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110TH CONGRESS, *1st Session* | SENATE | REPORT 110–234

TRUTH IN CALLER ID ACT OF 2007

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 704

DECEMBER 5, 2007.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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Mr. INOUYE, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 704]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 704) to amend the Communications Act of 1934 to prohibit manipulation of caller identification information, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 704 is to prohibit persons from causing 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.

BACKGROUND AND NEEDS

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

ID spoofing can make a call appear to come from any phone number the caller wishes. For instance, the American Association of Retired Persons (AARP) 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 person responsible used caller ID spoofing to display the name and number of the courthouse on the ID box. In another widely-reported case of ID spoofing, a SWAT team shut down a neighborhood in New Brunswick, New Jersey, after receiving what they believed was a legitimate distress call. A caller had used spoofing to trick law enforcement into thinking that an emergency call was coming from an apartment in the neighborhood. In yet another example, identity thieves bought a number of stolen credit card numbers. They called Western Union, set up caller ID information to make it look like the call originated from the credit card holder's phone line and used the credit card numbers to order cash transfers.

Traditionally, caller ID works through the use of signaling system 7 (SS7), which is the standard for connecting phone companies' networks worldwide. SS7 allows the 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.

Federal Communications Commission (FCC) regulations require that 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. Customers who order traditional caller ID services and have caller ID-capable phones or boxes will receive the CPN and name of the calling party when their phone rings. By FCC regulation, consumers also have the right to conceal their CPN, by dialing *67.

In the past, it has been possible to "spoof" or manipulate caller ID information over traditional phone calls. However, such spoofing required special phone connections and expensive equipment. With advances in technology and the widespread availability of Internet Protocol-enabled (IP-enabled) voice services, however, it has become easier for callers to transmit any caller ID information the calling party chooses. Moreover, there are a number of online sites that offer spoofing services, eliminating the need for any specialized hardware. Many of these caller ID spoofing services promote themselves for use in "prank calls" or "for entertainment purposes only." However, these services can be accessed easily by criminals, identity thieves, or others who wish to harm or deceive someone.

Although there are many harmful applications for ID spoofing, it is important to recognize that there are some beneficial uses of this technology. For instance, the National Network to End Domestic Violence has 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. In addition, some IP-enabled service providers suggest that there are innovative services that legitimately involve changes in caller ID information, such as providing consumers with the ability to provide a temporary callback number that is different from their assigned caller ID.

SUMMARY OF PROVISIONS

S. 704, the Truth in Caller ID Act of 2007, would amend the Communications Act of 1934 (Communications Act) to prohibit persons from causing any caller ID service to knowingly transmit misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value.

The bill would make unlawful harmful uses of caller ID spoofing, while providing exemptions for authorized law enforcement, court orders, and intelligence activities. In addition, the bill would allow for additional exemptions from the prohibition on ID spoofing that the FCC determines are appropriate. The FCC would be charged with developing regulations to implement the Truth in Caller ID Act within six months. The FCC also would be required to report to Congress on whether additional legislation is necessary to prohibit the provision of inaccurate caller ID information in technologies that are successors to telecommunications service or IP-enabled voice service.

The bill makes clear that it would not prevent or restrict persons from blocking the transmission of caller ID services as is currently allowed.

The bill would authorize civil penalties of up to $10,000 for each violation, or three times that amount for each day of a continuing violation, up to a total of $1,000,000 for any single act or failure to act. A two-year statute of limitation applies to these civil penalties. In addition, the bill would authorize criminal fines of up to $10,000 for each willful and knowing violation, or three times that amount for each day of a continuing violation, in lieu of civil penalties.

States would be provided with the authority to bring actions on behalf of the residents of a State in an appropriate federal district court. The FCC would be provided with the right to intervene in such cases.

LEGISLATIVE HISTORY

The Truth in Caller ID Act of 2007 (S. 704) was introduced by Senator Bill Nelson on February 28, 2007, and referred to the Senate Committee on Commerce, Science, and Transportation. The bill is cosponsored by Senators Snowe, McCaskill, Stevens, and Klobuchar. On June 21, 2007, the Committee held a hearing on "ID Spoofing." On June 27, 2007, the Committee considered the bill in an open Executive Session. Chairman Inouye offered an amendment in the nature of a substitute that included language adding a statement of intent to the prohibition against spoofing, clarifying State authority to enforce violations, and updating the definition of IP-enabled services. Senators Nelson and Snowe also offered an amendment which was accepted into a manager's package. The substitute and manager's package were both adopted by voice vote. The Committee, without objection, ordered that S. 704 be reported.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

JULY 20, 2007.

Hon. DANIEL K. INOUYE,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 704, 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.

S. 704—Truth in Caller ID Act of 2007

Summary: S. 704 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 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 could increase federal revenues and direct spending by increasing collections of civil, criminal, and forfeiture penalties for violations of the Caller ID prohibitions. All such penalties are recorded in the budget as revenues. Collections of criminal penalties are deposited in the Crime Victims Fund and spent in subsequent years. CBO estimates that any increase in revenues and direct spending that would result from enacting the bill would not be significant because of the relatively small number of cases likely to be involved.

S. 704 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Any costs that state governments might incur would be incurred voluntarily.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 704 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit). For this estimate, CBO assumes that the bill will be enacted before the start of 2008 and that spending will follow historical patterns for similar FCC activities. Based on information from the FCC and subject to the availability of the necessary amounts, CBO estimates that implementing the bill would cost $1 million annually over the 2008–2012 period to issue and enforce the new regulations.

	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

Intergovernmental and private-sector impact: S. 704 contains no intergovernmental mandates as defined in UMRA. The bill would (1) allow states to bring civil actions on behalf of their residents in district courts, (2) require those states to notify the FCC of those actions, and (3) allow the FCC to intervene in such actions. Any costs those entities might incur to comply with those requirements would be incurred voluntarily.

Previous CBO estimate: On March 20, 2007, CBO transmitted a cost estimate for H.R. 251, the Truth in Caller ID Act. S. 704 would allow the FCC to collect civil forfeitures and criminal penalties for violations of the Caller ID provisions in addition to the civil penalties allowed under H.R. 251. Because the FCC expects to prosecute a small number of cases, the broader options for penalties would not significantly increase estimated revenues collected or related spending.

Estimate prepared by: Federal Costs: Susan Willie; Impact on State, Local, and Tribal Governments: Elizabeth Cove; Impact on the Private Sector: Amy Petz.

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

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 704 is intended to prohibit the use of 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. The persons subject to the regulations the FCC implements under this section are those manipulating caller identification information with intent to deceive or cause harm.

ECONOMIC IMPACT

S. 704 would not have an adverse impact on the nation's economy.

PRIVACY

Except for the privacy impact on those persons who would knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value, the reported bill would have no impact on the personal privacy of U.S. citizens.

PAPERWORK

The reported bill should not significantly increase paperwork requirements for individuals and businesses.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The short title is the "Truth in Caller ID Act of 2007."

Section 2. Prohibition regarding manipulation of caller identification information

Section 2 would add a new subsection (e) to section 227 of the Communications Act, and would redesignate existing subsections (e), (f), and (g) as (f), (g), and (h), respectively.

New subsection (e)(1) would prohibit persons within the United States from causing 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 unless exempted under (e)(3)(B).

New subsection (e)(2) would clarify that nothing in subsection (e) prevents or restricts any person from blocking caller identification service.

New subsection (e)(3)(A) would direct the FCC to prescribe regulations to implement new subsection (e) not later than six months after enactment. New subsection (e)(3)(B)(i) would provide that these regulations shall include exemptions from the prohibition described in new subsection (e)(1) that the FCC determines are appropriate. In addition, new subsection (e)(3)(B)(ii) would provide that these regulations shall include exemptions from the prohibition described in new subsection (e)(1) that are in connection with authorized activity of a law enforcement agency or a court order that specifically authorizes the use of caller identification manipulation. New subsection (e)(3)(B)(iii) also would clarify that nothing in new subsection (e) shall be construed to authorize or prohibit investigative, protective, or intelligence activities performed by a law enforcement agency of the United States, a State, or a political subdivision of a State or by an intelligence agency of the United States, in connection with official duties and under all applicable laws.

New subsection (e)(4) would require the FCC to report to Congress, not later than six months after enactment, whether additional legislation is necessary to prohibit the provision of inaccurate caller identification information in technologies that are successors or replacements for telecommunications service or IP-enabled voice service.

New subsection (e)(5) would establish penalties for violation of new subsection (e). New subsection (e)(5)(A)(i) would authorize civil penalties not to exceed $10,000 for each violation or three times that amount for each day of a continuing violation, with no amount for any continuing violation exceeding a total of $1,000,000 for any single act or failure to act. Subsection (e)(5)(A)(ii) would clarify that civil forfeiture penalties shall be recovered under section 504(a) of the Communications Act. New subsection (e)(5)(A)(iii) would clarify that forfeiture liability determined under new subsection (e)(5)(A)(i) would require notice pursuant to sections 503(b)(3) and 503(b)(4) of the Communications Act. In addition, new subsection (e)(5)(A)(iv) would impose a two-year statute of limitations on civil forfeiture penalties. New subsection (e)(5)(B) would authorize criminal fines of not more than $10,000 for each willful and knowing violation, or three times that amount for each day of a continuing violation in lieu of the fine provided by section 501 of the Communications Act.

New subsection (e)(6) would provide for enforcement by the states. New subsection (e)(6)(A) would authorize the chief legal officer of a State or any other State officer authorized by law to bring

actions on behalf of the residents of a State to bring a civil action for violation of subsection (e). New subsection (e)(6)(B) would require the relevant state officer to serve written notice on the FCC of prior to initiating any civil action taken under new subsection (e)(6)(A). New subsection (e)(6)(C) further would grant the FCC the right to intervene in the action and file petitions for appeal. New subsection (e)(6)(D) would clarify that nothing in new subsection (e) prevents state officers from exercising the powers conferred on them by the State. New subsection (e)(6)(E) would provide that actions brought under new subsection (e)(6)(A) may be brought in a district court of the United States and describes service of process.

New subsection (e)(7) would provide for the purposes of new subsection (e) definitions for "caller identification information", "caller identification service", and "IP-enabled voice service".

New subsection (e)(8) would clarify that redesignated section 227(f) of the Communications Act does not apply to new subsection (e) or any regulations promulgated pursuant to new subsection (e).

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, 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 material is printed in italic, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

[47 U.S.C. 227]

SEC. 227. RESTRICTIONS ON USE OF TELEPHONE EQUIPMENT

(a) DEFINITIONS.—As used in this section—

(1) The term "automatic telephone dialing system" means equipment which has the capacity—

(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and

(B) to dial such numbers.

(2) The term "established business relationship", for purposes only of subsection (b)(1)(C)(i), shall have the meaning given the term in section 64.1200 of title 47, Code of Federal Regulations, as in effect on January 1, 2003, except that—

(A) such term shall include a relationship between a person or entity and a business subscriber subject to the same terms applicable under such section to a relationship between a person or entity and a residential subscriber; and

(B) an established business relationship shall be subject to any time limitation established pursuant to paragraph (2)(G).

(3) The term "telephone facsimile machine" means equipment which has the capacity (A) to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or (B) to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.

(4) The term "telephone solicitation" means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or

services, which is transmitted to any person, but such term does not include a call or message (A) to any person with that person's prior express invitation or permission, (B) to any person with whom the caller has an established business relationship, or (C) by a tax exempt nonprofit organization.

(5) The term "unsolicited advertisement" means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission, in writing or otherwise.

(b) RESTRICTIONS ON USE OF AUTOMATED TELEPHONE EQUIPMENT.—

(1) PROHIBITIONS.—It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States—

(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—

(i) to any emergency telephone line (including any "911" line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency);

(ii) to the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or

(iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call;

(B) to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes or is exempted by rule or order by the Commission under paragraph (2)(B);

(C) to use any telephone facsimile machine, computer, or other device to send, to a telephone facsimile machine, an unsolicited advertisement, unless—

(i) the unsolicited advertisement is from a sender with an established business relationship with the recipient;

(ii) the sender obtained the number of the telephone facsimile machine through—

(I) the voluntary communication of such number, within the context of such established business relationship, from the recipient of the unsolicited advertisement, or

(II) a directory, advertisement, or site on the Internet to which the recipient voluntarily agreed to make available its facsimile number for public distribution, except that this clause shall not apply in the case of an unsolicited advertisement

that is sent based on an established business relationship with the recipient that was in existence before the date of enactment of the Junk Fax Prevention Act of 2005 if the sender possessed the facsimile machine number of the recipient before such date of enactment; and

(iii) the unsolicited advertisement contains a notice meeting the requirements under paragraph (2)(D), except that the exception under clauses (i) and (ii) shall not apply with respect to an unsolicited advertisement sent to a telephone facsimile machine by a sender to whom a request has been made not to send future unsolicited advertisements to such telephone facsimile machine that complies with the requirements under paragraph (2)(E); or

(D) to use an automatic telephone dialing system in such a way that two or more telephone lines of a multi-line business are engaged simultaneously.

(2) REGULATIONS; EXEMPTIONS AND OTHER PROVISIONS.—The Commission shall prescribe regulations to implement the requirements of this subsection. In implementing the requirements of this subsection, the Commission—

(A) shall consider prescribing regulations to allow businesses to avoid receiving calls made using an artificial or prerecorded voice to which they have not given their prior express consent;

(B) may, by rule or order, exempt from the requirements of paragraph (1)(B) of this subsection, subject to such conditions as the Commission may prescribe—

(i) calls that are not made for a commercial purpose; and

(ii) such classes or categories of calls made for commercial purposes as the Commission determines—

(I) will not adversely affect the privacy rights that this section is intended to protect; and

(II) do not include the transmission of any unsolicited advertisement;

(C) may, by rule or order, exempt from the requirements of paragraph (1)(A)(iii) of this subsection calls to a telephone number assigned to a cellular telephone service that are not charged to the called party, subject to such conditions as the Commission may prescribe as necessary in the interest of the privacy rights this section is intended to protect;

(D) shall provide that a notice contained in an unsolicited advertisement complies with the requirements under this subparagraph only if—

(i) the notice is clear and conspicuous and on the first page of the unsolicited advertisement;

(ii) the notice states that the recipient may make a request to the sender of the unsolicited advertisement not to send any future unsolicited advertisements to a telephone facsimile machine or machines and that failure to comply, within the shortest reasonable time, as determined by the Commission, with such a request

meeting the requirements under subparagraph (E) is unlawful;

(iii) the notice sets forth the requirements for a request under subparagraph (E);

(iv) the notice includes—

(I) a domestic contact telephone and facsimile machine number for the recipient to transmit such a request to the sender; and

(II) a cost-free mechanism for a recipient to transmit a request pursuant to such notice to the sender of the unsolicited advertisement; the Commission shall by rule require the sender to provide such a mechanism and may, in the discretion of the Commission and subject to such conditions as the Commission may prescribe, exempt certain classes of small business senders, but only if the Commission determines that the costs to such class are unduly burdensome given the revenues generated by such small businesses;

(v) the telephone and facsimile machine numbers and the cost-free mechanism set forth pursuant to clause (iv) permit an individual or business to make such a request at any time on any day of the week; and

(vi) the notice complies with the requirements of subsection (d);

(E) shall provide, by rule, that a request not to send future unsolicited advertisements to a telephone facsimile machine complies with the requirements under this subparagraph only if—

(i) the request identifies the telephone number or numbers of the telephone facsimile machine or machines to which the request relates;

(ii) the request is made to the telephone or facsimile number of the sender of such an unsolicited advertisement provided pursuant to subparagraph (D)(iv) or by any other method of communication as determined by the Commission; and

(iii) the person making the request has not, subsequent to such request, provided express invitation or permission to the sender, in writing or otherwise, to send such advertisements to such person at such telephone facsimile machine;

(F) may, in the discretion of the Commission and subject to such conditions as the Commission may prescribe, allow professional or trade associations that are tax-exempt nonprofit organizations to send unsolicited advertisements to their members in furtherance of the association's tax-exempt purpose that do not contain the notice required by paragraph (1)(C)(iii), except that the Commission may take action under this subparagraph only—

(i) by regulation issued after public notice and opportunity for public comment; and

(ii) if the Commission determines that such notice required by paragraph (1)(C)(iii) is not necessary to

protect the ability of the members of such associations to stop such associations from sending any future unsolicited advertisements; and

(G)(i) may, consistent with clause (ii), limit the duration of the existence of an established business relationship, however, before establishing any such limits, the Commission shall—

(I) determine whether the existence of the exception under paragraph (1)(C) relating to an established business relationship has resulted in a significant number of complaints to the Commission regarding the sending of unsolicited advertisements to telephone facsimile machines;

(II) determine whether a significant number of any such complaints involve unsolicited advertisements that were sent on the basis of an established business relationship that was longer in duration than the Commission believes is consistent with the reasonable expectations of consumers;

(III) evaluate the costs to senders of demonstrating the existence of an established business relationship within a specified period of time and the benefits to recipients of establishing a limitation on such established business relationship; and

(IV) determine whether with respect to small businesses, the costs would not be unduly burdensome; and

(ii) may not commence a proceeding to determine whether to limit the duration of the existence of an established business relationship before the expiration of the 3-month period that begins on the date of the enactment of the Junk Fax Prevention Act of 2005.

(3) Private right of action. A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State—

(A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,

(B) an action to recover for actual monetary loss from such a violation, or to receive $500 in damages for each such violation, whichever is greater, or

(C) both such actions.

If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

(c) PROTECTION OF SUBSCRIBER PRIVACY RIGHTS.—

(1) RULEMAKING PROCEEDING REQUIRED.—Within 120 days after the date of enactment of this section, the Commission shall initiate a rulemaking proceeding concerning the need to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object. The proceeding shall—

(A) compare and evaluate alternative methods and procedures (including the use of electronic databases, telephone network technologies, special directory markings, industry-based or company-specific 'do not call' systems, and any other alternatives, individually or in combination) for their effectiveness in protecting such privacy rights, and in terms of their cost and other advantages and disadvantages;

(B) evaluate the categories of public and private entities that would have the capacity to establish and administer such methods and procedures;

(C) consider whether different methods and procedures may apply for local telephone solicitations, such as local telephone solicitations of small businesses or holders of second class mail permits;

(D) consider whether there is a need for additional Commission authority to further restrict telephone solicitations, including those calls exempted under subsection (a)(3) of this section, and, if such a finding is made and supported by the record, propose specific restrictions to the Congress; and

(E) develop proposed regulations to implement the methods and procedures that the Commission determines are most effective and efficient to accomplish the purposes of this section.

(2) REGULATIONS.—Not later than 9 months after the date of enactment of this section, the Commission shall conclude the rulemaking proceeding initiated under paragraph (1) and shall prescribe regulations to implement methods and procedures for protecting the privacy rights described in such paragraph in an efficient, effective, and economic manner and without the imposition of any additional charge to telephone subscribers.

(3) USE OF DATABASE PERMITTED.—The regulations required by paragraph (2) may require the establishment and operation of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations, and to make that compiled list and parts thereof available for purchase. If the Commission determines to require such a database, such regulations shall—

(A) specify a method by which the Commission will select an entity to administer such database;

(B) require each common carrier providing telephone exchange service, in accordance with regulations prescribed by the Commission, to inform subscribers for telephone exchange service of the opportunity to provide notification, in accordance with regulations established under this paragraph, that such subscriber objects to receiving telephone solicitations;

(C) specify the methods by which each telephone subscriber shall be informed, by the common carrier that provides local exchange service to that subscriber, of (i) the subscriber's right to give or revoke a notification of an objection under subparagraph (A), and (ii) the methods by which such right may be exercised by the subscriber;

(D) specify the methods by which such objections shall be collected and added to the database;

(E) prohibit any residential subscriber from being charged for giving or revoking such notification or for being included in a database compiled under this section;

(F) prohibit any person from making or transmitting a telephone solicitation to the telephone number of any subscriber included in such database;

(G) specify (i) the methods by which any person desiring to make or transmit telephone solicitations will obtain access to the database, by area code or local exchange prefix, as required to avoid calling the telephone numbers of subscribers included in such database; and (ii) the costs to be recovered from such persons;

(H) specify the methods for recovering, from persons accessing such database, the costs involved in identifying, collecting, updating, disseminating, and selling, and other activities relating to, the operations of the database that are incurred by the entities carrying out those activities;

(I) specify the frequency with which such database will be updated and specify the method by which such updating will take effect for purposes of compliance with the regulations prescribed under this subsection;

(J) be designed to enable States to use the database mechanism selected by the Commission for purposes of administering or enforcing State law;

(K) prohibit the use of such database for any purpose other than compliance with the requirements of this section and any such State law and specify methods for protection of the privacy rights of persons whose numbers are included in such database; and

(L) require each common carrier providing services to any person for the purpose of making telephone solicitations to notify such person of the requirements of this section and the regulations thereunder.

(4) CONSIDERATIONS REQUIRED FOR USE OF DATABASE METHOD.—If the Commission determines to require the database mechanism described in paragraph (3), the Commission shall—

(A) in developing procedures for gaining access to the database, consider the different needs of telemarketers conducting business on a national, regional, State, or local level;

(B) develop a fee schedule or price structure for recouping the cost of such database that recognizes such differences and—

(i) reflect the relative costs of providing a national, regional, State, or local list of phone numbers of subscribers who object to receiving telephone solicitations;

(ii) reflect the relative costs of providing such lists on paper or electronic media; and

(iii) not place an unreasonable financial burden on small businesses; and

(C) consider (i) whether the needs of telemarketers operating on a local basis could be met through special markings of area white pages directories, and (ii) if such direc-

tories are needed as an adjunct to database lists prepared by area code and local exchange prefix.

(5) PRIVATE RIGHT OF ACTION.—A person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may, if otherwise permitted by the laws or rules of court of a State bring in an appropriate court of that State—

(A) an action based on a violation of the regulations prescribed under this subsection to enjoin such violation,

(B) an action to recover for actual monetary loss from such a violation, or to receive up to $ 500 in damages for each such violation, whichever is greater, or

(C) both such actions.

It shall be an affirmative defense in any action brought under this paragraph that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under this subsection. If the court finds that the defendant willfully or knowingly violated the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

(6) RELATION TO SUBSECTION (B).—The provisions of this subsection shall not be construed to permit a communication prohibited by subsection (b).

(d) TECHNICAL AND PROCEDURAL STANDARDS.—

(1) PROHIBITION.—It shall be unlawful for any person within the United States—

(A) to initiate any communication using a telephone facsimile machine, or to make any telephone call using any automatic telephone dialing system, that does not comply with the technical and procedural standards prescribed under this subsection, or to use any telephone facsimile machine or automatic telephone dialing system in a manner that does not comply with such standards; or

(B) to use a computer or other electronic device to send any message via a telephone facsimile machine unless such person clearly marks, in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission, the date and time it is sent and an identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of such business, other entity, or individual.

(2) TELEPHONE FACSIMILE MACHINES.—The Commission shall revise the regulations setting technical and procedural standards for telephone facsimile machines to require that any such machine which is manufactured after one year after the date of enactment of this section clearly marks, in a margin at the top or bottom of each transmitted page or on the first page of each transmission, the date and time sent, an identification of the business, other entity, or individual sending the message,

and the telephone number of the sending machine or of such business, other entity, or individual.

(3) ARTIFICIAL OR PRERECORDED VOICE SYSTEMS.—The Commission shall prescribe technical and procedural standards for systems that are used to transmit any artificial or prerecorded voice message via telephone. Such standards shall require that—

(A) all artificial or prerecorded telephone messages (i) shall, at the beginning of the message, state clearly the identity of the business, individual, or other entity initiating the call, and (ii) shall, during or after the message, state clearly the telephone number or address of such business, other entity, or individual; and

(B) any such system will automatically release the called party's line within 5 seconds of the time notification is transmitted to the system that the called party has hung up, to allow the called party's line to be used to make or receive other calls.

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

(1) IN GENERAL.—It shall be unlawful for any person within the United States, in connection with any telecommunications service or IP-enabled voice service, 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, unless such transmission is exempted pursuant to paragraph (3)(B).

(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) IN GENERAL.—Not later than 6 months after the date of enactment of the Truth in Caller ID Act of 2007, the Commission shall prescribe regulations to implement this subsection.

(B) CONTENT OF REGULATIONS.—

(i) IN GENERAL.—The regulations required under subparagraph (A) shall include such exemptions from the prohibition under paragraph (1) as the Commission determines is appropriate.

(ii) SPECIFIC EXEMPTION FOR LAW ENFORCEMENT AGENCIES OR COURT ORDERS.—The regulations required under subparagraph (A) shall exempt from the prohibition under paragraph (1) transmissions in connection with—

(I) any authorized activity of a law enforcement agency; or

(II) a court order that specifically authorizes the use of caller identification manipulation.

(iii) EFFECT ON OTHER LAWS.—Nothing in this subsection shall be construed to authorize or prohibit any investigative, protective, or intelligence activities performed in connection with official duties and in accord-

ance with all applicable laws, by a law enforcement agency of the United States, a State, or a political subdivision of a State, or by an intelligence agency of the United States.

(4) REPORT.—Not later than 6 months after the date of enactment of the Truth in Caller ID Act of 2007, the Commission shall report to Congress whether additional legislation is necessary to prohibit the provision of inaccurate caller identification information in technologies that are successor or replacement technologies to telecommunications service or IP-enabled voice service.

(5) PENALTIES.—

(A) CIVIL FORFEITURE.—

(i) IN GENERAL.—Any person that is determined by the Commission, in accordance with paragraphs (3) and (4) of section 503(b), to have violated this subsection shall be liable to the United States for a forfeiture penalty. A forfeiture penalty under this paragraph shall be in addition to any other penalty provided for by this Act. The amount of the forfeiture penalty determined under this paragraph shall not exceed $10,000 for each violation, or 3 times that amount for each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1,000,000 for any single act or failure to act.

(ii) RECOVERY.—Any forfeiture penalty determined under clause (i) shall be recoverable pursuant to section 504(a).

(iii) PROCEDURE.—No forfeiture liability shall be determined under clause (i) against any person unless such person receives the notice required by section 503(b)(3) or section 503(b)(4).

(iv) 2-YEAR STATUTE OF LIMITATIONS.—No forfeiture penalty shall be determined or imposed against any person under clause (i) if the violation charged occurred more than 2 years prior to the date of issuance of the required notice or notice or apparent liability.

(B) CRIMINAL FINE.—Any person who willfully and knowingly violates this subsection shall upon conviction thereof be fined not more than $10,000 for each violation, or 3 times that amount for each day of a continuing violation, in lieu of the fine provided by section 501 for such a violation. This subparagraph does not supersede the provisions of section 501 relating to imprisonment or the imposition of a penalty of both fine and imprisonment.

(6) ENFORCEMENT BY STATES.—

(A) IN GENERAL.—The chief legal officer of a State, or any other State officer authorized by law to bring actions on behalf of the residents of a State, may bring a civil action, as parens patriae, on behalf of the residents of that State in an appropriate district court of the United States to enforce this subsection or to impose the civil penalties for violation of this subsection, whenever the chief legal officer or other State officer has reason to believe that the interests of the

residents of the State have been or are being threatened or adversely affected by a violation of this subsection or a regulation under this subsection.

(B) NOTICE.—The chief legal officer or other State officer shall serve written notice on the Commission of any civil action under subparagraph (A) prior to initiating such civil action. The notice shall include a copy of the complaint to be filed to initiate such civil action, except that if it is not feasible for the State to provide such prior notice, the State shall provide such notice immediately upon instituting such civil action.

(C) AUTHORITY TO INTERVENE.—Upon receiving the notice required by subparagraph (B), the Commission shall have the right—

(i) to intervene in the action;

(ii) upon so intervening, to be heard on all matters arising therein; and

(iii) to file petitions for appeal.

(D) CONSTRUCTION.—For purposes of bringing any civil action under subparagraph (A), nothing in this paragraph shall prevent the chief legal officer or other State officer from exercising the powers conferred on that officer by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(E) VENUE; SERVICE OR PROCESS.—

(i) VENUE.—An action brought under subparagraph (A) shall be brought in a district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(ii) SERVICE OF PROCESS.—In an action brought under subparagraph (A)—

(I) process may be served without regard to the territorial limits of the district or of the State in which the action is instituted; and

(II) a person who participated in an alleged violation that is being litigated in the civil action may be joined in the civil action without regard to the residence of the person.

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

(A) CALLER IDENTIFICATION INFORMATION.—The term "caller identification information" means information provided 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 IP-enabled voice 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 IP-enabled voice service. Such term includes automatic number identification services.

(C) IP-ENABLED VOICE SERVICE.—The term "IP-enabled voice service" has the meaning given that term by section 9.3 of the Commission's regulations (47 C.F.R. 9.3), as those regulations may be amended by the Commission from time to time.

(8) LIMITATION.—Notwithstanding any other provision of this section, subsection (f) shall not apply to this subsection or to the regulations under this subsection.

[(e)] *(f)* EFFECT ON STATE LAW.—

(1) STATE LAW NOT PREEMPTED.—Except for the standards prescribed under subsection (d) and subject to paragraph (2) of this subsection, nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulations on, or which prohibits—

(A) the use of telephone facsimile machines or other electronic devices to send unsolicited advertisements;

(B) the use of automatic telephone dialing systems;

(C) the use of artificial or prerecorded voice messages; or

(D) the making of telephone solicitations.

(2) STATE USE OF DATABASES.—If, pursuant to subsection (c)(3), the Commission requires the establishment of a single national database of telephone numbers of subscribers who object to receiving telephone solicitations, a State or local authority may not, in its regulation of telephone solicitations, require the use of any database, list, or listing system that does not include the part of such single national database that relates to such State.

[(f)] *(g)* ACTIONS BY STATES.—

(1) AUTHORITY OF STATES.—Whenever the attorney general of a State, or an official or agency designated by a State, has reason to believe that any person has engaged or is engaging in a pattern or practice of telephone calls or other transmissions to residents of that State in violation of this section or the regulations prescribed under this section, the State may bring a civil action on behalf of its residents to enjoin such calls, an action to recover for actual monetary loss or receive $500 in damages for each violation, or both such actions. If the court finds the defendant willfully or knowingly violated such regulations, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under the preceding sentence.

(2) EXCLUSIVE JURISDICTION OF FEDERAL COURTS.—The district courts of the United States, the United States courts of any territory, and the District Court of the United States for the District of Columbia shall have exclusive jurisdiction over all civil actions brought under this subsection. Upon proper application, such courts shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding the defendant to comply with the provisions of this section or regulations prescribed under this section, including the requirement that the defendant take such action as is necessary to remove the danger of such violation. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

(3) RIGHTS OF COMMISSION.—The State shall serve prior written notice of any such civil action upon the Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Commission shall have the right (A) to intervene in the action, (B) upon so intervening, to be heard on all matters arising therein, and (C) to file petitions for appeal.

(4) VENUE; SERVICE OF PROCESS.—Any civil action brought under this subsection in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the violation occurred or is occurring, and process in such cases may be served in any district in which the defendant is an inhabitant or where the defendant may be found.

(5) INVESTIGATORY POWERS.—For purposes of bringing any civil action under this subsection, nothing in this section shall prevent the attorney general of a State, or an official or agency designated by a State, from exercising the powers conferred on the attorney general or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(6) EFFECT ON STATE COURT PROCEEDINGS.—Nothing contained in this subsection shall be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State.

(7) LIMITATION.—Whenever the Commission has instituted a civil action for violation of regulations prescribed under this section, no State may, during the pendency of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission's complaint for any violation as alleged in the Commission's complaint.

(8) DEFINITION.—As used in this subsection, the term "attorney general" means the chief legal officer of a State.

[(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) the number of complaints received by the Commission during such year alleging that a consumer received an unsolicited advertisement via telephone facsimile machine in violation of the Commission's rules;

(2) the number of citations issued by the Commission pursuant to section 503 during the year to enforce any law, regulation, or policy relating to sending of unsolicited advertisements to telephone facsimile machines;

(3) the number of notices of apparent liability issued by the Commission pursuant to section 503 during the year to enforce any law, regulation, or policy relating to sending of unsolicited advertisements to telephone facsimile machines;

(4) for each notice referred to in paragraph (3)—

(A) the amount of the proposed forfeiture penalty involved;

(B) the person to whom the notice was issued;

(C) the length of time between the date on which the complaint was filed and the date on which the notice was issued; and

(D) the status of the proceeding;

(5) the number of final orders imposing forfeiture penalties issued pursuant to section 503 during the year to enforce any law, regulation, or policy relating to sending of unsolicited advertisements to telephone facsimile machines;

(6) for each forfeiture order referred to in paragraph (5)—

(A) the amount of the penalty imposed by the order;

(B) the person to whom the order was issued;

(C) whether the forfeiture penalty has been paid; and

(D) the amount paid;

(7) for each case in which a person has failed to pay a forfeiture penalty imposed by such a final order, whether the Commission referred such matter for recovery of the penalty; and

(8) for each case in which the Commission referred such an order for recovery—

(A) the number of days from the date the Commission issued such order to the date of such referral;

(B) whether an action has been commenced to recover the penalty, and if so, the number of days from the date the Commission referred such order for recovery to the date of such commencement; and

(C) whether the recovery action resulted in collection of any amount, and if so, the amount collected.

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