

TRUTH IN CALLER ID ACT OF 2007

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 JUNE 11, 2007.—Committed to the Committee of the Whole House on the State of
 the Union and ordered to be printed
 —————

Mr. DINGELL, from the Committee on Energy and Commerce,
 submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 251]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 251) to amend the Communications Act of 1934 to prohibit manipulation of caller identification information, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Truth in Caller ID Act of 2007”.

SEC. 2. PROHIBITION REGARDING MANIPULATION OF CALLER IDENTIFICATION INFORMATION.

Section 227 of the Communications Act of 1934 (47 U.S.C. 227) is amended—

(1) by redesignating subsections (e), (f), and (g) as subsections (f), (g), and (h), respectively; and

(2) by inserting after subsection (d) the following new subsection:

“(e) PROHIBITION ON PROVISION OF DECEPTIVE CALLER IDENTIFICATION INFORMATION.—

“(1) IN GENERAL.—It shall be unlawful for any person within the United States, in connection with any telecommunications service or VOIP service, to cause any caller identification service to transmit misleading or inaccurate caller identification information, with the intent to defraud or cause harm.

“(2) PROTECTION FOR BLOCKING CALLER IDENTIFICATION INFORMATION.—Nothing in this subsection may be construed to prevent or restrict any person from blocking the capability of any caller identification service to transmit caller identification information.

“(3) REGULATIONS.—

“(A) DEADLINE.—Not later than 6 months after the enactment of this subsection, the Commission shall prescribe regulations to implement this subsection.

“(B) CONSIDERATION OF RELATED REGULATIONS.—In conducting the proceeding to prescribe the regulations required by subparagraph (A) of this paragraph, the Commission shall examine whether the Commission’s regulations under subsection (b)(2)(B) of this section should be revised to require non-commercial calls to residential telephone lines using an artificial or pre-recorded voice to deliver a message to transmit caller identification information that is not misleading or inaccurate.

“(4) DEFINITIONS.—For purposes of this subsection:

“(A) CALLER IDENTIFICATION INFORMATION.—The term ‘caller identification information’ means information provided to an end user by a caller identification service regarding the telephone number of, or other information regarding the origination of, a call made using a telecommunications service or VOIP service.

“(B) CALLER IDENTIFICATION SERVICE.—The term ‘caller identification service’ means any service or device designed to provide the user of the service or device with the telephone number of, or other information regarding the origination of, a call made using a telecommunications service or VOIP service. Such term includes automatic number identification services.

“(C) VOIP SERVICE.—The term ‘VOIP service’ means a service that—

“(i) provides real-time voice communications transmitted through end user equipment using TCP/IP protocol, or a successor protocol, for a fee or without a fee;

“(ii) is offered to the public, or such classes of users as to be effectively available to the public (whether part of a bundle of services or separately); and

“(iii) has the capability to originate traffic to, or terminate traffic from, the public switched telephone network.

“(5) SAVINGS PROVISION.—Except for paragraph (3)(B), nothing in this subsection may be construed to affect or alter the application of the Commission’s regulations regarding the requirements for transmission of caller identification information, issued pursuant to the Telephone Consumer Protection Act of 1991 (Public Law 102–243) and the amendments made by such Act.”.

PURPOSE AND SUMMARY

The purpose of H.R. 251, the Truth in Caller ID Act of 2007, is to prohibit people or entities from manipulating caller identification information with the intent to defraud or cause harm.

BACKGROUND AND NEED FOR LEGISLATION

Most companies that offer telephone service also offer a caller identification (caller ID) service that can provide their customers with the telephone number or the name of calling parties, or both. Some callers, however, are employing technology to alter the name or number that appears on the recipient's caller ID display, a practice known as caller ID "spoofing."

Caller ID spoofing can make a call appear to come from any phone number the caller wishes. For instance, the American Association of Retired Persons issued a "scam alert" when someone posing as a courthouse employee called a Sterling, Michigan, woman claiming that she had missed jury duty that week. The caller threatened that a warrant was being issued for her arrest and then asked her to confirm her Social Security number in order to verify her identity. This scam appeared even more real when the con artist used a caller ID "spoofing" product that allowed the con artist to display the name and number of the courthouse on the caller ID box.

Today, caller ID typically works through the use of Signaling System 7 (SS7), which is the standard for connecting phone companies' networks worldwide. SS7 allows the call originator's local telephone exchange to send a Calling Party Number (CPN), which includes the number of the caller and whether or not the caller wants their number to be blocked. By Federal Communications Commission (FCC or Commission) regulation, when a telecommunications carrier uses SS7 to set up a call, it must transmit the CPN and its associated privacy indicator for that call to the connecting carrier. By regulation, consumers also have the right to conceal their CPN by dialing *67.

Voice over Internet Protocol (VoIP) service providers are not currently subject to the same FCC caller ID regulations that apply to traditional telephony. The Commission has not yet established guidelines for VoIP providers to handle the transmission of caller ID information to a called party. Additionally, VoIP services can give the calling party far more control over the content and transmission of caller ID. VoIP customers are able to control the features of their phone service through their Web settings. Some VoIP companies offer customers the ability to change the caller ID information that is distributed when a call is made. Other VoIP companies restrict or block the ability of their customers to change the calling party's phone number.

It has been possible for a number of years to "spoof" or manipulate caller ID information, although it required specific phone connections and expensive equipment. With advances in technology and the advent of VoIP, however, it has become easier for callers to transmit any caller ID information the calling party chooses. Moreover, there are a number of online Web sites that offer spoofing services, eliminating the need for any specialized hardware. Not only can these services mask the correct caller ID information,

but many offer voice-scrambling services that can, among other things, make the caller sound like someone of the opposite sex.

Although these caller ID spoofing services promote themselves for use in “prank calls” or for “entertainment purposes only,” such services can be easily accessed and used by criminals, identity thieves, or others who wish to harm or deceive someone. Additionally, many business functions, from credit card verification to automatic call routing, opt to use caller ID for security purposes, which spoofing can thwart.

There are, however, legitimate reasons to alter caller ID information. For example, the Committee received a letter from the National Network to End Domestic Violence that explained that many phones are set to refuse blocked or private calls. It therefore becomes important for domestic violence shelters to transmit caller ID information so a call is completed, but it may be necessary to alter the caller ID information to ensure the safety of the domestic violence victims. Moreover, informants to law enforcement tip lines or whistleblowers have additional reasons to keep their calling information private. And many doctors, lawyers, and psychiatrists have legitimate reasons to keep direct lines private, with no intention of misleading anyone.

Although there are specific caller ID rules that govern how telemarketers may transmit caller ID information, current FCC regulations contain no broad mandate that all callers transmit accurate caller ID information. H.R. 251 remedies this problem.

HEARINGS

The Subcommittee on Telecommunications and the Internet held a hearing on H.R. 251 on Wednesday, February 28, 2007. The Subcommittee received testimony from the following: Ms. Kris Monteith, Chief, Enforcement Division, FCC; Ms. Staci Pies, Vice President, PointOne Communications, on behalf of the Voice on the Net Coalition (“VON”); and Ms. Allison Knight, Staff Counsel, Electronic Privacy Information Center.

SUBCOMMITTEE CONSIDERATION

On Wednesday, February 28, 2007, the Subcommittee met in open markup session. Chairman Markey offered an amendment in the nature of a substitute that clarified the definition of VoIP for purposes of H.R. 251 as any real-time voice communications service using TCP/IP or a successor protocol that is capable of connecting calls to, or receiving calls from, the public switched telephone network. The amendment in the nature of a substitute was agreed to by voice vote. The Subcommittee forwarded H.R. 251 to the full Committee, amended, by voice vote.

COMMITTEE CONSIDERATION

On Thursday, March 15, 2007, the full Committee met in open markup session. Mr. Green of Texas offered an amendment to direct the FCC to consider whether noncommercial calls made to residential lines using an artificial or recorded voice should be required to transmit caller ID information that is not misleading or inaccurate. The Committee agreed to Mr. Green’s amendment by

voice vote. The Committee ordered H.R. 251 favorably reported to the House, amended, by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken on amendments or in connection with ordering H.R. 251 reported. A motion by Mr. Dingell to order H.R. 251 favorably reported to the House, amended, was agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

Regarding clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Subcommittee on Telecommunications and the Internet held a legislative hearing and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The objective of H.R. 251 is to prohibit people or entities from manipulating caller ID information with the intent to defraud or cause harm.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Regarding compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 251 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARKS AND TAX AND TARIFF BENEFITS

Regarding compliance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 251 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

MARCH 20, 2007.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 251, the Truth in Caller ID Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

PETER R. ORSZAG.

Enclosure.

H.R. 251—Truth in Caller ID Act of 2007

Summary: H.R. 251 would amend the Communications Act of 1934 to prohibit caller identification services (known as Caller ID) from transmitting misleading or inaccurate caller identification information with the intent to defraud or cause harm. Prohibitions under the bill would apply to both traditional telephone and voice over Internet protocol (VOIP) services. Caller ID allows consumers to see the names and telephone numbers of incoming calls. The Federal Communications Commission (FCC) would be required to develop regulations to implement the new restriction.

Assuming appropriation of the necessary amounts, CBO estimates that implementing the bill would cost about \$5 million over the 2008–2012 period. Enacting the bill also would affect federal revenues by increasing collections of fines and penalties, but CBO estimates that any such increase would not be significant.

H.R. 251 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	1	1	1	1	1
Estimated Outlays	1	1	1	1	1

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted by the start of 2008 and that spending will follow historical patterns for similar FCC programs.

Based on information from the FCC and subject to the availability of appropriated funds, CBO estimates that implementing the bill would cost \$1 million annually in each subsequent year to issue and enforce the new regulations.

Enacting the bill would likely increase federal revenues as a result of collection of additional civil penalties assessed for violations of the new law and regulations. Collections of civil penalties are recorded in the budget as revenues. CBO estimates, however, that any additional revenues that would result from enacting the bill

would not be significant because of the relatively small number of cases likely to be involved.

Intergovernmental and private-sector impact: H.R. 251 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Comparison with other estimates: On February 15, 2007, CBO transmitted a cost estimate for H.R. 740, the Preventing Harassment through Outbound Number Enforcement (PHONE) Act of 2007, as ordered reported by the House Committee on the Judiciary on February 7, 2007. That bill would establish a new federal crime for the fraudulent use of caller ID information but would not require new FCC regulations. CBO estimated that implementing H.R. 740 would have no significant cost to the federal government. Enacting H.R. 740 could affect direct spending and revenues, but CBO estimated that any such effects would not be significant.

Estimate prepared by: Federal Costs: Susan Willie; Impact on State, Local, and Tribal Governments: Theresa Gullo; Impact on the Private Sector: Fatimot Ladipo.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian Tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1—Short title

The short title of the bill is the “Truth in Caller ID Act of 2007.”

Section 2—Prohibition regarding manipulation of caller identification information

Section 2 adds a new subsection (e) to section 227 of the Communications Act. New subsection (e)(1) makes it unlawful for any person, in connection with any telecommunications service or VoIP

service, to cause any caller ID service to transmit misleading or inaccurate caller ID information with the intent to defraud or cause harm. The Committee intends a common law definition of the term “fraud,” meaning an intentional misrepresentation of material existing fact made by one person to another with knowledge of its falsity and for the purpose of inducing the other person to act, and upon which the other person relies with resulting injury or damage. Further, the Committee intends that “the intent to defraud or cause harm” standard set out in section 227(e)(1) includes all types of harm that may result from such caller ID “spoofing,” including financial, physical, and emotional harm.

The Committee notes that the inclusion of the “intent to defraud or cause harm” language is intended to prohibit the use of caller ID technology for harmful impersonation. Such language is included in the section to ensure that Congress does not inadvertently prohibit the conduct of an individual or an entity who is not intending to defraud or harm the recipient of the call, but instead may be protecting privileged communications or ensuring the safety of an individual. For example, a domestic violence shelter may alter caller ID information in order to return a call to a victim in a way that will protect the shelter’s confidential location and not alert the victim’s abuser that she has contacted a shelter program. Because the shelter in this example is not intending to defraud or harm the recipient of the call, the shelter would not be in violation of the section.

Commission regulations currently provide that any caller shall be able to block their caller ID information from reaching the end user. New subsection (e)(2) is designed to ensure that nothing in the bill prevents or restricts any person from blocking caller ID information.

The Committee intends that this bill will not confer or authorize any new powers for any intelligence or law enforcement agency. This bill does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.

New subsection (e)(3)(A) requires the FCC to prescribe regulations implementing new subsection (e) within 6 months of enactment. Subparagraph (B) of this subsection, which was added by the Green amendment, requires the Commission, as part of that proceeding, to re-examine certain Commission regulations originally adopted after enactment of the Telephone Consumer Protection Act of 1991 (the “TCPA”). The TCPA contains a general prohibition, found in section 227(b)(1)(B), against initiation of any telephone call to any residential phone line using an artificial or pre-recorded voice without express prior consent of the called party. The TCPA, however, also contained authority for the Commission, found in subsection (b)(2)(B)(i) of section 227, to exempt from the prohibition “calls that are not made for a commercial purpose.” The Commission’s regulations implementing section 227 contain this exemption. The intent of the Green Amendment to H.R. 251 is to require the Commission to consider re-examining this exemption for non-commercial entities in circumstances where the caller ID information is misleading or inaccurate.

New subsection (e)(4) contains the definition of “caller identification information,” “caller identification service” and “VoIP Service.” VoIP Service is defined as a service offered to the public that provides real-time voice communications capable of placing calls to, or completing calls from, the public switched telephone network (PSTN) through end-user equipment that uses TCP/IP protocol, or a successor protocol, with or without a fee.

New subsection (e)(5) contains a savings clause indicating that, other than new section 227(e)(3)(B), nothing in the bill shall affect FCC regulations issued pursuant to the Telephone Consumer Protection Act of 1991.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

* * * * *

TITLE II—COMMON CARRIERS

PART I—COMMON CARRIER REGULATION

* * * * *

SEC. 227. RESTRICTIONS ON THE USE OF TELEPHONE EQUIPMENT.

(a) * * *

* * * * *

(e) PROHIBITION ON PROVISION OF DECEPTIVE CALLER IDENTIFICATION INFORMATION.—

(1) IN GENERAL.—It shall be unlawful for any person within the United States, in connection with any telecommunications service or VOIP service, to cause any caller identification service to transmit misleading or inaccurate caller identification information, with the intent to defraud or cause harm.

(2) PROTECTION FOR BLOCKING CALLER IDENTIFICATION INFORMATION.—Nothing in this subsection may be construed to prevent or restrict any person from blocking the capability of any caller identification service to transmit caller identification information.

(3) REGULATIONS.—

(A) DEADLINE.—Not later than 6 months after the enactment of this subsection, the Commission shall prescribe regulations to implement this subsection.

(B) CONSIDERATION OF RELATED REGULATIONS.—In conducting the proceeding to prescribe the regulations required by subparagraph (A) of this paragraph, the Commission shall examine whether the Commission’s regulations under subsection (b)(2)(B) of this section should be revised to require non-commercial calls to residential telephone lines using an artificial or pre-recorded voice to deliver a mes-

sage to transmit caller identification information that is not misleading or inaccurate.

(4) DEFINITIONS.—For purposes of this subsection:

(A) CALLER IDENTIFICATION INFORMATION.—The term “caller identification information” means information provided to an end user by a caller identification service regarding the telephone number of, or other information regarding the origination of, a call made using a telecommunications service or VOIP service.

(B) CALLER IDENTIFICATION SERVICE.—The term “caller identification service” means any service or device designed to provide the user of the service or device with the telephone number of, or other information regarding the origination of, a call made using a telecommunications service or VOIP service. Such term includes automatic number identification services.

(C) VOIP SERVICE.—The term “VOIP service” means a service that—

(i) provides real-time voice communications transmitted through end user equipment using TCP/IP protocol, or a successor protocol, for a fee or without a fee;

(ii) is offered to the public, or such classes of users as to be effectively available to the public (whether part of a bundle of services or separately); and

(iii) has the capability to originate traffic to, or terminate traffic from, the public switched telephone network.

(5) SAVINGS PROVISION.—Except for paragraph (3)(B), nothing in this subsection may be construed to affect or alter the application of the Commission’s regulations regarding the requirements for transmission of caller identification information, issued pursuant to the Telephone Consumer Protection Act of 1991 (Public Law 102–243) and the amendments made by such Act.

[(e)] (f) EFFECT ON STATE LAW.—

(1) * * *

* * * * *

[(f)] (g) ACTIONS BY STATES.—

(1) * * *

* * * * *

[(g)] (h) JUNK FAX ENFORCEMENT REPORT.—The Commission shall submit an annual report to Congress regarding the enforcement during the past year of the provisions of this section relating to sending of unsolicited advertisements to telephone facsimile machines, which report shall include—

(1) * * *

* * * * *

ADDITIONAL VIEWS OF REPRESENTATIVE JOE BARTON

I do not intend the definition of “Voice over Internet Protocol (VOIP)” Service in new section 227(e)(4)(C) to be used in other contexts. This bill is designed to address the rise in spoofing caused, at least in part, by the increased ease with which individuals and entities can alter caller ID information using VoIP and similar technologies. The inclusion of this definition here to address that problem is in no way intended to suggest that I endorse use of this definition for other purposes, especially since the definition was specifically tailored to include one-way VoIP services to prevent such services from evading the prohibition on spoofing.

JOE BARTON.

