

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)

MEMORANDUM OPINION AND ORDER

Adopted: June 5, 2023

Released: June 7, 2023

By the Commission:

TABLE OF CONTENTS

Heading Paragraph #
I. INTRODUCTION..... 1
II. BACKGROUND..... 3
III. DISCUSSION 9
A. Rising Eagle Violated the Truth in Caller ID Act..... 10
B. Rising Eagle Intended to Defraud..... 14
C. Rising Eagle Had Adequate Notice that Its Conduct Violated the Truth in Caller ID Act..... 25
D. The Commission Considered All Relevant Factors in Assessing the Forfeiture Amount 31
IV. CONCLUSION 42
V. ORDERING CLAUSES..... 43

I. INTRODUCTION

1. We deny the Petition for Reconsideration (Petition) filed by 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 (collectively, Rising Eagle)¹ seeking reconsideration of the Forfeiture Order² issued by the Federal Communications Commission (the Commission or FCC) finding that Rising Eagle had illegally 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. Upon review of the Petition and the entire record, we find no basis for reconsideration. In general, reconsideration is appropriate only when the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the

¹ 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.

² 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, 36 FCC Rcd 6225, 6226, para. 2 (2021) (Rising Eagle Forfeiture Order).

petitioner's last opportunity to present such matters.³ Rising Eagle's Petition fails to present such facts or arguments warranting reconsideration. It argues that the Commission improperly relied upon the content of the prerecorded messages rather than the caller ID number itself to impose the forfeiture; Rising Eagle lacked the intent to defraud; the Commission's application of the Truth in Caller ID Act to Rising Eagle's conduct was impermissibly vague; and the Commission failed to consider all relevant factors when it assessed the proposed forfeiture amount. We do not find merit in any of Rising Eagle's arguments. We find that the Commission properly decided the matters raised and deny Rising Eagle's Petition and affirm the conclusion in the Rising Eagle Forfeiture Order that pursuant to Section 503(b) of the Communications Act of 1934, as amended (the Act) Rising Eagle is liable for a monetary forfeiture of \$225,000,000 for willfully and repeatedly violating section 227(e) of the Act and section 64.1604 of the Commission's rules.

II. BACKGROUND

3. *Legal Framework.* The Truth in Caller ID Act, codified in section 227(e) of the 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 [(caller ID)] information with the intent to defraud, cause harm, or wrongfully obtain anything of value"⁴—a practice otherwise known as "spoofing," which on a large scale is often coupled with illegal robocalling activity.⁵ In enacting the Telephone Consumer Protection Act (TCPA),⁶ 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.⁷ 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 purpose⁸—and require inclusion of the telephone number of the entity responsible for initiating the call.⁹ The Commission has

³ See 47 CFR § 1.106; *EZ Sacramento, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 18257, 18257, para. 2 (EB 2000) (citing *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC Rcd 685, 686 (1964), *aff'd sub. Nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966)); see also *Ely Radio, LLC*, Memorandum Opinion and Order, 27 FCC Rcd 7608, 7610, para. 6 (EB 2012) (articulating the standard of review for Petitions for Reconsideration).

⁴ 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.

⁵ S. Rep. No. 116-41 at 2 (2019).

⁶ Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (codified at 47 U.S.C. § 227) (TCPA).

⁷ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 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.N.M. 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).

⁸ 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 U.S.C. § 227(b)(2)(C).

⁹ 47 U.S.C. § 227(d)(3)(A); 47 CFR § 64.1200(b)(2).

found that spoofing, when employed in an unlawful robocalling campaign, can indicate an intent to cause harm.¹⁰

4. *Factual Background.* In September 2018, the USTelecom Industry Traceback Group (Traceback Group) informed the FCC Enforcement Bureau (Bureau) that it had traceback information for millions of robocalls containing prerecorded messages offering health insurance.¹¹ The Traceback Group determined that approximately 23.6 million health insurance robocalls were crossing the networks of the four largest wireless carriers each day.¹² Moreover, the Traceback Group's experts found indications that many or possibly all of the offending robocalls contained false caller ID information.¹³ The Bureau launched an investigation to determine who was responsible for the apparently unlawful spoofed robocalls affecting consumers.

5. 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.¹⁴ Rising Eagle made spoofed robocalls on behalf of clients that sold short-term, limited-duration health insurance plans.¹⁵ Many of the robocalls contained 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.¹⁶

The prerecorded messages purported to offer health insurance plans from well-known health insurance companies such as Aetna, Blue Cross Blue Shield,¹⁷ Cigna, and UnitedHealth Group.

¹⁰ *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*).

¹¹ 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). The Traceback Group is the registered industry consortium selected pursuant to the TRACED Act to conduct tracebacks. *See Implementing Section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)*, EB Docket No. 20-22, Report and Order, DA 22-870, para. 40 (EB 2022); *see also* Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274, Sec. 13(d) (2019) (TRACED Act). 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, *Combating Illegal Robocalls at 2-3* (2021), <https://tracebacks.org/itg-report/>.

¹² USTelecom Subpoena Response (Oct. 4, 2018) (on file in EB-TCD-18-00027781).

¹³ *Id.*

¹⁴ *Rising Eagle Forfeiture Order*, *supra* note 2, at 6228, para. 8.

¹⁵ *Id.* at 6227, para. 6.

¹⁶ Nomorobo, (678) 261-1817 Is a Health Insurance Scam (Feb. 6, 2019), <https://www.nomorobo.com/lookup/678-261-1817>. Nomorobo is a call blocking application. Nomorobo, *How it Works*, <https://nomorobo.com/#learn> (last visited May 22, 2023). Its website contains recordings of various robocalls. The recording cited here has a caller ID associated with Rising Eagle calls transmitted on February 6, 2019. *See* Call Detail Records, *supra* note 19. Rising Eagle does not dispute that it used this recording.

¹⁷ Blue Cross Blue Shield is comprised of 34 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->

(continued....)

In fact, the Bureau confirmed that Rising Eagle had no connection to at least two of the insurance companies—Blue Cross Blue Shield and Cigna—and there is no evidence that Rising Eagle was connected with any of the other insurance companies mentioned.¹⁸ 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 above-named health insurance companies. The 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 the health insurance companies named in the prerecorded messages.

6. 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.¹⁹ The Bureau reviewed a subset of Rising Eagle’s more than one billion robocalls to confirm that they were spoofed. The Bureau determined that Rising Eagle used at least 60 caller IDs assigned to persons other than Rising Eagle or that were unassigned.²⁰ Rising Eagle used these 60 caller IDs to make 113,190,325 calls. The Bureau verified that at least 150,000 of these calls in fact used one of the 60 spoofed caller IDs²¹ and 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.²² Bureau

(Continued from previous page) _____
[system](#) (last visited May 2, 2023). References to Blue Cross Blue Shield in this Memorandum Opinion and Order are to the Blue Cross Blue Shield system as a whole.

¹⁸ Affidavit of Adam Peltzman, Assistant General Counsel, Executive Director, Blue Cross Blue Shield Association at 1 (Apr. 10, 2020) (on file in EB-TCD-18-00027781) (Blue Cross Aff.); Affidavit of Kaitlin Reilly, Legal Compliance Senior Advisor, Cigna Corporation at 1-2 (Feb. 12, 2020) (on file in EB-TCD-18-00027781) (Cigna Aff.).

¹⁹ R Squared Subpoena Response (Aug. 16, 2019) (on file in EB-TCD-18-00027781) (*hereinafter* 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 Canadian consumers; however, the 150,000 robocalls that the Bureau verified only include robocalls made to U.S. consumers.

²⁰ The Bureau subpoenaed the subscriber information of the caller IDs to determine whether voice service providers had assigned the numbers to Rising Eagle or its clients. *See* 8x8, Inc. (Dec. 4, 2019) (on file in EB-TCD-18-00027781); AT&T Corp. (Nov. 19, 2019) (on file in EB-TCD-18-00027781); Armstrong Telecomms., Inc. (Nov. 19, 2019) (on file in EB-TCD-18-00027781); Big River Tel. Co. (Dec. 4, 2019) (on file in EB-TCD-18-00027781); Blitz Telecom Consulting (Nov. 19, 2019) (on file in EB-TCD-18-00027781); Broadvoice, Inc. (July 7, 2020) (on file in EB-TCD-18-00027781); CenturyLink Commc’ns, LLC (Nov. 27, 2019) (on file in EB-TCD-18-00027781); Comcast Phone, LLC (Nov. 19, 2019) (on file in EB-TCD-18-00027781); Connexum, LLC (Dec. 6, 2019) (on file in EB-TCD-18-00027781); Intermedia.net, Inc. (Dec. 2, 2019) (on file in EB-TCD-18-00027781); j2 Cloud Servs., LLC (Dec. 4, 2019) (on file in EB-TCD-18-00027781); Lumos Networks, Inc. (Dec. 4, 2019) (on file in EB-TCD-18-00027781); Momentum Telecom, Inc. (Dec. 10, 2019) (on file in EB-TCD-18-00027781); Pinger, Inc. (Dec. 9, 2019) (on file in EB-TCD-18-00027781); Qwest Corp. (Nov. 21, 2019) (on file in EB-TCD-18-00027781); TPx Commc’ns Co. (Feb. 10, 2020) (on file in EB-TCD-18-00027781); Verizon Commc’ns Inc. (Nov. 21, 2019) (on file in EB-TCD-18-00027781); Vonage Holdings Corp. (Dec. 16, 2019) (on file in EB-TCD-18-00027781); Ymax Commc’ns Corp. (Nov. 21, 2019) (on file in EB-TCD-18-00027781).

²¹ The 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. Verified Call Detail Records (on file in EB-TCD-18-00027781) (*hereinafter* Verified Call Detail Records).

²² 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.

staff interviewed 52 of the consumers who received robocalls from Rising Eagle.²³ None of the called consumers whom the Bureau interviewed gave permission—written or otherwise—for the robocalls.²⁴ 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), the Bureau 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.²⁵

7. On June 10, 2020, the Commission adopted a Notice of Apparent Liability (Notice) proposing a \$225,000,000 penalty against Rising Eagle for its apparent violations of the Truth in Caller ID Act.²⁶ Rising Eagle responded to the Notice on August 24, 2020.²⁷ On March 17, 2021, the Commission adopted the Forfeiture Order imposing a \$225,000,000 penalty as proposed in the Notice.²⁸ On April 19, 2021, Rising Eagle filed a Petition for Reconsideration (Petition).²⁹

8. Rising Eagle makes a number of arguments as to why the Forfeiture Order should be reconsidered and rescinded: (1) the Commission has imposed this historic penalty for the content of the prerecorded messages rather than the caller ID information or the reason for alleged caller ID spoofing;³⁰ (2) there is no adequate showing of Petitioners' intent to defraud or harm the consumers called;³¹ (3) the application of the statute to Petitioners' conduct is impermissibly, unconstitutionally vague as applied to the conduct at issue;³² and (4) the Commission failed to consider all relevant factors it is required to examine when considering whether to reduce a proposed forfeiture.³³ These arguments are considered below.

III. DISCUSSION

9. Section 1.106(p) authorizes the Commission or the relevant bureau to dismiss or deny a petition for reconsideration that is used merely to repeat legal and factual arguments that have been “fully

²³ These 52 examples were those for which the Bureau was 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.

²⁴ Declaration of { [REDACTED] } (Apr. 8, 2020) (on file in EB-TCD-18-00027781); Declaration of { [REDACTED] } (Apr. 6, 2020) (on file in EB-TCD-18-00027781); Declaration of { [REDACTED] } (Mar. 12, 2020) (on file in EB-TCD-18-00027781); Declaration of { [REDACTED] } (Mar. 10, 2020) (on file in EB-TCD-18-00027781); Declaration of { [REDACTED] } (Mar. 9, 2020) (on file in EB-TCD-18-00027781). Material highlighted and set off by double brackets { [REDACTED] } is redacted from the public version of this document.

²⁵ The Bureau examined recordings provided by YouMail, Inc., a robocall identification and blocking service. YouMail Subpoena Response (Jan. 3, 2020) (on file in EB-TCD-18-00027781) (*hereinafter* YouMail Response).

²⁶ *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 Rcd 5948, 5948, para. 1 (2020) (*Rising Eagle Notice*).

²⁷ Rising Eagle, Response to Notice of Apparent Liability (Aug. 24, 2020) (on file in EB-TCD-18-00027781) (*hereinafter* Notice Response).

²⁸ *Rising Eagle Forfeiture Order*, *supra* note 2, at 6226, para. 2.

²⁹ Rising Eagle, Petition for Reconsideration (Apr. 19, 2021) (on file at EB-TCD-18-00027781) (*hereinafter* Petition).

³⁰ *Id.* at 1-4.

³¹ *Id.* at 4-10.

³² *Id.* at 10-13.

³³ *Id.* at 13-18.

considered and rejected by the Commission within the same proceeding[.]”³⁴ The Commission may also deny a petition for reconsideration that relies “on facts or arguments which have not previously been presented to the Commission” unless those facts or arguments “relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission,” or relate to “facts or arguments unknown to [the] petitioner until after his last opportunity to present them to the Commission.”³⁵ In the Petition, Rising Eagle presents arguments that it either previously raised in its Notice Response or that it could have raised at that stage. Furthermore, Rising Eagle does not explain why it could not have raised these arguments at that stage. While these arguments may be procedurally deficient as they address facts and legal theories known to Rising Eagle at the time of its Notice Response, we deny them on the merits as discussed below. Rising Eagle did raise one argument based on new facts—the Commission did not consider Rising Eagle Capital Group’s January 2021 bankruptcy filing when considering its inability to pay.³⁶ As discussed in more detail below, we do not find Rising Eagle Capital Group’s bankruptcy changes our analysis or conclusions. We therefore affirm the \$225,000,000 forfeiture assessed in the Forfeiture Order.

A. Rising Eagle Violated the Truth in Caller ID Act

10. Rising Eagle unlawfully spoofed robocalls with the intent to defraud, cause harm, and wrongfully obtain something of value. Courts have recognized that direct evidence of specific intent is rarely available.³⁷ Therefore, it is reasonable and often necessary to look at a party’s actions to determine intent regarding a wrongful action.³⁸ In the first four months of 2019, Rising Eagle made over one billion robocalls, and the Bureau verified it spoofed at least 150,000 of these calls.³⁹ In the Forfeiture Order, we determined that Rising Eagle knowingly altered the display of caller ID information because Rising Eagle admitted that it knowingly selected unassigned numbers as caller ID as directed by one of its clients.⁴⁰ We further determined that Rising Eagle spoofed “with the intent to defraud, cause harm, or wrongfully obtain anything of value” on a number of grounds: (1) the spoofed prerecorded messages defrauded

³⁴ 47 CFR § 1.106(p)(3).

³⁵ *Id.* § 1.106(b)(2), (p)(2).

³⁶ Petition, *supra* note 29, at 15.

³⁷ *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).

³⁸ *See United States v. Davis*, 490 F.3d 541, 549 (6th Cir. 2007) (explaining that circumstantial evidence of fraudulent intent is sufficient because of the difficulty of proving intent to defraud through the availability of direct evidence) (citations omitted); *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).

³⁹ *Rising Eagle Forfeiture Order*, *supra* note 2, at 6225-26, para. 1.

⁴⁰ *Id.* at 6231, para. 15.

consumers by including misleading statements about the identity and nature of the products offered;⁴¹ (2) the spoofing enabled an illegal robocall campaign that harmed consumers;⁴² (3) the robocalls caused reputational harm to the companies misleadingly named in the messages;⁴³ (4) the spoofing harmed the subscribers of the spoofed numbers as well as numbering resources;⁴⁴ (5) the spoofed robocalls harmed the terminating service providers that carried Rising Eagle's calls;⁴⁵ and (6) Rising Eagle obtained something of value from the spoofing campaign in the form of monetary compensation and evasion of legal liability.⁴⁶ Other than the intent to defraud, which we address below, Rising Eagle does not contest any of these findings. Instead, Rising Eagle argues that we impermissibly used the content of the calls to impose liability for violations outside of the Commission's jurisdiction.⁴⁷

11. We rejected a similar argument about using the contents of calls to prove violations in *Rhodes*.⁴⁸ Rising Eagle, like *Rhodes*, argues that the fraud or harm must be caused by the caller ID number itself rather than the content of the robocall messages or the broader robocall scheme.⁴⁹ Rising Eagle's assertion lacks any foundation in the text of the statute, and its interpretation would unduly narrow the intended scope of the Truth in Caller ID Act. In passing that statute, Congress was concerned, among other things, about hoaxes that were facilitated through caller ID spoofing.⁵⁰ Congress believed that spoofing enabled the spoofers to hide from law enforcement.⁵¹ Congress did not say or suggest that the spoofed caller ID had to be the sole cause of the harm. Furthermore, in an action by the U.S. Department of Justice to collect the *Rhodes* forfeiture, the federal district court in that case agreed that "the language of the statute does not require proof that the person intended for the spoofing of caller identification information to cause harm itself."⁵²

12. Our past cases are consistent with this interpretation. In *Abramovich*, the Commission found that Adrian Abramovich intended to cause harm to well-known travel companies and consumers because he mentioned the companies in his robocalls.⁵³ Adrian Abramovich selected caller IDs that had no connection to the mentioned companies; instead, the Commission determined that Abramovich's use of spoofing made it more likely that recipients would answer their phones and listen to the robocalls' harmful message.⁵⁴ In *Rhodes*, the Commission specifically relied on statements made in the messages to

⁴¹ *Id.* at 6234-37, paras. 20-24.

⁴² *Id.* at 6237-39, paras. 26-28.

⁴³ *Id.* at 6239-41, paras. 28-30.

⁴⁴ *Id.* at 6242-43, paras. 31-34.

⁴⁵ *Rising Eagle Forfeiture Order*, *supra* note 2, at 6241, para. 35.

⁴⁶ *Id.* at 6243-44, paras. 36-39.

⁴⁷ Petition, *supra* note 29, at 1-4.

⁴⁸ *Scott Rhodes a.k.a. Scott David Rhodes, Scott D. Rhodes, Scott Platek, Scott P. Platek*, Forfeiture Order, 36 FCC Rcd 705, 715, para. 25 (2021) (*Scott Rhodes Forfeiture Order*).

⁴⁹ Petition, *supra* note 29, at 3-4.

⁵⁰ 156 Cong. Rec. H8376, H8380 (2010); 156 Cong. Rec. H2522, H2523 (2010); *see also* 156 Cong. Rec. H8376, H8379 (2010) (discussing an incident where law enforcement personnel wasted valuable time investigating a hoax claim that a woman shot her baby).

⁵¹ *See* 156 Cong. Rec. H8376, H8379 (2010) (discussing false attribution caused by spoofing).

⁵² *United States v. Scott Rhodes*, No. CV 21-110-M-DLC, 2022 WL 17484847, at *4 (D. Mont. Dec. 7, 2022).

⁵³ *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4668, para. 16 (2018) (*Abramovich Forfeiture Order*).

⁵⁴ *Id.* at 4668, paras. 15-16.

show that Scott Rhodes had acted with intent.⁵⁵ In all of these cases, the Commission proved that the altering of caller ID furthered the fraud, harm, or “wrongfully obtain[ing] anything of value.”⁵⁶

13. Like our past cases, we reviewed the content of Rising Eagle’s messages to determine whether Rising Eagle spoofed “with the intent to defraud, cause harm, or wrongfully obtain anything of value.”⁵⁷ The Forfeiture Order discussed in detail how Rising Eagle intended to defraud, cause harm, or wrongfully obtain anything of value and how spoofing furthered those actions.⁵⁸ This conduct may also have violated other statutes outside of the Commission’s jurisdiction,⁵⁹ but that does not foreclose us from imposing Truth in Caller ID Act liability if we have shown that Rising Eagle met each element of section 227(e). In the Forfeiture Order, we found that Rising Eagle altered the caller ID information for each of the 150,000 sampled robocalls and did so with the intent to defraud, cause harm, or wrongfully obtain anything of value; thus, we find that Rising Eagle’s arguments are without merit.

B. Rising Eagle Intended to Defraud

14. “Intent” under the Act encompasses a broad scope of objectives, namely, an intent to (1) defraud; (2) cause harm; or (3) wrongfully obtain anything of value.⁶⁰ The Commission found Rising Eagle acted with intent to achieve not just one of the aforementioned objectives, but all three.⁶¹ Rising Eagle challenges only the Commission’s finding that it intended to defraud; not that it intended to cause harm or wrongfully obtain anything of value.⁶² Accordingly, even if the Commission were to accept that Rising Eagle did not intend to defraud—which the Commission does not—the finding still stands on other grounds that Rising Eagle acted with requisite intent under the Act.

15. In the Forfeiture Order, we determined that Rising Eagle acted with intent to defraud recipients by placing spoofed robocalls.⁶³ Common law fraud requires “(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”⁶⁴ Rising Eagle falsely represented its clients were offering health insurance policies from well-known companies, *i.e.*, Blue Cross Blue Shield, Aetna, Cigna, and United.⁶⁵ These representations were material as a matter of law. Rising Eagle was aware of, or at least expressed a reckless indifference to, the veracity of the statements. The Commission properly inferred intent from Rising Eagle’s close

⁵⁵ *Scott Rhodes Forfeiture Order*, *supra* note 48, at 715, paras. 25-26.

⁵⁶ 47 U.S.C. § 227(e).

⁵⁷ *Id.*; *see also* 47 CFR § 64.1604(a).

⁵⁸ 47 U.S.C. § 227(e); 47 CFR § 64.1604(a); *Rising Eagle Forfeiture Order*, *supra* note 2, at 6236-37, para. 24, 6238-39, para. 28, 6239, para. 29, 6240, para. 31, 6242-43, para. 35, 6243-44, paras. 37-39.

⁵⁹ *See* Petition, *supra* note 29, at 1-2 (“[T]he Commission’s findings are in the nature of a state claim against unfair, deceptive, or abusive acts and practices or FTC Telemarketing Sales Rule (“TSR”) case, masquerading as a Truth in Caller ID Act case, and therefore outside the Commission’s jurisdiction.”). We do not opine on whether Rising Eagle’s conduct may have independently violated another statute.

⁶⁰ 47 U.S.C. § 227(e)(1).

⁶¹ *Rising Eagle Forfeiture Order*, *supra* note 2, at 6225-26, para. 1.

⁶² Petition, *supra* note 29, at 4-10.

⁶³ *Rising Eagle Forfeiture Order*, *supra* note 2, at 6233-37, paras. 19-24.

⁶⁴ *Pence v. United States*, 316 U.S. 332, 338 (1942).

⁶⁵ *Rising Eagle Forfeiture Order*, *supra* note 2, at 6234, para. 20.

participation in devising the content of the misrepresentations and executing the scheme to bring the representations to consumers.⁶⁶

16. In response, Rising Eagle alleges that its statements were not false, it had no knowledge the statements were false, lacked scienter, and the Commission could not prove its case without listening to every message.⁶⁷ We reject each of these arguments.

17. *Misrepresentations.* Rising Eagle included affirmative misrepresentations in its spoofed, prerecorded voice message calls in order to direct consumers toward Rising Eagle's clients. Rising Eagle argues it was "simply comparing the products being offered to those sold by [Cigna, Aetna, Blue Cross, and United]," and that "this comparison is akin to puffery."⁶⁸ Rising Eagle's misrepresentations constitute neither a legitimate comparison nor permissible puffery. Puffing is an "expression of exaggerated opinion . . . with the intent to sell a good or service" and is not actionable for fraud.⁶⁹ A key factor is whether the statement is something that consumers would rely upon in making a decision.⁷⁰ Typical examples of puffing include statements such as "high quality," "top dollar," "superb," "custom quality," or "super fine."⁷¹ Similarly, comparing one product to another and claiming superiority is not an actionable misrepresentation.⁷² However, subjective, comparative terms may be actionable.⁷³

18. Rising Eagle's statements in the prerecorded message calls did not include vague or subjective terms:

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.⁷⁴

The message informed consumers that they could obtain a health insurance policy from a well-known insurance provider and then proceeded to list several large health insurance companies. A consumer who pressed 3 to connect to a "licensed agent;" however, would not be able to purchase a policy from one of the named companies. The only subjective term in the message is the word "affordable," but the Forfeiture Order did not pass judgment on the affordability of the health insurance policies.

19. Rising Eagle argues that the phrase "such as" is a comparative term and that even if a consumer could not purchase a mentioned company policy, the consumer could still purchase a similar policy from a similar company.⁷⁵ We find this argument unpersuasive. *First*, the wording of the message strongly indicates that a consumer could buy an insurance policy from one of the listed companies. The

⁶⁶ *Id.* at 6236-37, para. 24.

⁶⁷ Petition, *supra* note 29, at 4-10.

⁶⁸ *Id.* at 6.

⁶⁹ *Carvelli v. Orwen Financial Corporation*, 934 F.3d 1307, 1319 (11th Cir. 2019).

⁷⁰ See *Reilly v. Pinkus*, 338 U.S. 269, 274-75 (1949); *All-Tech Telecom, Inc. v. Amway Corp.*, 174 F.3d 862, 868 (7th Cir. 1999).

⁷¹ See *FTC v. Trudeau*, 579 F.3d 754, 765 (7th Cir. 2009); *GJP, Inc. v. Classic Jaguar, Inc.*, 251 S.W.3d 854, 889 (Tex. App. 2008).

⁷² *Autohaus Inc. v. Aguilar*, 794 S.W.2d 459, 464 (Tex App. 1990).

⁷³ *Trudeau*, 579 F.3d at 765.

⁷⁴ Nomorobo, (678) 261-1817 Is a Health Insurance Scam (Feb. 6, 2019), <https://www.nomorobo.com/lookup/678-261-1817> (emphasis added).

⁷⁵ Petition, *supra* note 29, at 6.

message began by soliciting whether the recipient is looking for a health insurance policy “from a company you know.”⁷⁶ Then it listed the names of insurance companies immediately followed by the phrase, “just a quick phone call away.”⁷⁷ Upon hearing this message, the consumer would likely believe that they could purchase an insurance policy from one of the named companies.⁷⁸ *Second*, Rising Eagle’s cited cases do not support its argument. The cited cases all involve subjective comparisons between products or statements of superiority.⁷⁹ Here, Rising Eagle did not state its clients’ health insurance policies are the best or some other subjective characterization. Instead, Rising Eagle said that consumers could buy a Blue Cross Blue Shield or Cigna health insurance policy when in fact they could not.

20. *Knowledge.* Rising Eagle acted with reckless indifference to the truth of the statements it included in its robocalls. It argues that “the actions of Petitioners cannot be considered to be made with ‘reckless indifference’ to whether any representations were true or false” because the statements were “mere puffery.”⁸⁰ As discussed above, we do not find the statements included in the messages to be puffery.⁸¹ Direct knowledge is not required to show fraud.⁸² “One who acts with reckless indifference to whether a representation is true or false is chargeable with knowledge of its falsity.”⁸³ As we stated in the Forfeiture Order, Rising Eagle acted with reckless indifference because it sent more than a billion robocalls without any consideration of the truthfulness of the messages that it had a direct role in crafting.⁸⁴ Moreover, health Advisors told Rising Eagle that it was not supposed to use the name of at least one of the well-known health insurance companies.⁸⁵ Despite this knowledge as well as the considerable consumer ire that these calls generated, Rising Eagle failed to correct any misleading aspects of the messages.⁸⁶ Rising Eagle’s cited cases in support of its argument are not persuasive.⁸⁷ The court declined to find reckless indifference in *Bonhomme Investment Partners* because the defendant had no involvement in the loan at issue.⁸⁸ Similarly, in *John Beck Amazing Profits*, the spokesmen defendants did not maintain any significant control over the corporate defendants to become aware of the falsity of

⁷⁶ Nomorobo, (678) 261-1817 Is a Health Insurance Scam (Feb. 6, 2019), <https://www.nomorobo.com/lookup/678-261-1817>.

⁷⁷ *Id.*

⁷⁸ See *Reilly v. Pinkus*, 338 U.S. at 274 (discussing statements creating reliance).

⁷⁹ See *Autohaus*, 794 S.W.2d at 461 (statement by salesman that Mercedes is the “best engineered car in the world”); *Diais v. Land Rover Dallas, L.P.*, No. 05-15-00115-CV, 2016 WL 1298392, at 1 (Tex. App. Apr. 4, 2016) (“car was the most luxurious, rugged vehicle, with a supercharged high performance engine”)

⁸⁰ Petition, *supra* note 29, at 9.

⁸¹ See *supra* paras. 8-9.

⁸² *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 507, 527 (Tex. 1998).

⁸³ *Beecroft*, 608 F.2d at 757.

⁸⁴ *Rising Eagle Forfeiture Order*, *supra* note 2, at 6235, para. 23. See also Spiller Dep., *Texas v. Rising Eagle Capital Group, LLC et al.*, No. 4:20-cv-02021196:16-18, Sept. 12, 2022 (on file in EB-TCD-18-00027781) (“Q: Do you know who wrote the content on those prerecorded messages? A: Jakob and I did.”).

⁸⁵ Spiller Call Recording, 10.36.101.25-c44d35790a2465192dcc48922a136847, at 03:27 (on file in EB-TCD-18-00027781).

⁸⁶ *Rising Eagle Forfeiture Order*, *supra* note 2, at para. 23, n.104.

⁸⁷ Petition, *supra* note 29, at 10 (citing *Bonhomme Investment Partners, LLC v. Hayes*, No. 4:13CV475 CDP, 2015 WL 6702257, at *4 (E.D. Mo. Nov. 2, 2015); *FTC v. John Beck*, No. 2:09-cv-4719-FMC-FFMx, 2009 WL 7844076, at *14 (C.D. Cal. Nov. 17, 2009)).

⁸⁸ *Bonhomme Investment Partners*, No. 4:13CV475 CDP, 2015 WL 6702257, at *4 (E.D. Mo. Nov. 2, 2015).

their statements.⁸⁹ Here, Rising Eagle had significant control over the robocalling operation and a direct role in crafting the messages.⁹⁰ These actions included purchasing leads,⁹¹ crafting messages,⁹² recording messages,⁹³ and controlling the number of outbound calls.⁹⁴ We fully disposed of these arguments in the Forfeiture Order and do not see a reason to reconsider them here.

21. *Intent.* Rising Eagle argues consumers who ultimately purchased products from Health Advisors “did so knowing they were purchasing Health Advisors’ health insurance plan,” and that therefore Rising Eagle would “have no incentive, and likewise no intent to mislead consumers.”⁹⁵ It does not follow that, merely because Health Advisors may have ultimately been transparent with consumers at the point of purchase, Rising Eagle did not intend to mislead consumers initially in furtherance of potentially making a sale. Rising Eagle’s only support for this assertion is a New York state lower court decision involving the sale of an apartment where the broker made inconsistent statements about the size of the unit.⁹⁶ Here, the consumer did not receive any inconsistent advertisements *from Rising Eagle*. The fact that the consumer may have been alerted to the fraud upon speaking with a Health Advisors sales agent does not absolve Rising Eagle for the misrepresentations that it made in order to incent consumers to “press 3” to receive a sales pitch from Health Advisors.⁹⁷ Furthermore, Rising Eagle’s argument underplays the savviness of fraudsters and the skill of call center sales agents to deceive consumers into parting with their money.⁹⁸ Even if some consumers would hang-up upon learning of the discrepancy, others may fall for the misrepresentation.⁹⁹

⁸⁹ *FTC v. John Beck*, No. 2:09-cv-4719-FMC-FFMx, 2009 WL 7844076, at *14 (C.D. Cal. Nov. 17, 2009).

⁹⁰ *Rising Eagle Forfeiture Order*, *supra* note 2, at 6232, para. 17, 6235, paras. 21-22.

⁹¹ 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).

⁹² See Spiller Call Recording, 10.36.101.13-5988bf5d0a24650d44b9d37bd41479ba, at 03:55 (on file in EB-TCD-18-00027781) (showing Rising Eagle’s involvement in crafting the messages); *see also* Spiller Dep., *Texas v. Rising Eagle Capital Group, LLC et al.*, No. 4:20-cv-02021196:16-18, Sept. 12, 2022 (on file in EB-TCD-18-00027781) (“Q: Do you know who wrote the content on those prerecorded messages? A: Jakob and I did.”).

⁹³ 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”).

⁹⁴ See Spiller Call Recording, 10.36.101.11-39ed10350a24650b08066bee1f06792b, at 03:30 (on file in EB-TCD-18-00027781) (directing Mears to keep the call center agents busy with incoming calls); Spiller Call Recording, 10.36.101.11-949cdf00a24650b549dd67859253002, at 09:01 (on file in EB-TCD-18-00027781) (“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 (on file in EB-TCD-18-00027781) (“Let’s turn up the heat.”); Spiller Call Recording, 10.36.101.13-5988bf5d0a24650d44b9d37bd41479ba, at 09:56 (on file in EB-TCD-18-00027781) (managing call volume).

⁹⁵ Petition, *supra* note 29, at 6 (emphasis omitted).

⁹⁶ *Estrada v. Metropolitan Property Group, Inc.*, 973 N.Y.S.2d 147, 148 (N.Y. App. Div. Oct. 15, 2013).

⁹⁷ See *Abramovich Forfeiture Order*, *supra* note 53, at 4668, para. 4 (finding that the sales agents had no connection to the misrepresented companies mentioned in the robocalls).

⁹⁸ See *id.* (fining a lucrative robocalling scheme that misrepresented the identity of the products offered); Gareth Norris et al., *The Psychology of Internet Fraud Victimization: A Systematic Review*, 34 J Police Crim Psych 231, 235 (2019) (describing factors that fraudulent communications use to convince people to respond); Marguerite DeLiema, Tongjie Yon, & Kathleen H. Wilber, *Tricks of the Trade: Motivating Sales Agents to Con Older Adults*, 56 The Gerontologist 335, 342 (2014) (describing the psychological tactics, such as misleadingly adopting salient brand names, used by sales agents to manipulate consumers into purchasing fraudulent products); Jeffrey H. Doocy et al., *Telemarketing Fraud: Who Are the Tricksters and What Makes Them Trick?*, 14 Security Journal 7, 11 (2001)

(continued....)

22. *Call Sampling.* We used a sample of 150,000 calls to determine whether Rising Eagle altered caller ID information with the intent to defraud consistent with our past precedent.¹⁰⁰ It is reasonable, and necessary, for the Commission to review a subset of calls to identify the content and scope of the calls and to rely on other available evidence to reach its conclusions.¹⁰¹ Rising Eagle argues that it was “unconscionable and clear error” to assess liability based only on a subset of calls.¹⁰² Rising Eagle further claims that precedent, citing an unreported federal district court case, requires an examination of each call.¹⁰³ We rejected this argument in *Rhodes*.¹⁰⁴ Sampling is valid when there are multiple indicia—such as volume of calls, call patterns, number of complaints, news reports, and any other circumstantial evidence—showing consistency across the calls.¹⁰⁵ Here, Rising Eagle made over one billion robocalls between January 2, 2019 and May 14, 2019, which equated to millions of calls per day.¹⁰⁶ Complaints filed with the Commission and online consumer complaint websites, as well as multiple recordings from Nomorobo and YouMail, confirm the consistency of the message content.¹⁰⁷ Rising Eagle used a single caller ID on February 6, 2019, to transmit 5,425,755 prerecorded voice message calls that directly referenced insurance company names.¹⁰⁸ In comparison, we used a substantial sample of 150,000 calls to assess the forfeiture.¹⁰⁹ Moreover, Rising Eagle offers no evidence that the content deviated across calls.

23. Rising Eagle’s cited case is similarly unavailing. The facts in *Newhart* differ from the facts here. The district court in *Newhart* observed that there were differences in the types of alleged calls: some calls were potentially unsolicited robocalls while others were responses from consumer inquiries.¹¹⁰ The court concluded that “[a]s the challenged calls are not uniform in purpose, the telemarketing issue cannot be resolved by common, classwide evidence.”¹¹¹ In contrast, each of the 150,000 sampled calls here shared a uniform purpose. Rising Eagle does not claim that the calls had more than one purpose, or that some of the calls were made with the consent of the called party. All of the calls were outbound,

(Continued from previous page) _____

(observing that a successful sales agent has “an ability to convince others that you are what you truly are not, and to have them believe that the lines you speak are truth”).

⁹⁹ See *Abramovich Forfeiture Order*, *supra* note 53, at 4668, paras. 4, 16 (describing how Abramovich used false statements to induce people to connect to call centers who had no connection to the named brands in the robocalls).

¹⁰⁰ See, e.g., *Scott Rhodes Forfeiture Order*, *supra* note 48, at 713-714, paras. 20-23; *Kenneth Moser dba Marketing Support Systems*, 35 FCC Rcd 13415, 13432, para. 39 (2020) (*Moser Forfeiture Order*); *Affordable Enterprises of Arizona, LLC*, 35 FCC Rcd 12142, 12143, para. 3 (2020) (*Affordable Forfeiture Order*); *Roesel Forfeiture Order*, *supra* note 10, at 9206, para. 5 (2018); *Abramovich Forfeiture Order*, *supra* note 53, at 4665, para. 7.

¹⁰¹ *Rhodes Forfeiture Order*, *supra* note 48, at 714, para. 21.

¹⁰² Petition, *supra* note 29, at 7.

¹⁰³ *Id.* at 7-8 (citing *Newhart v. Quicken Loans Inc.*, 9:15-CV-81250, 2016 WL 7118998, at *4-5 (S.D. Fla. Oct. 12, 2016)).

¹⁰⁴ See *Rhodes Forfeiture Order*, *supra* note 48, at 713-14, para. 20-22.

¹⁰⁵ *Id.*

¹⁰⁶ Call Detail Records, *supra* note 19.

¹⁰⁷ See, e.g., YouMail Response, *supra* note 25; Nomorobo, (678) 261-1817 Is a Health Insurance Scam (Feb. 6, 2019), <https://www.nomorobo.com/lookup/678-261-1817> (emphasis added).

¹⁰⁸ Call Detail Records, *supra* note 19.

¹⁰⁹ Verified Call Detail Records, *supra* note 21.

¹¹⁰ *Newhart v. Quicken Loans Inc.*, 9:15-CV-81250, 2016 WL 7118998, at *3-4 (S.D. Fla. Oct. 12, 2016).

¹¹¹ *Id.* at *4.

spoofed, telemarketing calls made with the intent to defraud, cause harm, and wrongfully obtain something of value. Additionally, *Newhart* is a case about class certification and interpreting Federal Rule of Civil Procedure 23(a)'s requirement of "numerosity, commonality, typicality, and adequacy" among the class.¹¹² Rising Eagle does not explain why the specific procedural standards of Rule 23(a) bind our application of the Truth in Caller ID Act on the merits.

24. In sum, we find that not only could Rising Eagle have raised these arguments in its Notice Response as they relate to facts and legal theories known to Rising Eagle at the time of its Notice Response, but also that none of the arguments change our conclusions that Rising Eagle spoofed at least 150,000 robocalls with the intent to defraud.¹¹³

C. Rising Eagle Had Adequate Notice that Its Conduct Violated the Truth in Caller ID Act

25. The Forfeiture Order did not violate Rising Eagle's due process rights. The Truth in Caller ID Act directs the Commission to provide notice according to either subsection 503(b)(3) (*i.e.*, notice and opportunity for a hearing before the Commission or an administrative law judge) or subsection 503(b)(4) of the Act (*i.e.*, a notice of apparent liability).¹¹⁴ The Commission followed the procedures in subsection 503(b)(4) by adopting a notice of apparent liability on June 9, 2020, that detailed Rising Eagle's conduct and how it violated the Truth in Caller ID Act.¹¹⁵ Rising Eagle had an opportunity to respond to the notice of apparent liability and did so on August 24, 2020.¹¹⁶ We did not find any of the arguments raised in the Notice Response to be persuasive and imposed the entire proposed forfeiture of \$225,000,000.¹¹⁷

26. Rising Eagle raises a due process challenge to the Truth in Caller ID Act as the Commission applied the statute to Rising Eagle's conduct in the Forfeiture Order.¹¹⁸ It claims that the Forfeiture Order's application of the Truth in Caller ID Act is "impermissibly vague" as "[n]o reasonable person could possibly predict that a back-end technical consultant could be subject to a mind-bogglingly immense monetary penalty under a statute purporting to regulate caller ID information based on the Commission's tenuous interpretation of the content of prerecorded messages in another party's marketing campaign."¹¹⁹ Specifically, Rising Eagle claims that the Truth in Caller ID Act should be interpreted narrowly in favor of the defendant as it is a penal statute and regulates speech.¹²⁰ Rising Eagle does not explain why it did not raise these arguments in its Notice Response; nonetheless, we find them legally and factually deficient.

27. The Forfeiture Order appropriately applied the Truth in Caller ID Act to Rising Eagle's conduct. A statute can be impermissibly vague for two independent reasons: (1) the statute "fails to

¹¹² *Id.* at *2.

¹¹³ Even if we accepted Rising Eagle's argument that there was no intent to defraud—or the intent to defraud was not present in each call—Rising Eagle does not contest our findings that Rising Eagle spoofed all of the calls with the intent to harm and wrongfully obtain something of value. Thus, we would still uphold the forfeiture absent intent to defraud.

¹¹⁴ 47 U.S.C. § 227(e)(5)(A)(iii).

¹¹⁵ *Rising Eagle Notice*, *supra* note 26, at 5948, para. 1.

¹¹⁶ Notice Response, *supra* note 27.

¹¹⁷ *Rising Eagle Forfeiture Order*, *supra* note 2, at 6226, para. 2.

¹¹⁸ Petition, *supra* note 29, at 10-11.

¹¹⁹ *Id.* at 12-13.

¹²⁰ *Id.* at 10-11.

provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits,” and (2) the statute “authorizes or even encourages arbitrary and discriminatory enforcement.”¹²¹ The first factor is ameliorated if the statute contains a scienter requirement.¹²² The second factor requires the statute to have sufficient specificity to provide standards to law enforcement.¹²³ Sufficient specificity includes words or phrases that have a well-known technical or other special meaning or a well-settled common-law meaning.¹²⁴ The level of specificity does not need to be exact as long as the public and law enforcement can readily determine what the statute “as a whole prohibits” as “we can never expect mathematical certainty from our language.”¹²⁵ Additionally, civil statutes are reviewed at a less exacting standard than criminal statutes.¹²⁶ Rising Eagle’s reliance on 19th century case law¹²⁷ to argue that civil statutes should be strictly construed is outdated as modern courts have moved away from strictly construing certain civil statutes by recognizing that the “consequences of imprecision are qualitatively less severe” in civil rather than criminal statutes.¹²⁸

28. Our application of the Truth in Caller ID Act to Rising Eagle’s conduct was sufficiently clear and reasonable to avoid any vagueness problems. *First*, the Truth in Caller ID Act has a scienter requirement: “It shall be unlawful for any person . . . to cause any caller identification service to *knowingly* transmit misleading or inaccurate caller identification information with the *intent* to defraud, cause harm, or wrongfully obtain anything of value. . . .”¹²⁹ We applied a knowing standard to Rising Eagle’s conduct, finding that Rising Eagle *knowingly* altered caller ID information as it knew that it was altering caller ID to display what it thought were unassigned numbers.¹³⁰ We further determined that Rising Eagle *intended* to defraud as it acted with reckless indifference to whether the information it was broadcasting via more than one billion robocalls was truthful or not in order to deceive consumers.¹³¹ Rising Eagle *intended* to cause harm to consumers, the insurance companies, the subscribers of the spoofed numbers as well as numbering resources, and the service providers that terminated the calls.¹³² Rising Eagle also *intended* to wrongfully obtain compensation for the illegal calls and obtain a liability

¹²¹ *Hill v. Colorado*, 530 U.S. 703, 732 (2000); *see also Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972).

¹²² *Hill*, 530 U.S. at 732; *see also Colautti v. Franklin*, 439 U.S. 379, 395 (1979); *Boyce Motor Lines v. United States*, 342 U.S. 337, 342 (1952); *Screws v. United States*, 325 U.S. 91, 101–103 (1945).

¹²³ *Hill*, 530 U.S. at 733.

¹²⁴ *Connally v. General Const. Co.*, 269 U.S. 385, 391 (1926).

¹²⁵ *Grayned*, 408 U.S. at 110; *see also Kolender v. Lawson*, 461 U.S. 352, 361 (1983) (quoting *United States v. Petrillo*, 332 U.S. 1, 7-8 (1947) (“due process does not require ‘impossible standards’ of clarity”)); *Boyce Motor Lines*, 342 U.S. at 330-31 (“But few words possess the precision of mathematical symbols, most statutes must deal with untold and unforeseen variations in factual situations, and the practical necessities of discharging the business of government inevitably limit the specificity with which legislators can spell out prohibitions. Consequently, no more than a reasonable degree of certainty can be demanded.”).

¹²⁶ *See United States v. Harris*, 705 F.3d 929, 932 (9th Cir. 2013).

¹²⁷ Petition, *supra* note 29, at 10 (citing *United States v. Lacher*, 134 U.S. 624, 628 (1890); *Krutz v. Moffitt*, 115 U.S. 487 (1885); *Huber v. Reily*, 53 Fa. 112 (Pa. 1866)).

¹²⁸ *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498-99 (1982); *see also Lacher*, 134 U.S. at 628 (noting that courts have relaxed the rule of lenity in favor of deferring to the legislature); *cf. Jordan v. De George*, 341 U.S. 223, 231 (1951) (holding that while the statute at issue was civil, the penalty—deportation—was severe).

¹²⁹ 47 U.S.C. § 227(e)(1) (emphasis added).

¹³⁰ *Rising Eagle Forfeiture Order*, *supra* note 2, at 6231, para. 15.

¹³¹ *Id.* at 6236, para. 23.

¹³² *Id.* at 6237-43, paras. 25-35.

shield.¹³³ Rising Eagle’s claim that no reasonable person could predict that its actions would have resulted in a \$225 million forfeiture is belied by the fact that Rising Eagle is a prolific robocaller that knowingly engaged in conduct specifically prohibited by the Truth in Caller ID Act. Moreover, Congress specifically set a large penalty for each violation to deter such malicious conduct.¹³⁴

29. *Second*, the Truth in Caller ID Act gives clear guidance to Rising Eagle and law enforcement about what is prohibited. The Truth in Caller ID Act prohibits altering caller ID information “with the intent to defraud, cause harm, or wrongfully obtain anything of value.”¹³⁵ Mathematical precision in the statutory language is not necessary to account for every possible permutation of fact patterns as that discretion can be left to law enforcement so long as there is a standard to guard against arbitrary or discriminatory enforcement.¹³⁶ We applied the common law definition of fraud in determining that Rising Eagle acted with the intent to defraud.¹³⁷ Rising Eagle does not challenge our conclusions that it intended to cause harm or wrongfully obtain something of value, but rather that we applied these factors inconsistently with each of our past spoofing actions. Rising Eagle fails to persuade us that we departed from the standard set by Congress in the Truth in Caller ID Act and affirmed in the nearly half-dozen spoofing forfeitures that the Commission has issued since 2018.¹³⁸ Its actions fall squarely within what the statute as a whole prohibits: altering caller ID information with intent to defraud, cause harm, or wrongfully obtain anything of value.¹³⁹ Rising Eagle argues that the Commission’s Forfeiture Order “leaves the American public in a complete fog about when the content of their messages will subject them to multi-million dollar penalties for the content of their calls” due to a lack of “limiting principles.”¹⁴⁰ To the contrary, we applied the “limiting principle” contained in the Truth in Caller ID Act: the altering of caller ID information must be accompanied by the intent to defraud, cause harm, or wrongfully obtain anything of value.¹⁴¹ Each of Rising Eagle’s proffered examples would only be illegal

¹³³ *Id.* at 6243-44, paras. 37-38.

¹³⁴ See Truth in Caller ID Act of 2009, Pub. L. No. 111-331, codified at 47 U.S.C. § 227(e), (establishing a \$10,000 penalty for each violation); *cf. BMW of North Am. v. Gore*, 517 U.S. 559, 574 (1996) (“Elementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose.”); *Abramovich Forfeiture Order*, *supra* note 53 (finding that the forfeiture for spoofing was not “grossly disproportional” to the gravity of the offense).

¹³⁵ 47 U.S.C. § 227(e).

¹³⁶ See *Village of Hoffman Estates*, 455 U.S. at 498-99.

¹³⁷ See *Rising Eagle Forfeiture Order*, *supra* note 2, at 6234, para. 20 (quoting *Pence v. United States*, 316 U.S. 332, 338 (1942)) (“(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 . . .”). An appropriate standard includes a well-settled common-law meaning. See *Connally v. General Const. Co.*, 269 U.S. 385, 391 (1926).

¹³⁸ See, e.g., *Scott Rhodes Forfeiture Order*, *supra* note 48, paras. 38-45, 725-26, para. 48 (harm to consumers, numbering resources, intent to evade liability); *Moser Forfeiture Order*, *supra* note 100, at 13425-27, paras. 20-28, 13429-30, paras. 32-33 (harm to consumers, intent to evade liability); *Affordable Forfeiture Order*, *supra* note 100, at 12160, para. 47, 12162-63, para. 53 (harm to consumers, numbering resources; wrongfully obtain sales, intent to evade liability); *Roesel Forfeiture Order*, *supra* note 10, at 9211-12, para. 19, 9215, para. 30, 9217, para. 37 (harm to consumers, numbering resources, service providers, wrongfully obtain sales, evade liability); *Abramovich Forfeiture Order*, *supra* note 53, at 4668, paras. 15-18 (harm to consumers, brand names, service providers, numbering resources). *Cf. FCC v. Fox Television Stations*, 567 U.S. 239, 254-58 (2012) (finding the Commission’s action to be impermissibly vague where there had been changes in policy and inconsistent enforcement).

¹³⁹ See *Grayned v. City of Rockford*, 408 U.S. 104, 110-11 (1972) (looking to the purpose and context of the law).

¹⁴⁰ Petition, *supra* note 29, at 12, n.41.

¹⁴¹ See *Rising Eagle Forfeiture Order*, *supra* note 2, at 6233-44, paras. 19-39 (discussing Rising Eagle’s intent).

if the Commission found that there was intent to defraud, cause harm, or wrongfully obtain something of value. Absent those factors, there would be no violation of the Truth in Caller ID Act or our rules.¹⁴² Rising Eagle knowingly caused the display of inaccurate caller ID information as part of a deceptive and illegal robocall campaign; therefore, we conclude that we appropriately assessed a forfeiture against Rising Eagle and did not violate its right to due process.¹⁴³

30. Lastly, we do not need to apply a stricter standard for statutory vagueness despite the Truth in Caller ID Act being a civil statute as this forfeiture does not infringe on Rising Eagle's First Amendment rights.¹⁴⁴ Rising Eagle argues that broadcasting caller ID is a form of speech and the Commission's reliance on Rising Eagle's message content raises First Amendment concerns.¹⁴⁵ We explicitly rejected this argument in *Rhodes*.¹⁴⁶ The Truth in Caller ID Act regulates conduct, not speech.¹⁴⁷ The Supreme Court in *Spence v. Washington* determined that conduct becomes expressive and deserving of First Amendment protection when the actor intended to communicate a particular message by his actions and the message was understood by the audience.¹⁴⁸ Rising Eagle does not argue that it was trying to convey a message in its selected caller ID. Similarly, our reliance on the content of Rising Eagle's messages to prove elements of the Truth in Caller ID Act does not infringe on the First Amendment.¹⁴⁹ The content of the messages is relevant only to the extent that it demonstrates an intent to defraud, cause harm, or wrongfully obtain something of value. The Supreme Court has long recognized that the government may introduce "the evidentiary use of speech to establish the elements of a crime or to prove motive or intent."¹⁵⁰ We only reviewed the content of Rising Eagle's messages to show that they contained deceptive information, which establishes that Rising Eagle intended to defraud and cause harm. Thus, we see no reason to apply a higher tier of scrutiny here.

D. The Commission Considered All Relevant Factors in Assessing the Forfeiture Amount

31. After considering the relevant statutory factors and the Commission's *Forfeiture Policy Statement*, we affirm our finding that Rising Eagle is liable for a total forfeiture amount of \$225,000,000. As explained in the Notice and Forfeiture Order, this forfeiture amount results from applying a base forfeiture of \$1,000 to each of the 150,000 verified spoofed robocalls.¹⁵¹ We then impose an upward

¹⁴² *Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, WC Docket No. 11-39, Report and Order, 26 FCC Rcd 9114, 9120, para. 17 (2011).

¹⁴³ See *Affordable Forfeiture Order*, *supra* note 100, at 12150, para. 18; *Roesel Forfeiture Order*, *supra* note 10, at 9211-12, para. 19.

¹⁴⁴ See *Smith v. California*, 361 U.S. 147, 151 (1959) ("[S]tricter standards of permissible statutory vagueness may be applied to a statute having a potentially inhibiting effect on speech . . .").

¹⁴⁵ Petition, *supra* note 29, at 11.

¹⁴⁶ *Rhodes Forfeiture Order*, *supra* note 2, at 712, para. 18.

¹⁴⁷ *Id.*

¹⁴⁸ *Spence v. Washington*, 418 U.S. 405, 410-11, 415 (1974) (finding that defendant's alteration of the flag was intended to communicate a message that would have been likely understood by those who viewed it).

¹⁴⁹ See *Rhodes Forfeiture Order*, *supra* note 47, at 718, para. 32 (determining that reliance on message content was not prohibited by the First Amendment).

¹⁵⁰ *Wisconsin v. Mitchell*, 508 U.S. 476, 489 (1993); see also *Street v. New York*, 394 U.S. 576, 594 (1969) (noting that nothing would render a conviction impermissible "merely because an element of the crime was proved by the defendant's words rather than in some other way").

¹⁵¹ *Rising Eagle Forfeiture Order*, *supra* note 2, at 6257, para. 59; *Rising Eagle Notice*, *supra* note 26, at 5963-64, paras. 38-39.

adjustment of \$75,000,000 to reflect the egregiousness and extent of the harm associated with the illegal spoofed robocalls.¹⁵² The proposed base forfeiture amount and upward adjustment are consistent with the Commission's rules and precedent. We find no basis to reduce the forfeiture.

32. 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,¹⁵³ which requires the Commission to 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."¹⁵⁴ Contrary to Rising Eagle's claim that we ignored those factors, we considered each factor in the Notice and Forfeiture Order and do so again here.

33. *Nature, Circumstances, Extent, and Gravity of the Violation.* Rising Eagle made more than one billion robocalls during a period of four-and-a-half months in 2019 as part of a massive scheme to defraud consumers into thinking that the robocalls originated from well-known health insurance companies. At the time, this was the largest robocalling scheme that the Commission had ever investigated. As we found in the Notice and the Forfeiture Order, these calls generated considerable outrage from consumers:

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.¹⁵⁵

The robocalls also disrupted innocent third parties whose numbers Rising Eagle spoofed.¹⁵⁶ Rising Eagle's violations were extremely egregious and warrant a strong penalty.

34. *Culpability.* As we found in the Forfeiture Order, Rising Eagle is highly culpable for the violations.¹⁵⁷ 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 Voice over Internet Protocol (VoIP) provider to place outbound calls to consumers.¹⁵⁸ Furthermore, Rising Eagle informed the Traceback Group that it intentionally stopped checking its calling list against the Do Not Call Registry because it found that more people would answer its calls.¹⁵⁹ Rising Eagle also had direct control over the volume of robocalls made on behalf of its clients.¹⁶⁰ This factor also supports an upward adjustment.

35. *Cooperation.* Rising Eagle's alleged willingness to cooperate with the Traceback Group does not provide a basis to reduce the forfeiture. We expect full cooperation from entities during our

¹⁵² *Rising Eagle Forfeiture Order*, *supra* note 2, at 6257, para. 59; *Rising Eagle Notice*, *supra* note 26, at 5964-65, paras. 40-41. Rising Eagle argues that this methodology resulted in a penalty above the statutory maximum, but Rising Eagle mistakenly conflates the statutory maximum for each single violation with the maximum allowed for continuing violations. *Petition*, *supra* note 29. The Commission did not apply a continuing violation theory in this case. *See Notice*, *supra* note 26, at 5964, para. 39 (proposing a \$1,000 fine per spoofed call).

¹⁵³ *See Petition*, *supra* note 29, at 13.

¹⁵⁴ 47 U.S.C. § 503(b)(2)(E).

¹⁵⁵ FCC Complaint #3070502 (Feb. 21, 2019); *see also Rising Eagle Forfeiture Order*, *supra* note 2, at 6257, para. 60; *Rising Eagle Notice*, *supra* note 26, at 5964, para. 41.

¹⁵⁶ *Rising Eagle Forfeiture Order*, *supra* note 2, at 6257, para. 60.

¹⁵⁷ *Id.* at para. 61.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

investigations and proceedings.¹⁶¹ Rising Eagle claims that it “continually cooperated with the Traceback Group investigations and that it took corrective action to ensure that any alleged violations would not continue to occur.”¹⁶² The evidence in the record does not support Rising Eagle’s argument that its violations were “merely a flash in the pan.”¹⁶³ Rising Eagle’s back-and-forth with the Industry Takeback Group only began *after* the date of the alleged violations. The Forfeiture Order covered violations up to May 14, 2019. Rising Eagle began promising compliance to the Industry Traceback Group on June 7, 2019.¹⁶⁴ It only started taking corrective action on September 10, 2019¹⁶⁵—four months after the last violation cited in the Forfeiture Order. Months-long delays in attempting to comply with the law do not warrant a downward adjustment.¹⁶⁶ Furthermore, Rising Eagle completely disregarded the Bureau’s attempts to contact it during the investigation—actions that delayed the investigation.¹⁶⁷ We see no reason to reward Rising Eagle’s belated attempts to take corrective actions months after the violations.

36. *Prior Offenses.* While this is Rising Eagle’s first violation of the Truth in Caller ID Act, we declined to reduce the penalty in the Forfeiture Order.¹⁶⁸ All of our previous spoofing forfeiture orders involve first-time violators of the Truth in Caller ID Act.¹⁶⁹ In each case, we did not apply a downward adjustment.¹⁷⁰ Following our past precedent, we decline to apply a downward adjustment here especially given the other section 503 balancing factors that support an upward adjustment.

37. *Inability to Pay.* In the Forfeiture Order we declined to consider Rising Eagle’s inability to pay argument because Rising Eagle did not provide *any* financial information for us to assess its inability to pay, and we found Rising Eagle’s violations to be egregious.¹⁷¹ The *Forfeiture Policy Statement* issued in 1997 and cited by Rising Eagle in the Petition notes that the Commission will be sensitive to small entities who may not have the ability to pay a particular forfeiture or submit extensive accounting documents.¹⁷² While Rising Eagle is a small entity, it does not warrant a reduction in the

¹⁶¹ See, e.g., *RB Commc’ns, Inc. d/b/a Starfone*, Forfeiture Order, 29 FCC Rcd 5668, 5672, para. 15 (2014) (*Starfone Forfeiture Order*); *Coleman Enter., Inc. d/b/a Local Long Distance, Inc.*, Order of Reconsideration, 16 FCC Rcd 10023, 10027–28, paras. 10–11 (2001); *4M of Richmond, Inc.*, Forfeiture Order, 19 FCC Rcd 15447, 15452, para. 15 (EB 2004); *Ne. Utils.*, Forfeiture Order, 17 FCC Rcd 4115, 4117, para. 13 (EB 2002).

¹⁶² Petition, *supra* note 29, at 14.

¹⁶³ *Id.*

¹⁶⁴ Affidavit of David Frankel at 2 (Jan. 9, 2020) (on file in EB-TCD-18-00027781) (Frankel Aff.).

¹⁶⁵ *Id.* at 3.

¹⁶⁶ See *Starfone Forfeiture Order*, 29 FCC Rcd at 5673, para. 16 (noting Starfone’s months long delay in complying with registration requirements).

¹⁶⁷ *Rising Eagle Forfeiture Order*, *supra* note 2, at 6258, para. 62.

¹⁶⁸ *Id.* at para. 65.

¹⁶⁹ *Rhodes Forfeiture Order*, *supra* note 48, at 728-29, para. 54; *Moser Forfeiture Order*, *supra* note 100, at 13432-33, para. 39; *Affordable Forfeiture Order*, *supra* note 100, at 12167-68, para. 70; *Roesel Forfeiture Order*, *supra* note 10, at 9226, para. 60; *Abramovich Forfeiture Order*, *supra* note 53, at 4678, para. 43. In *Abramovich*, we applied an upward adjustment for Abramovich’s history of prior TCPA violations even though he was a first-time violator of the Truth in Caller ID Act. *Abramovich Forfeiture Order*, *supra* note 53, at 4678, para. 43.

¹⁷⁰ *Rhodes Forfeiture Order*, *supra* note 48, at 728-29, para. 54; *Moser Forfeiture Order*, *supra* note 100, at 13432-33 para. 39; *Affordable Forfeiture Order*, *supra* note 100, at 12167-68, para. 70; *Roesel Forfeiture Order*, *supra* note 10, at 9226, para. 60; *Abramovich Forfeiture Order*, *supra* note 53, at 4678, para. 43.

¹⁷¹ *Rising Eagle Forfeiture Order*, *supra* note 2, at 6259-60, para. 66.

¹⁷² *The Commission’s Forfeiture Policy Statement and Amendments of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087-17107 (1997); Petition at 16, n.60.

forfeiture amount. We have consistently declined to reduce a forfeiture based on inability to pay where we have found egregious conduct as we found here in the Forfeiture Order.¹⁷³ Rising Eagle argues that the bank account records reviewed by the Bureau should be sufficient to make an inability to pay determination,¹⁷⁴ but we rejected this exact same argument in the Forfeiture Order.¹⁷⁵ The bank records only represent a part of Rising Eagle's financial situation. While the Bureau did review a PayPal account and a bank account associated with Rising Eagle Capital Group LLC, the Bureau did not review any personal financial accounts associated with Spiller.

38. Besides these recycled arguments, Rising Eagle does raise one new issue by stating that "Rising Eagle" had declared bankruptcy after filing its Notice Response.¹⁷⁶ While this is new information that Rising Eagle could not have raised in its Notice Response, we do not find it availing and it does not change the outcome of this case.

39. Rising Eagle filed bankruptcy for Rising Eagle Capital Group LLC on January 29, 2021.¹⁷⁷ The petition lists that Rising Eagle Capital Group LLC has zero assets.¹⁷⁸ This bankruptcy filing, however, does not tell the entire story of Rising Eagle's financial status. *First*, the bankruptcy is only for Rising Eagle Capital Group LLC—one of nine parties named in the Forfeiture Order. It is not dispositive of the financial status of Spiller or Mears personally or the other named companies. *Second*, Spiller began winding down Rising Eagle Capital Group LLC a year prior to the bankruptcy filing. On October 16, 2019, Spiller and Mears formed Rising Eagle Capital Group – Cayman, a foreign entity registered in the Cayman Islands.¹⁷⁹ On January 13, 2020, Spiller and Mears removed themselves as managers of Rising Eagle and appointed Rising Eagle Capital Group – Cayman as Rising Eagle's manager.¹⁸⁰ They dissolved Rising Eagle Capital Group on February 28, 2020.¹⁸¹ Rising Eagle transferred ownership of Rising Eagle Capital Group LLC to a foreign entity nearly a year prior to the bankruptcy filing. Given these circumstances, it is not dispositive of *Rising Eagle's* financial status that *Rising Eagle Capital Group LLC* had no assets as of January 2021. We therefore conclude that Rising Eagle Capital Group LLC's bankruptcy filing does not require us to reconsider the penalty assessed in the Forfeiture Order.

40. We also reject Rising Eagle's inability to pay arguments with respect to Jakob Mears.¹⁸² Rising Eagle did provide financial information for Mears, but we determined in the Forfeiture Order that Mears' inability to pay is outweighed by the other balancing factors consistent with past precedent.¹⁸³

¹⁷³*Rising Eagle Forfeiture Order*, *supra* note 2, at 6258, para. 64 (citing *Roesel Forfeiture Order*, *supra* note 10, at 9226, para. 58; *Abramovich Forfeiture Order*, *supra* note 53, at 4680, para. 48).

¹⁷⁴ Petition, *supra* note 29, at 14-15.

¹⁷⁵ See *Rising Eagle Forfeiture Order*, *supra* note 2, at 6258, para. 66 ("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.").

¹⁷⁶ Petition, *supra* note 29, at 15.

¹⁷⁷ Chapter 7 Voluntary Petition for Non-Individuals, *In re Rising Eagle Capital Group LLC*, Bankruptcy Petition #: 21-30282 (Bankr. S.D. Tex. Jan. 29, 2021) (Bankruptcy Petition).

¹⁷⁸ *Id.* at Form 206Sum.

¹⁷⁹ Rising Eagle Capital Group – Cayman, Search Report, Cayman Is. General Registry (Oct. 16, 2019). This was one month after Rising Eagle informed that the Traceback Group that it would make efforts to comply with the law. See Frankel Aff., *supra* note 164, at 2.

¹⁸⁰ Rising Eagle Capital Group LLC, Certificate of Amendment, Office of the Sec'y of State of Tex. (Jan. 13, 2020).

¹⁸¹ Rising Eagle Capital Group LLC, Forfeiture of Certification, Office of the Sec'y of State of Tex. (Feb. 28, 2020).

¹⁸² *Id.* at 16.

¹⁸³ *Rising Eagle Forfeiture Order*, *supra* note 2, at 6260, para. 67.

Additionally, Rising Eagle repeats its argument that Mears only had limited involvement and therefore should not be subjected to the penalty.¹⁸⁴ This argument is contradicted by the record, which shows that Mears was listed as a manager on corporate documents and managed the day-to-day operations of Rising Eagle while Spiller was incarcerated.¹⁸⁵ The Petition does not raise any new facts or legal arguments; therefore, we decline to revisit the Forfeiture Order's conclusions regarding Mears' liability.

41. Lastly, Rising Eagle argues that the forfeiture is unjust compared to the penalties assessed by other law enforcement agencies on one of its clients for similar calls.¹⁸⁶ Rising Eagle notes that its client, Health Advisors, settled with the Missouri Attorney General for only \$8,500.¹⁸⁷ We rejected similar arguments in the Forfeiture Order about Rising Eagle's role in the calls and see no reason to revisit them here absent any new evidence.¹⁸⁸ Furthermore, the Missouri enforcement action is not comparable as it involved a different statute, by a state agency, at a different stage of adjudication. Accordingly, after balancing all of the statutory factors, we find no basis to reduce the forfeiture.

IV. CONCLUSION

42. Based on the record before us and in light of the applicable statutory factors, we affirm our conclusion that Rising Eagle willfully and repeatedly violated the Truth in Caller ID Act by knowingly causing the display of inaccurate caller ID information with the intent to defraud, cause harm, and wrongfully obtain something of value. We further affirm our decision not to cancel or reduce the \$225,000,000 forfeiture.

V. ORDERING CLAUSES

43. Accordingly, **IT IS ORDERED** that, pursuant to 47 U.S.C. § 405 and 47 CFR § 1.106, the Petition for Reconsideration filed by Rising Eagle is hereby **DISMISSED** and **DENIED** to the extent discussed herein.

44. The Commission hereby **REAFFIRMS** that, pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 CFR § 1.80, 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 LIABLE FOR A MONETARY FORFEITURE** in the amount of two hundred million, twenty-five dollars (\$225,000,000) for willfully and repeatedly violating section 227(e) of the Act, 47 U.S.C. § 227(e), section 64.1604 of the Commission's rules, 47 CFR § 64.1604, and Commission orders.¹⁸⁹

45. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules upon release of this Memorandum Opinion and Order.¹⁹⁰ Rising Eagle shall send electronic notification of payment to Kristi Thompson, Enforcement Bureau, Federal Communications Commission, at kristi.thompson@fcc.gov on the date said payment is made. If the forfeiture is not paid

¹⁸⁴ Petition, *supra* note 29, at 15-16.

¹⁸⁵ See *Rising Eagle Forfeiture Order*, *supra* note 2, at 6252, para. 52 (describing Mears' role and direct involvement in the robocalling scheme); Rising Eagle Capital Group LLC, Certificate of Amendment, Office of the Sec'y of State of Tex. (June 1, 2018) (adding Mears as managing member of Rising Eagle Capital Group LLC).

¹⁸⁶ Petition, *supra* note 29, at 16-17.

¹⁸⁷ *Id.* at 17; see also Consent Judgment, *Missouri v. Health Advisors of America, Inc.*, No 19SL-CC00580 (Aug. 8, 2019).

¹⁸⁸ *Rising Eagle Forfeiture Order*, *supra* note 2, at 6231, para. 15, 6233-34, para. 19

¹⁸⁹ *Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, WC Docket No. 11-39, Report and Order, 26 FCC Rcd 9114 (2011).

¹⁹⁰ *Id.*

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.¹⁹¹

46. In order for 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 to pay the proposed forfeiture, 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 notify Kristi Thompson at kristi.thompson@fcc.gov of its intent to pay, whereupon an invoice will be posted in the Commission’s Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/cores/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. 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:¹⁹²

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters “FORF”. In addition, a completed Form 159¹⁹³ or printed CORES form¹⁹⁴ must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, 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).¹⁹⁵ 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 CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, 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 CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number

¹⁹¹ 47 U.S.C. § 504(a).

¹⁹² For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

¹⁹³ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

¹⁹⁴ Information completed using the Commission’s Registration System (CORES) does not require the submission of an FCC Form 159. CORES is accessible at <https://apps.fcc.gov/cores/userLogin.do>.

¹⁹⁵ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (*e.g.*, NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, 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.

47. 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, D.C. 20554. 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.

48. **IT IS FURTHER ORDERED** that a copy of this Memorandum Opinion and 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 {[REDACTED]}, Jakob A. Mears at {[REDACTED]}, 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 {[REDACTED]}, and to Mitchell N. Roth, Esq., Roth Jackson, 8200 Greensboro Dr., Suite 820, McLean, Virginia 22102.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary