

FCC Expands Anti-Spoofing Prohibitions to Foreign-Originated Calls, Text-Messaging Services

August 15, 2019

On August 1, the FCC took another step in its ongoing effort to combat deceptive and unlawful calls to consumers. This action once again sets its sights on a [common target](#): concealment or alteration of the originating number on a communication. This practice is known as “spoofing” and, when conducted with an intent to cause harm to consumers, is unlawful. In the August 1 Report and Order, the FCC amended its [Truth In Caller ID rules](#) to expand anti-spoofing prohibitions to foreign-originated calls and text messaging services.

Once these rules take effect, the FCC closes a significant gap in its prior rules – calls which originate outside the United States – at the same time that it acts preemptively to prohibit deceptive spoofing in a growing area – text messaging. In the process, the FCC will enhance one of its most commonly used tools in its effort to combat unlawful robocalls – fines for unlawful spoofing. Generally, the FCC has attacked parties that originate unlawful robocalls by [fining them for the subsidiary violation of spoofing the unlawful calls](#). In telecommunications enforcement, spoofing violations are the tax evasion charges to Al Capone’s criminal enterprise.

Expansion of the Spoofing Prohibition

The first change adopted in the August 1 Report and Order was to expand the rules to cover communications originating outside the United States directed at recipients within the United States. The existing rules only applied to persons and entities within the U.S. The new rule states:

“No person in the United States, **nor any person outside the United States if the recipient is in the United States**, shall, with the intent to defraud, cause harm, or wrongfully obtain anything of value, knowingly cause, directly, or indirectly, any caller identification service to transmit or display misleading or inaccurate caller identification information in connection with any voice service or text messaging service.”

In addition to the FCC’s authority to issue fines, the new rules will allow law enforcement to seize the domestic assets of those making illegally spoofed calls from outside the U.S. and work with foreign governments to pursue international scammers.

The second change, also incorporated in the rule above, applies the rule’s prohibition beyond voice communications to include text messages. The definition of text messages includes text, images, sounds, or other information transmitted to or from a device, specifically covering short message service (“SMS”) and multimedia message service (“MMS”) messages. Also covered by the rules are messages sent to or from Common Short Codes (Short Codes), which are the 5- or 6-digit codes commonly used by enterprises to communicate with consumers at high volume.

Not included in the definition is real-time, two-way voice or video communications and messages over IP-enabled messaging services so long as the communication is to another user of the same messaging service. Thus, the rules do not reach messages sent via common OTT applications such as iMessage, Google Hangouts, Whatsapp, and direct message features in Snapchat and Twitter. Rich Communications Services ("RCS") messages, which allow advanced messaging features, are also excluded. The Commission determined that Congress intended for RCS messages to fit under the statutory exclusion for "IP-enabled communications."

The Commission also clarified its definition of "voice service" to ensure the rules cover the broader "telecommunications service," as well as interconnected VoIP.

Implementing the RAY BAUM'S Act

The rule changes were required by amendments to the Communications Act, made by the RAY BAUM'S Act of 2018, which strengthened the FCC's authority over spoofed calls established in the Truth in Caller ID Act of 2009. The 2009 legislation prohibited the use of misleading and inaccurate caller ID information for harmful purposes, but in a 2011 report, the FCC recommended that Congress update the rules to give the Commission authority to prohibit calls outside of the U.S. and make explicit that the Act covers text messages. The order also cited a May 2019 filing by 42 state attorneys general urging the Commission to adopt the rules.

While all voting commissioners supported the order, Commissioner Mike O'Rielly expressed some reservations prior to the vote. In particular, he said he thought the extraterritorial jurisdiction would be difficult to execute and would have preferred narrower statutory language, but did not believe it was his role to "challenge the wisdom" of the legislature. He also said the definitions of text and voice services were broader than he wanted, which he thought might cause future unintended consequences.

The new rules will go into effect on February 6, 2020, or 30 days after Federal Register publication, whichever is later.