

Summary of the Pallone-Thune TRACED Act

January 15, 2020

Passed the House of Representatives (12/4) and the U.S. Senate (12/19) Signed by President Trump (12/31)

The Pallone-Thune TRACED Act, S. 151, is bipartisan legislation designed to focus on telemarketers who make unlawful robocalls to consumers. “Robocalling” – a term which sometimes lumps unlawful practices with lawful but unwanted calls – has been a significant source of consumer complaints in previous years. Per some sources, as many as 54 billion robocalls were made through November 2019. In December 2019, Congress passed legislation that addresses the practice. The principal headlines tout stricter enforcement penalties for egregious violators, but the legislation also mandates call authentication frameworks and requires the FCC to issue nearly two dozen rulemaking proceedings or reports on various issues. In short, the Pallone-Thune TRACED Act will have repercussions across all areas of calling (and texting) practices.

The following is a summary of the major provisions of the bill:

- The TRACED Act grants the Federal Communications Commission (FCC) more latitude to pursue civil forfeiture penalties against the worst offenders—robocallers who intentionally violate the Telephone Consumer Protection Act (TCPA). Under current law, the FCC must first issue a citation to a caller, and then can only seek penalties within a year of a subsequent violation. This bill would permit the FCC to pursue violations for up to four years after a violation has occurred and would eliminate the citation requirement. The bill applies to both telephone calls and text messages

- The legislation directs the FCC to adopt rules requiring all classes of telephone providers to adopt call authentication technologies within 18 months, without a line item charge to consumers. These technologies enable a telephone carrier to verify that incoming calls are authenticated before they reach the telephones of consumers. The legislation requires the FCC to mandate SHAKEN/STIR for IP-based networks and an “effective” call authentication technology for non-IP networks.
 - The FCC can exempt from the rules carriers that are making reasonable progress toward implementing call authentication programs.
 - In addition, the FCC may extend the 18 month deadline for implementing call authentication frameworks for a provider or a class of providers upon a finding of undue hardship provided that the carrier(s) receiving such an extension also adopt a reasonable robocall mitigation program in the interim.

- The FCC must assess the effectiveness of call authentication technologies every three years thereafter.
- The TRACED Act creates a working group of law enforcement and other robocall enforcers to evaluate policies and resources needed to better prosecute and encourage fewer illegal robocalls. The working group will be comprised of the FCC, Department of Justice, Department of Commerce, Department of State, Department of Homeland Security, Federal Trade Commission, and the Consumer Financial Protection Bureau.
- The bill requires the FCC to evaluate new ways to reduce access to numbers by potential violators, potentially cutting off repeat offenders from access to telephone numbers and numbering resources.
- The legislation directs the FCC to begin a rulemaking process to help protect subscribers from receiving unwanted and unauthenticated telephone calls. This new mandate will hopefully ensure that the FCC adopts protections that help empower subscribers to block calls from spoofed telephone numbers.
- Many consumers receive robocalls intended for previous individuals who had the phone number before them. The TRACED Act ensures that the FCC is quickly making available the reassigned number database it agreed to implement in December 2018 by requiring a report to Congress.
- The legislation requires the FCC to issue an annual report to Congress on their enforcement efforts against illegal robocallers and to provide information to the U.S. Attorney General regarding certain violations. Notably, the report must include an analysis of degree to which TCPA violations are enabled by providers of interconnected VoIP service and non-interconnected VoIP service “that discount high-volume, unlawful, short-duration calls.”
- A recent trend in unlawful activity has been what are called “one-ring scams,” whereby an international scammer makes a call to a consumer that rings only once, in an attempt to induce the consumer to call them back so that they can charge exorbitant fees. Under the Pallone-Thune TRACED Act, the FCC is required to initiate a proceeding to protect consumers from one-ring scams.
- The legislation formalizes the “Traceback” group coordinated by an industry trade group, but requires that the FCC register a neutral group of companies to carry the effort forward. The FCC will report to Congress annually on the status of these efforts.

- Many hospitals are affected by unwanted robocalls which can result in some information being given to consumers without their permission. The TRACED Act establishes a new hospital robocall working group designed to issue a set of best practices to help carriers combat illegal robocalls to hospitals.
- Unfortunately, the TRACED Act does not amend or clarify the definition of an Automated Telephone Dialing System (ATDS). This task is left up to the FCC to address in the *ACA International* remand or a possible future rulemaking.

FCC Reports and Proceedings Required by the Pallone-Thune TRACED Act