 (1998) ("Nothing in CERCLA purports to rewrite this well-settled rule [of finding personal liability], either. CERCLA is thus like many another congressional enactment in giving no indication that 'the entire corpus of state corporation law is to be replaced simply because a plaintiff's cause of action is based upon a federal statute,' and the failure of the statute to speak to a matter as fundamental as the liability implications of corporate ownership demands application of the rule that '[i]n order to abrogate a common-law principle, the statute must speak directly to the question addressed by the common law.'" (internal citations omitted); see also *N.L.R.B. v. Bolivar-Tees, Inc.*, 551 F.3d at 728 ("Although Congress did not provide specifically for shareholder liability for violations of the NLRA, federal courts have pierced the corporate veil to hold shareholders liable for violations of federal statutes, including the NLRA.").

<sup>220</sup> Notice Response at 19.

<sup>221</sup> See Spiller Call Recording, 10.36.101.25-ad4cdd6d0a2465192dcc48925708ccbb, at 02:00; see also Spiller Call Recording, 10.36.101.11-949cdf00a24650b549dd67859253002, at 02:03-06:49 ("This is one of the things why it's so hard for me to run my business from in here.").

<sup>222</sup> Spiller Call Recording, 10.36.101.11-7b370fb60a24650b2512cb1d3b3d1048, at 02:00.

<sup>223</sup> See, e.g., Spiller Call Recording, 10.36.101.22-168d8b680a2465162e25e3fd2e1f9b37 (discussing Rising Eagle's account balance, lead generation, business payments, and Rising Eagle's clients); Spiller Call Recording, 10.36.101.22-4fd807a20a24651666b9b5488f5ce8c9 (discussing Health Advisors' sales for the day and their payments to Rising Eagle); Spiller Call Recording, 10.36.101.25-175a17330a2465191e6bceccf19ddc2c (discussing particulars of Rising Eagle's business operations); Spiller Call Recording, 10.36.101.25-ad267b1f0a2465192dcc48920cb80828 (discussing negotiations with Health Advisors and the state of Health Advisors' calling campaign); Spiller Call Recording, 10.36.101.26-3ae92a000a24651a7a8d59ebc5dd4c3b (discussing Health Advisors' payments and sales); Spiller Call Recording, 10.36.101.26-15f2fda90a24651a52c603e7e8f364e5 (conversing about cash flow, call routing, and solutions to their clients' poor sales performance); Spiller Call Recording, 10.36.101.26-f1dac3140a24651a52c603e7611e4fd3 (confirming that Health Advisors is a business partner); Spiller Call Recording, 10.36.101.26-385471d80a24651a386110328ad8e280 (discussing sales and ordering Mears to shut off traffic to clients who failed to make payments); Spiller Call Recording, 10.36.101.26-570455190a24651a52c603e7c1d562b1 (discussing their clients' sales, lead sharing, and whether to shut off traffic to certain clients); Spiller Call Recording, 10.36.101.11-949cdf00a24650b549dd67859253002 (reviewing the company's expenses and lamenting Rising Eagle's lack of earnings); Spiller Call Recording, 10.36.101.11-b37225ac0a24650b549dd6785eea3c5d (Spiller discussing clients' payments and speaking directly to Health Advisors about Rising Eagle's business). These calls are a small sample

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Mears and directed him to take specific actions aimed to increase health insurance sales for Health Advisors.<sup>224</sup> Spiller even used videoconferencing equipment to view Mears's computer screen in Rising Eagle's facilities so that he could assist Mears in conducting Rising Eagle's operations.<sup>225</sup>

52. Spiller's involvement continued after he was released from prison in March of 2019. It appears, for example, that following Spiller's release from prison, he began to make new business and personal payments from Rising Eagle's PayPal account beginning on March 14, 2019.<sup>226</sup> In addition, Spiller described in detail to a USTelecom consultant information about Rising Eagle's operations during the period covered by this *Order*.<sup>227</sup> The evidence demonstrates that Spiller was integrally involved in Rising Eagle's operations from January 2, 2019 to May 14, 2019.

53. Mears also directly participated in, authorized, and oversaw Rising Eagle's unlawful robocalling campaign. Mears served as Rising Eagle's co-owner, managing member, and agent for legal service<sup>228</sup> as well as an officer of every entity named in the *Notice*.<sup>229</sup> Mears also acted as a point of contact for the Traceback Group's inquiries into the health insurance robocalling campaign that is the basis for this *Order*.<sup>230</sup> In Rising Eagle's response, Mears stated that he "facilitated Health Advisors' marketing campaign" in coordination with Spiller.<sup>231</sup> Mears admitted to running the calling campaign for Health Advisors while Spiller was incarcerated.<sup>232</sup> Mears also admitted that, between November 2018 and March 2019, he worked closely with Health Advisors and sometimes communicated with them on a daily basis to make spoofed health insurance robocalls.<sup>233</sup> Call recordings between Spiller and Mears

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of the hundreds of business-related calls that Spiller placed while incarcerated and demonstrate the hands-on role in the unlawful robocalling scheme that both Mears and Spiller played.

<sup>224</sup> See, e.g., *supra* notes 82, 83 (providing evidence of conversations between Spiller and Mears in which they discussed their direct participation in Rising Eagle's robocalling scheme).

<sup>225</sup> Spiller Call Recording, 10.36.101.13-bcb4e7d10a24650d4fb8896fcfa1c4ae, at 03:30.

<sup>226</sup> See 2019 PayPal Transactions.

<sup>227</sup> See generally Frankel Aff. Although Spiller made these statements to the consultant throughout the summer of 2019 and our *Order* only includes violations through May, Spiller described actions that took place during the period of our violations.

<sup>228</sup> See Rising Eagle Capital Group LLC, Certificate of Formation, Office of the Sec'y of State of Tex. (Apr. 9, 2014); Rising Eagle Capital Group LLC, Certificate of Amendment, Office of the Sec'y of State of Tex. (June 1, 2018) (adding Jakob Mears as a member and director); Rising Eagle Capital Group LLC, Public Information Report, Office of the Sec'y of State of Tex. (2018).

<sup>229</sup> Mears Aff. at 1, para. 1.

<sup>230</sup> Frankel Aff. at 4-5.

<sup>231</sup> Mears Aff. at 3, para. 14. Pursuant to section 217 of the Act, when "enforcing the provisions of this chapter, the act, omission, or failure of any officer . . . acting for or employed by any . . . user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such . . . user as well as that of the person." 47 U.S.C. § 217. Rising Eagle Capital Group LLC, Rising Eagle Capital Group – Cayman, Only Web Leads, LLC, and JSquared Telecom, LLC are "users" of the telephone networks to engage in illegal robocalling. See *Scott Malcolm DSM Supply, LLC Somaticare, LLC*, Notice of Apparent Liability, 29 FCC 2476, 2484, para. 19 (2014) (determining that a TCPA violator is a user as contemplated by section 217 of the Act). Thus, the acts and omissions of Spiller and Mears may be imputed to Rising Eagle Capital Group LLC.

<sup>232</sup> Mears Aff. at 4-5, paras. 17-18.

<sup>233</sup> *Id.* at 18.

corroborate these findings and further show that Mears personally participated in, oversaw, and directed Rising Eagle's unlawful activities.<sup>234</sup>

54. Rising Eagle suggests that the *Notice* is deficient because it did not adequately specify Mears's unlawful conduct for the purpose of holding him personally liable.<sup>235</sup> However, courts have determined that a pleading need only allege that an officer either (1) personally participated in the unlawful conduct, (2) personally authorized the unlawful conduct, or (3) so controlled the policies and practices such that they were the driving force behind the unlawful conduct.<sup>236</sup> Therefore, it is enough to allege that an officer made the calls at issue or that the calls were made at the officer's direction.<sup>237</sup> The *Notice* satisfied this standard. Specifically, the *Notice* described the apparent unlawful conduct and Mears's role in that conduct, including that Mears co-owned Rising Eagle and the other named entities; directed the Company's operations; served as point of contact for inquiries into the robocalling campaign; facilitated the telemarketing campaign to sell health insurance plans; and personally and directly "made or caused to be made" robocalls with the intent to defraud, cause harm, or wrongfully obtain something of value.<sup>238</sup> In addition, Rising Eagle's Response admits that Mears personally facilitated and oversaw Rising Eagle's robocall campaigns, which supports a finding of liability.<sup>239</sup> We thus find that it is appropriate to hold both Spiller and Mears personally liable.

**2. John Spiller, Jakob Mears, Rising Eagle Capital Group LLC, JSquared Telecom, Rising Phoenix Group, Only Web Leads, Rising Phoenix Holdings, RPG Leads, and Any Successors in Interest are Jointly and Severally Liable**

55. When multiple parties are deemed responsible for an unlawful robocalling campaign, the Commission has found such entities jointly and severally liable.<sup>240</sup> Joint and several liability is rooted in the principle that a wrongdoer is liable for the reasonably foreseeable acts of his fellow wrongdoers committed in furtherance of their joint undertaking.<sup>241</sup> In this case, each entity is merely the alter ego of

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<sup>234</sup> See, e.g., Spiller Call Recording, 10.36.101.22-d6481cc00a2465162e25e3fd0bf9bce2, at 03:21 (discussing the fact that Jakob is "running the business"); Spiller Call Recording, 10.36.101.23-75e2644d0a246517782d5c850fbc703c, at 06:30 (Mears stating how he made decisions concerning what length of prerecorded voice message script to use); Spiller Call Recording, 10.36.101.23-75f53deb0a246517782d5c8516f266e5, at 14:10 (confirming that Jakob is running the business and "managing Scott, Mike"—the owners of Health Advisors); Spiller Call Recording, 10.36.101.25-c7fa0c7d0a2465192dcc4892bdc766f1, at 15:02 (lauding Mears for "sustaining the business" during the former's incarceration and "pumping in calls"); Spiller Call Recording, 10.36.101.11-2f1d5d2f0a24650b549dd678f9ac82c2, at 05:00-07:34 ("You are running my company at the best level you could run it at."); Spiller Call Recording, 10.36.101.25-c44d35790a2465192dcc48922a136847, at 00:48 (admitting to working closely with Health Advisors and altering the content of the prerecorded voice messages to avoid identification).

<sup>235</sup> Notice Response at 17-18.

<sup>236</sup> See *Texas v. American Blastfax, Inc.*, 164 F.Supp.2d 892, 898 (W.D. Tex. 2001) ("[A]n officer may be personally liable under the TCPA if he had direct, personal participation in or personally authorized the conduct found to have violated the statute . . ."); *Cunningham v. Crosby Billing Services Corp.*, 2018 WL 6424792, at \*5 (Plaintiff must have alleged or otherwise shown that [defendants] actually participated in the TCPA violation or show that they sufficiently controlled the policies and practices . . .").

<sup>237</sup> "Plaintiff has adequately pleaded sufficient facts to state a claim [because Plaintiff alleged that defendant], acting in his capacity as a corporate officer of [defendant corporation], made the phone calls at issue. . . . [Plaintiff] attests in his affidavit that [Defendant] made the phone calls . . . [and that] 'the calls were made at the direction of [Defendant].'" *Cunningham*, 2018 WL 6424792, at \*6 (citations omitted).

<sup>238</sup> See *Rising Eagle Notice*, 35 FCC Rcd at 5952, para. 11, 5954, para. 18, 5965-66, paras. 43-454.

<sup>239</sup> See *Mears Aff.* at 3, para. 14; *id.* at 4-5, paras. 17-18.

<sup>240</sup> See, e.g., *Abramovich Forfeiture Order*, 33 FCC Rcd at 4663, para. 1.

<sup>241</sup> *United States v. Philip Morris USA*, 316 F.Supp.2d 19, 26 (D.D.C. 2004).

Spiller and Mears and is jointly and severally liable for their unlawful actions.<sup>242</sup> Rising Eagle was the sole manager of Only Web Leads LLC and JSquared Telecom LLC.<sup>243</sup> Spiller's and Mears's fiduciary duties as sole directors—and control as sole board members—of Rising Eagle dictate that Rising Eagle, Only Web Leads, and JSquared Telecom knew and approved of Spiller's and Mears's unlawful spoofing.<sup>244</sup> Rising Eagle argues that JSquared did not conduct any business operations until December 2019 and further claims that Only Web Leads was defunct between January and May 2019.<sup>245</sup> The record proves otherwise. Between February 2019 and September 2019, Rising Eagle's PayPal account included 22 transactions that were listed as expenditures for JSquared.<sup>246</sup> These expenditures included creating a website, purchasing telephone numbers, conducting business with a call center software provider, and paying VoIP providers more than \$132,000.<sup>247</sup> Even Rising Eagle's voice service providers viewed Rising Eagle and JSquared as interchangeable entities.<sup>248</sup> Only Web Leads operated dually as a registered fictitious business name of Rising Eagle<sup>249</sup> and as a limited liability company during the relevant time period, with Spiller as its founder and CEO.<sup>250</sup> Similarly, Only Web Leads, through Spiller, signed and filed a Texas Franchise Tax Public Information Report on April 2, 2019, which affirms that the entity was not defunct during our investigation.<sup>251</sup> As both a fictitious business name of Rising Eagle and an LLC wholly owned by Rising Eagle, we treat Only Web Leads and Rising Eagle as the same company.

56. In addition to Rising Eagle, Only Web Leads, and JSquared Telecom, Spiller and Mears conducted business as Rising Phoenix Group,<sup>252</sup> Rising Phoenix Holdings,<sup>253</sup> and RPG Leads.<sup>254</sup> None of these entities exist as formal legal entities; they possess no corporate, partnership, or other business entity filings; and they did not provide any unfiled organizational documents. The “Rising Phoenix” moniker, however, appears frequently in Rising Eagle's business operations, including in payments to R Squared

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<sup>242</sup> See 47 U.S.C. § 217.

<sup>243</sup> JSquared Telecom LLC, Certificate of Formation, Office of the Sec'y of State of Tex. (Jan. 30, 2019); Only Web Leads LLC, Certificate of Formation, Office of the Sec'y of State of Tex. (Nov. 20, 2018).

<sup>244</sup> Spiller used Rising Eagle's corporate bank accounts to make telemarketing-related payments. See 2019 PayPal Transactions; 2018 PayPal Transactions; Bank of Am. Wire Records; see also *AngioScore, Inc. v. TriReme Medical, Inc.*, 87 F.Supp.3d 986, 1002-03 (N.D. Cal. 2015) (outlining the breadth of the fiduciary duty owed a corporation under the corporate opportunity doctrine).

<sup>245</sup> Notice Response at 6.

<sup>246</sup> See 2019 PayPal Transactions.

<sup>247</sup> See *id.*

<sup>248</sup> See Frankel Aff. at 2 (“In June 2019, we traced 8 calls all playing an identical recorded message offering health insurance plans. The voice service providers responding to our inquiries indicated they got the calls from JSquared Telecom or Rising Eagle Capital.”) (emphasis added).

<sup>249</sup> Rising Eagle Capital Group LLC, Certificate of Formation, Office of the Sec'y of State of Tex. (Apr. 9, 2014) (doing business as Only Web Leads, amongst other fictitious names) (terminated Feb. 28, 2020).

<sup>250</sup> Only Web Leads LLC, Certificate of Formation, Office of the Sec'y of State of Tex. (Nov. 20, 2018).

<sup>251</sup> Only Web Leads, Texas Franchise Tax Public Information Report (Apr. 2, 2019).

<sup>252</sup> Spiller used the business name “Rising Phoenix Group” synonymously with “Rising Eagle Capital Group” in a large number of business-related transactions conducted through Rising Eagle Capital Group's corporate bank account. See Bank of Am. Wire Records.

<sup>253</sup> Rising Eagle Capital Group LLC, Assumed Name Certificate, Office of the Sec'y of State of Tex. (Jan. 12, 2015) (creating the assumed name of Rising Phoenix Holdings).

<sup>254</sup> Rising Eagle Capital Group LLC, Assumed Name Certificate, Office of the Sec'y of State of Tex. (Mar. 17, 2017) (creating the assumed name of RPG Leads); RPG Leads, *About*, <https://rpgleads.com/about/> (last visited Dec. 2, 2020).

from “Rising Phoenix Group” through Rising Eagle’s bank account that totaled over one million dollars.<sup>255</sup> Spiller used an RPG Leads e-mail address when signing contracts between Rising Eagle and JSquared and voice service providers.<sup>256</sup> Spiller also operates an RPG Leads website that sells health insurance leads, which is the same type of calls that formed the basis of this unlawful robocalling campaign.<sup>257</sup> We therefore treat Rising Phoenix Group, Rising Phoenix Holdings, and RPG Leads as mere unincorporated associations of Spiller and Mears and hold each jointly and severally liable along with Spiller and Mears, to the extent they have any independent legal existence, for the violations found herein.

57. Spiller formed Rising Eagle Capital Group – Cayman, an offshore company located in the Cayman Islands, on October 16, 2019.<sup>258</sup> On January 13, 2020, Spiller and Mears filed a Certificate of Amendment for Rising Eagle Capital Group LLC with the Texas Secretary of State, removing themselves as managing members and adding Rising Eagle Capital Group – Cayman as the new, sole managing member.<sup>259</sup> Spiller and Mears dissolved Rising Eagle Capital Group LLC on February 28, 2020.<sup>260</sup> Spiller then ceased using the name “Rising Eagle Capital Group,” instead choosing to correspond under the name “Rising Eagle Capital Group – Cayman.”<sup>261</sup> Evidence in the record demonstrates, however, that Rising Eagle Capital Group – Cayman is merely a continuation of Rising Eagle Capital Group.<sup>262</sup> Following a pattern that courts have recognized in other cases, the new Rising Eagle corporation “proceed[ed] exactly as if it were the old corporation”<sup>263</sup> and continued to make millions of robocalls.<sup>264</sup> Spiller and Mears themselves referred to the new company as an “alias” of Rising Eagle Capital Group, created for the express purpose of evading liability.<sup>265</sup> As the successor in

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<sup>255</sup> See *supra* para. 44.

<sup>256</sup> See, e.g., Talkie Communications, Talkie Master Services Agreement (signed Apr. 9, 2019) (on file in EB-TCD-18-00027781); Talkie Communications, Talkie Certification of Company Status Form (signed June 26, 2019) (showing both that Spiller used RPG Leads interchangeably with his other companies and that JSquared existed prior to December 2019, contrary to Rising Eagle’s attestations) (on file in EB-TCD-18-00027781).

<sup>257</sup> RPG Leads, *Health Insurance Leads*, <https://rpgleads.com/health-insurance-leads/> (last visited Dec. 2, 2020).

<sup>258</sup> Rising Eagle Capital Group – Cayman, Search Report, Cayman Is. General Registry (Oct. 16, 2019) (providing a Registration Number of 356487 and registered office at WB Corporate Services (Cayman) Ltd., P.O. Box 2775, 1st Floor Artemis House, 67 Fort Street, George Town, Grand Cayman KY1-1111, Cayman Islands).

<sup>259</sup> Rising Eagle Capital Group LLC, Certificate of Amendment, Office of the Sec’y of State of Tex. (Jan. 13, 2020); Rising Eagle Capital Group – Cayman, Search Report, Cayman Is. General Registry (Oct. 16, 2019).

<sup>260</sup> Rising Eagle’s termination occurred well after the unlawful activities that form the basis of this Forfeiture Order. Rising Eagle Capital Group LLC, Forfeiture of Certification, Office of the Sec’y of State of Tex. (Feb. 28, 2020).

<sup>261</sup> Frankel Aff. at 4-5.

<sup>262</sup> Spiller Call Recording, 10.36.101.22-71c5cce40a2465165185cb8722cbb11f, at 01:20-05:10 (discussing creating a foreign company to avoid liability).

<sup>263</sup> *United States v. Sterling Footwear, Inc.*, 279 F.Supp.3d 1113, 1141 (U.S. Ct. Int’l Trade 2017) (citation omitted).

<sup>264</sup> Spiller and Mears continued to engage in large-scale robocalling campaigns through Rising Eagle Capital Group – Cayman, just as they had under Rising Eagle Capital Group. USTelecom Subpoena Response (July 9, 2020) (on file in EB-TCD-18-00027781); YouMail, *And the Robocaller Reaction to the FCC’s \$225 Million Fine Is...* (June 18, 2020), <https://blog.youmail.com/2020/06/fcc255millionfine/>; see also *Rising Eagle Notice*, 35 FCC Red at 5969, para. 48 n.160.

<sup>265</sup> Spiller Call Recording, 10.36.101.22-71c5cce40a2465165185cb8722cbb11f, at 01:20-05:10 (“What we’re going to do is we’re going to fly under an alias company in one of those countries.”). Piercing the corporate veil is appropriate where, as here, officers created an alias company for the express purpose of evading liability. *N.L.R.B. v. Bolivar-Teas, Inc.*, 551 F.3d at 728 (“[T]he use of the corporate form as a mere shell, instrumentality or conduit of an individual or another corporation” may evince a unity of interest.) (citation omitted).

interest to Rising Eagle Capital Group LLC and to discourage asset-shifting in anticipation of a forfeiture, we hold Rising Eagle Capital Group – Cayman jointly and severally liable with the above-named entities.<sup>266</sup> Rising Eagle argues that Rising Eagle Capital Group – Cayman is not liable because it began operations after May 2019. But it failed to address our argument that Rising Eagle Capital Group – Cayman is a mere continuation of Rising Eagle and that both entities are the alter egos of Spiller and Mears and are, therefore, functionally the same entity.

58. Rising Eagle Capital Group, Rising Eagle Capital Group – Cayman, JSquared Telecom, Rising Phoenix Group, Rising Phoenix Holdings, and RPG Leads are all alter egos of Spiller and Mears. Rising Eagle complained that we are treating the entities named in the *Notice* as an “amorphous collective,” yet that is precisely what they are.<sup>267</sup> Spiller and Mears made personal purchases and business payments for the above entities from the same unsegregated PayPal and bank accounts.<sup>268</sup> More importantly, Rising Eagle used its many business names interchangeably in communications with business associates.<sup>269</sup> Rising Eagle made payments to Talkie Communications from “Rising Eagle Capital Group” and, just a week later, paid Talkie from “JSquared Telecom Rising Eagle Capital” using the same account.<sup>270</sup> Rising Eagle provided instructions for R Squared that payments originated from “John Spiller,” “Rising Phoenix Group,” “Rising Phoenix Group John Spiller,” “John Spiller Rising Eagle,” and “Rising Eagle Capital Group” depending on the day.<sup>271</sup> Mash Telecom received payments from “Rising Eagle Capital Group,” “JSquared Telecom or Rising Eagle Cap[ ],” and “JSquare[d] Telecom.”<sup>272</sup> The names are interchangeable because they are all fictions—mere alter egos of their owners, Spiller and Mears. The evidence demonstrates that Spiller and Mears treated the companies’ operations and assets as interchangeable. Rising Eagle has not presented any empirical proof to contradict the evidence in the record.

#### **D. The Forfeiture Amount is Supported by the Evidence**

59. Under section 503 of the Act and our forfeiture guidelines, the Commission must consider “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.”<sup>273</sup> After considering the statutory factors, the Commission’s *Forfeiture Policy Statement*, and our precedent, we find that Rising Eagle is liable for a total forfeiture of \$225,000,000.<sup>274</sup> This

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<sup>266</sup> A successor corporation is liable for its predecessor’s liabilities and debts if the creation of the successor entity constitutes a de facto merger or consolidation with the prior entity, the successor is a mere continuation of the prior entity, and/or the successor exists in order to fraudulently escape liability for such debts. See *Ronnoco Coffee, LLC v. Westfeldt Brothers, Inc.*, 939 F.3d 914, 920-21 (8th Cir. 2019); *Corrigan v. U.S. Steel Corp.*, 478 F.3d 718, 726-27 (6th Cir. 2007); *Reese Bros. Inc. v. U.S. Postal Service*, 477 F.Supp.2d 31, 40-41 (D.D.C. 2007). In the present case, Rising Eagle Capital Group – Cayman became the sole director of Rising Eagle Capital Group prior to the latter’s dissolution, which occurred shortly thereafter, and Spiller and Mears have continued to place robocalls since Rising Eagle Capital Group’s dissolution. Rising Eagle Capital Group LLC, Certificate of Amendment, Office of the Sec’y of State of Tex. (Jan. 13, 2020).

<sup>267</sup> Notice Response at 3.

<sup>268</sup> See Bank of Am. Wire Records; 2019 PayPal Transactions; 2018 PayPal Transactions.

<sup>269</sup> See Bank of Am. Wire Records.

<sup>270</sup> See *id.*

<sup>271</sup> See *id.*

<sup>272</sup> See *id.*

<sup>273</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>274</sup> Any entity that is a “Small Business Concern” as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, “Oversight of Regulatory Enforcement,” in addition to other rights set forth herein.

amount results from applying a base forfeiture of \$1,000 to each of the 150,000 verified spoofed robocalls.<sup>275</sup> We then impose an upward adjustment of \$75,000,000 to reflect the egregiousness of the harm associated with the illegal spoofed robocalls.<sup>276</sup> We reject Rising Eagle's argument that the Commission did not consider the various mitigating factors set forth in section 503(b)(2)(E) of the Act. The proposed base forfeiture amounts and upward adjustments are consistent with our rules and precedent. We find no basis to reduce the forfeiture.

### 1. Rising Eagle Engaged in Egregious and Intentional Misconduct on a Massive Scale

60. Rising Eagle made more than one billion robocalls during a period of four-and-a-half months in 2019—the largest robocalling operation that the Commission has ever investigated. This massive robocalling campaign also caught the attention of eight state attorneys general, which filed suit against Rising Eagle contemporaneously with our *Notice*.<sup>277</sup> Rising Eagle engaged in a massive scheme to defraud consumers into thinking that the robocalls originated from well-known health insurance companies.<sup>278</sup> Consumers expressed outrage about these calls. One consumer complained to the Commission:

I am disabled and elderly. I continue to receive repeated calls from this same caller. They call 2 - 3 times per day. I sometimes fall when trying to get to the phone. This caller sells Cigna, BlueCross/Blue Shield health care plans and others. It's recorded. Can't hardly take it anymore. Can't get my rest.<sup>279</sup>

Rising Eagle used each spoofed number to place millions of calls, overwhelming innocent third parties with angry call-backs from aggrieved consumers. At least one third-party, Genworth, had its telephone network so overwhelmed with call-backs from aggrieved consumers that some Genworth employees were unable to use its phone system.<sup>280</sup> Rising Eagle argues that we overstated the number of robocalls and therefore the degree of harm.<sup>281</sup> Spiller stated that Rising Eagle was only involved in approximately 525,500,000 robocalls on behalf of Health Advisors.<sup>282</sup> But Health Advisors was only one of Rising Eagle's clients, and even if Rising Eagle had "only" made 525,500,000 spoofed robocalls, we would find that egregious.<sup>283</sup>

61. Rising Eagle is highly culpable. Rising Eagle admitted that it configured the dialer, uploaded the messages, input the phone numbers to be called as well as the caller ID numbers, and connected the dialer to a VoIP provider to place outbound calls to consumers.<sup>284</sup> Furthermore, Rising Eagle informed the Traceback Group that it intentionally stopped checking its calling list against the Do

<sup>275</sup> *Rising Eagle Notice*, 35 FCC Rcd at 5963-64, paras. 38-39.

<sup>276</sup> *Id.* at 5964-65, paras. 40-41.

<sup>277</sup> First Amended Original Complaint at 1, Arkansas, Indiana, Michigan, Missouri, North Ohio, and Texas v. Rising Eagle Capital Group LLC, JSquared Telecom LLC, John C. Spiller, II, and Jakob A. Mears, No. 4:20-cv-02021 (S.D. Tex. 2020).

<sup>278</sup> *Rising Eagle Notice*, 35 FCC Rcd at 5964, para. 41.

<sup>279</sup> FCC Complaint #3070502 (Feb. 21, 2019).

<sup>280</sup> Genworth Aff. at 1.

<sup>281</sup> Notice Response at 8; Affidavit of John C. Spiller, Rising Eagle Capital Group LLC at 4 (Aug. 24, 2020) (Spiller Aff.).

<sup>282</sup> Spiller Aff. at 4.

<sup>283</sup> That call volume is several times larger than the calling campaign in *Abramovich* that the Commission found to be egregious. *Abramovich Forfeiture Order*, 33 FCC Rcd at 4676, para. 39.

<sup>284</sup> Notice Response at 5.

Not Call Registry because it found that more people would answer its calls.<sup>285</sup> Rising Eagle also had direct control over the volume of robocalls made on behalf of its clients.<sup>286</sup> Even if Health Advisors was “more culpable,” as Rising Eagle claims,<sup>287</sup> that would not absolve Rising Eagle of its responsibility.<sup>288</sup> In any event, Rising Eagle, not Health Advisors, uploaded the caller ID numbers into the dialer *causing* the display of inaccurate caller ID information. The evidence supports our finding that Rising Eagle intended to defraud, cause harm, and wrongfully obtain something of value.

62. Rising Eagle has demonstrated a disregard for compliance. Rising Eagle ignored attempts by Bureau staff to contact it while investigating the robocalls.<sup>289</sup> Rising Eagle argues that it “worked extensively with the Traceback Group to address concerns about Rising Eagle’s business practices, and made changes according[ly] . . . .”<sup>290</sup> Rising Eagle’s calls appeared in more than 100 tracebacks.<sup>291</sup> While it may have taken corrective action, Rising Eagle did so only after being caught and after the violations cited in the *Notice*. Even with these corrective actions, Rising Eagle continued to appear in Traceback Group tracebacks, indicating that it continued to place apparently illegal robocalls.<sup>292</sup>

63. In short, the forfeiture amount reflects the particularly egregious factors in this case. Rising Eagle was responsible for the most extensive caller ID spoofing scheme we have encountered to date—and the sizeable impact of its activity also was substantial enough to catch the attention of several state attorneys general. Moreover, Rising Eagle acted deliberately to transmit calls to consumers who had listed their numbers on the National Do Not Call Registry.

## 2. We Decline to Reduce the Forfeiture for Rising Eagle’s Inability to Pay or Lack of Prior Offenses

64. The Commission has refused to reduce a forfeiture due to inability to pay in cases where other factors support retaining the proposed amount.<sup>293</sup> As the Commission said in *Abramovich*,

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<sup>285</sup> Frankel Aff. at 2.

<sup>286</sup> See Spiller Call Recording, 10.36.101.11-39ed10350a24650b08066bee1f06792b, at 03:30 (directing Mears to keep the call center agents busy with incoming calls); Spiller Call Recording, 10.36.101.11-949cdf00a24650b549dd67859253002, at 09:01 (“I’m really hoping that you can drive more volume to the rooms that need it.”); Spiller Call Recording, 10.36.101.13-9ebc86d90a24650d4fb8896fad1a33c0, at 09:26 (“Let’s turn up the heat.”); Spiller Call Recording, 10.36.101.13-5988bf5d0a24650d44b9d37bd41479ba, at 09:56 (managing call volume).

<sup>287</sup> Notice Response at 22.

<sup>288</sup> The Commission considered and rejected the same argument in *Abramovich*. *Abramovich Forfeiture Order*, 33 FCC Rcd at 4677, paras. 41-42. *Abramovich* argued that his clients and VoIP provider were more liable for the robocalls. *Id.*

<sup>289</sup> E-mail from Daniel Stepanicich, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau, to John Spiller, Director, Rising Eagle Capital Group LLC (Dec. 3, 2018, 12:29 ET). The call recordings between Spiller and Mears confirm that Rising Eagle intentionally did not reply. See Spiller Call Recording, 10.36.101.21-7ac1433c0a246515031598bd86be2e9e, at 02:10 and 2:35 (instructing Mears that the correspondence was “trash” and “do not reply.”).

<sup>290</sup> Notice Response at 22.

<sup>291</sup> See E-mail from Jessica Thompson, Manager, Policy & Advocacy, USTelecom, to Daniel Stepanicich, Attorney Advisor, FCC Enforcement Bureau (Mar. 17, 2020, 16:09 ET) (on file in EB-TCD-18-00027781) (identifying that the Traceback Group ran approximately 130 tracebacks for Rising Eagle campaigns as of March 2020).

<sup>292</sup> Frankel Aff. at 2-4. This Forfeiture Order does not include robocalls made after May 14, 2019 and is without prejudice to any future enforcement action with respect to those robocalls.

<sup>293</sup> *Roesel Forfeiture Order*, 33 FCC Rcd at 9226, para. 58; *Abramovich Forfeiture Order*, 33 FCC Rcd at 4680, para. 48.

[w]hen adopting its spoofing rules, the Commission said that it would ‘seek substantial penalties’ against violators. Because of the ease and low costs that technology has brought to the task of generating telephone calls and falsifying caller ID information for unlawful purposes, large-scale violators may generate hundreds of thousands or even millions of illegal calls within a short period of time. We find that large-scale spoofing operations tend to be more harmful to consumers. . . . Accordingly, any proposed forfeitures in such cases must reflect the exponential harm associated with large-scale spoofing.<sup>294</sup>

65. Rising Eagle seeks a reduction of the proposed forfeiture based on an asserted inability to pay, Spiller’s and Mears’s status as individuals, and a lack of prior offenses, citing past Commission decisions in support of such reductions.<sup>295</sup> The cases on which Rising Eagle relies did not involve spoofing violations.<sup>296</sup> While the Bureau did reduce the forfeiture in *Larry Ritchie* because the violator was an individual, the Bureau also determined that the “violation was considered minor.”<sup>297</sup> Spiller and Mears engaged in the largest robocalling scheme that we have ever investigated—their violations are anything but “minor” and do not deserve a discount. All of the Commission’s past spoofing cases have involved first-time violators of the Truth in Caller ID Act, and the Commission have never reduced the forfeiture for lack of prior violations.<sup>298</sup> In addition, even outside of spoofing cases, the Commission has declined to reduce a forfeiture due to inability to pay where other factors weighed against doing so.<sup>299</sup> Rising Eagle is squarely culpable for its egregious violations of the Act and our rules. We find that these factors outweigh its alleged inability to pay or its lack of history concerning prior offenses.

66. Furthermore, Rising Eagle has not provided sufficient financial information for us to assess its inability to pay. The *Notice* requested that Rising Eagle support its inability to pay claim with federal tax returns for the past three years, financial statements for the past three years prepared according to generally accepted accounting practices, or some other reliable objective documents that accurately reflect the petitioner’s current financial status.<sup>300</sup> Rising Eagle argues that the Commission already reviewed Rising Eagle’s bank records and the required documents are unduly burdensome on small

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<sup>294</sup> *Abramovich Forfeiture Order*, 33 FCC Rcd at 4680, para. 48 (quoting *Abramovich Notice*, 32 FCC Rcd at 5426, para. 24).

<sup>295</sup> Notice Response at 20-22 (citing *Whisler Fleurinor*, Forfeiture Order, 28 FCC Rcd 1087, 1090 (EB 2013); *Larry Ritchie*, Forfeiture Order, 9 FCC Rcd 3112, 3112 (EB 1994)).

<sup>296</sup> We note that the forfeiture falls far below the statutory maximum, and Congress recently *increased* the amount that could be imposed for intentional TCPA violations, thereby affirming its desire to impose severe financial punishment for abusive phone calls. See TRACED Act § 3 (increasing the penalty for intentional violations of the TCPA).

<sup>297</sup> *Larry Ritchie*, 9 FCC Rcd at 3112.

<sup>298</sup> *Moser Forfeiture Order*, FCC 20-163, para. 39; *Affordable Forfeiture Order*, 35 FCC Rcd at 12167-68, para. 70; *Roesel Forfeiture Order*, 33 FCC Rcd at 9226, para. 60.

<sup>299</sup> See *Central Telecom Long Distance, Inc.*, Forfeiture Order, 31 FCC Rcd 10392, 10410-11, paras. 42-44 (2016); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-04, paras. 32-33 (2015) (acknowledging that “standing alone, Purple’s financial documents might support a reduction” but finding after applying the balancing factors no reduction was warranted); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014) (noting that the Commission “has previously rejected inability to pay claims in cases of repeated or otherwise egregious violations”); *Whisler Fleurinor*, Forfeiture Order, 28 FCC Rcd at 1090, para. 9 (EB 2013) (violator’s demonstrated inability to pay outweighed by gravity of repeated violations); *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840, 7844-45, para. 16 (EB 2011) (violator’s repeated intentional and malicious violations outweighed evidence of inability to pay), *recons. dismissed*, Memorandum Opinion and Order, 28 FCC Rcd 1170 (EB 2013).

<sup>300</sup> *Rising Eagle Notice*, 35 FCC Rcd at 5970, para. 53.

businesses who do not have the resources to “maintain detailed accounting records.”<sup>301</sup> *First*, even small companies must prepare annual tax returns; we see no reason why it would be burdensome to submit documents that should already have been kept in the ordinary course of business. *Second*, the Bureau did review a PayPal account and a bank account associated with Rising Eagle, but these accounts may reflect only a portion of Rising Eagle’s income and financial resources. Accordingly, we independently deny Rising Eagle’s request for modification for lack of appropriate documentation.

67. Mears did provide personal tax return information and bank records. Although this provides evidence of his personal income, it does not offer insight into the income or resources of the other named parties. Moreover, as set forth above and consistent with other precedent, we find that Mears’s inability to pay—even if Mears had established such inability in responsive documents—is greatly outweighed by the other balancing factors that militate in favor of a large forfeiture.

68. Accordingly, after balancing the statutory factors and taking into consideration the arguments advanced in the Response, we find that no downward adjustment is warranted. Our decision is consistent with prior precedent.<sup>302</sup> Thus, we conclude, based upon the evidence before us, that the proposed forfeiture of \$225,000,000 properly reflects the seriousness, duration, and scope of Rising Eagle’s violations.

#### IV. ORDERING CLAUSES

69. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act,<sup>303</sup> and section 1.80 of the Commission’s rules,<sup>304</sup> John C. Spiller, Jakob A. Mears, Rising Eagle Capital Group LLC, JSquared Telecom LLC, Only Web Leads LLC, Rising Phoenix Group, Rising Phoenix Holdings, RPG Leads, and Rising Eagle Capital Group – Cayman **ARE JOINTLY AND SEVERALLY LIABLE FOR A MONETARY FORFEITURE** in the amount of two hundred, twenty-five million dollars (\$225,000,000) for willfully and repeatedly violating section 227(e) of the Act<sup>305</sup> and section 64.1604 of the Commission’s rules.<sup>306</sup>

70. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission’s rules within thirty (30) calendar days after the release of this Forfeiture Order.<sup>307</sup> John C. Spiller, Jakob A. Mears, Rising Eagle Capital Group LLC, JSquared Telecom LLC, Only Web Leads LLC, Rising Phoenix Group, Rising Phoenix Holdings, RPG Leads, and Rising Eagle Capital Group – Cayman shall send electronic notification of payment to Lisa Williford, Enforcement Bureau, Federal Communications Commission, at [lisa.williford@fcc.gov](mailto:lisa.williford@fcc.gov) on the date said payment is made. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to section 504(a) of the Act.<sup>308</sup>

71. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission’s Fee Filer (the Commission’s online payment

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<sup>301</sup> Notice Response at 20.

<sup>302</sup> See, e.g., *Roesel Forfeiture Order*, 33 FCC Rcd at 9226, para. 58; *Abramovich Forfeiture Order*, 33 FCC Rcd at 4680, para. 48; *TV Max, Inc.*, 29 FCC Rcd at 8661, para. 25.

<sup>303</sup> 47 U.S.C. § 503(b).

<sup>304</sup> 47 CFR § 1.80.

<sup>305</sup> 47 U.S.C. § 227(e).

<sup>306</sup> 47 CFR § 64.1604.

<sup>307</sup> 47 CFR § 1.80.

<sup>308</sup> 47 U.S.C. § 504(a).

system),<sup>309</sup> or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:<sup>310</sup>

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov) on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters “FORF” in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN). For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu, and select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and then choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu and then select the bill number associated to the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

72. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 45 L Street NE, Washington, DC 20554.<sup>311</sup> Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

<sup>309</sup> Payments made using the Commission’s Fee Filer system do not require the submission of an FCC Form 159.

<sup>310</sup> For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

<sup>311</sup> See 47 CFR § 1.1914.

73. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to John C. Spiller, Rising Eagle Capital Group LLC, JSquared Telecom LLC, Rising Eagle Phoenix Group, Rising Phoenix Holdings, and RPG Leads at {{ }}, Jakob A. Mears at {{ }}, Rising Eagle Capital Group – Cayman at WB Corporate Services (Cayman) Ltd., P.O. Box 2775, 1st Fl. Artemis House, 67 Fort Street, George Town, Grand Cayman KYI-1111, Cayman Islands, Only Web Leads LLC at {{ }}, and to Mitchell N. Roth, Esq., Roth Jackson, 8200 Greensboro Dr., Suite 820, McLean, Virginia 22102.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**STATEMENT OF  
ACTING CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *In the Matter of John C. Spiller; Jakob A. Mears; Rising Eagle Capital Group LLC; JSquared Telecom LLC; Only Web Leads LLC; Rising Phoenix Group; Rising Phoenix Holdings; RPG Leads; and Rising Eagle Capital Group – Cayman*, Forfeiture Order, File No. EB-TCD-18-00027781.

The FCC receives more complaints about robocalls than any other issue. It's easy to see why! Robocalls are intrusive and annoying—and during the last few years the number has skyrocketed. Worse, many of these calls involve scams. To protect ourselves, many of us rely on Caller ID and only pick up the phone if we recognize the number.

So one of the most insidious things robocallers do is trick people into taking the call. They disguise who they are by spoofing their number and instead use numbers that we trust—friends, family, and familiar institutions.

This isn't just frustrating—it's dangerous. When we can't trust that the number we see is the number that is truly calling, we're less likely to pick up the phone and more likely to miss important calls from those we really care about.

So today we do something historic: we impose the largest fine ever for the illegal spoofing of telephone numbers. The individuals involved didn't just lie about who they were when they made their calls—they said they were calling on behalf of well-known health insurance companies on more than a billion calls. That's fraud on an enormous scale.

This is a just outcome. But the truth is that given the size and scope of the problem, we have to do much, much more.

That's why I'm announcing today the creation of a Robocall Response Team at the Federal Communications Commission. The Robocall Response Team will consist of over 50 attorneys, economists, engineers, and analysts from the agency, including the Enforcement Bureau, the Consumer and Governmental Affairs Bureau, the International Bureau, the Wireline Competition Bureau, the Office of Economics and Analytics, and the Office of General Counsel. Many of these folks have worked on robocall issues in the past, but coordination has been case-by-case and far too scarce. So we are putting in place a structure that allows us to think more broadly and act more boldly.

The Robocall Response Team will meet regularly, with input directly from my office. Its first order of business? A top to bottom review of our policies, laws, and practices, to identify gaps we need to close.

But we don't have to wait for more aggressive enforcement. So today we are sending six Robocall Cease and Desist letters to providers that appear to be facilitating illicit robocalls. We have already warned providers that they have to stop carrying illegal robocalls. The letters today represent our final notice: if these providers don't act within 48 hours to stop transmitting these illicit robocalls, we will authorize other carriers to block this unlawful traffic.

These missives won't be the last. We are going to redouble our efforts to issue Cease and Desist letters to get providers to keep these junk calls off of our networks.

Finally, because we need a whole-of-government approach, today I am sending letters to the Department of Justice, Federal Trade Commission and National Association of State Attorneys General to reaffirm our interest in coordinating to crack down on robocalls. I look forward to working with them to leverage the knowledge, skills, and jurisdictional reach we each have to address this problem. I also hope that we can expand these efforts to include additional law enforcement partners in the near future.

A big thank you to the agency staff who helped prepare this effort, including Monica Echevarria, Lisa Gelb, Rosemary Harold, Jermaine Haynes, Shannon Lipp, Balkisu Macauley, Jessica Manuel, Raul Rojo, Daniel Stepanicich, Kristi Thompson, Ashley Tyson, Lisa Zaina, and Bridgette Washington from the Enforcement Bureau; Valerie Hill, Rick Mallen, Linda Oliver, and Bill Richardson from the Office of the General Counsel; Rachel Kazan, Virginia Metallo, and Emily Talaga from the Office of Economics and Analytics; Ed Bartholme, Kurt Schroeder, Mark Stone, and Kristi Thornton from the Consumer and Governmental Affairs Bureau; and Pam Arluk, Daniel Kahn, and Melissa Kirkel from the Wireline Competition Bureau.

**STATEMENT OF  
COMMISSIONER NATHAN SIMINGTON**

Re: *In the Matter of John C. Spiller; Jakob A. Mears; Rising Eagle Capital Group LLC; JSquared Telecom LLC; Only Web Leads LLC; Rising Phoenix Group; Rising Phoenix Holdings; RPG Leads; and Rising Eagle Capital Group – Cayman*, Forfeiture Order, File No. EB-TCD-18-00027781.

Illegal robocalls are the most common complaint made to the FCC, and why wouldn't they be? They are a scourge on the American public. The FCC has made them an enforcement priority, and by today's historic fine, we continue to demonstrate our commitment and signal to fraudsters that they cannot act without consequence.

Just as it has supported the industry-led Industry Traceback Group, which was instrumental in identifying the origins of the robocalls at issue here, the Commission must continue to work arm-in-arm with the private sector to foster solutions like STIR/SHAKEN. It is only through regulatory and private partnering that industry and the Commission will succeed in reducing, and eventually eliminating, the high cost that all Americans pay for these calls.

I want to thank the staff of the Enforcement Bureau, the Consumer and Governmental Affairs Bureau, and the Wireline Competition Bureau for their dedicated work in shepherding this enforcement order through to completion. It has my full support.