

ANTI-SPOOFING ACT OF 2016

NOVEMBER 14, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 2669]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2669) to amend the Communications Act of 1934 to expand and clarify the prohibition on provision of inaccurate caller identification information, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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The amendments are as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Anti-Spoofing Act of 2016”.

**SEC. 2. SPOOFING PREVENTION.****(a) EXPANDING AND CLARIFYING PROHIBITION ON MISLEADING OR INACCURATE CALLER IDENTIFICATION INFORMATION.—**

(1) **COMMUNICATIONS FROM OUTSIDE THE UNITED STATES.**—Section 227(e)(1) of the Communications Act of 1934 (47 U.S.C. 227(e)(1)) is amended by striking “in connection with any telecommunications service or IP-enabled voice service” and inserting “or any person outside the United States if the recipient is within the United States, in connection with any voice service or text messaging service”.

(2) **COVERAGE OF TEXT MESSAGES AND VOICE SERVICES.**—Section 227(e)(8) of the Communications Act of 1934 (47 U.S.C. 227(e)(8)) is amended—

(A) in subparagraph (A), by striking “telecommunications service or IP-enabled voice service” and inserting “voice service or a text message sent using a text messaging service”;

(B) in the first sentence of subparagraph (B), by striking “telecommunications service or IP-enabled voice service” and inserting “voice service or a text message sent using a text messaging service”; and

(C) by striking subparagraph (C) and inserting the following:

“(C) **TEXT MESSAGE.**—The term ‘text message’—

“(i) means a message consisting of text, images, sounds, or other information that is transmitted to or from a device that is identified as the receiving or transmitting device by means of a 10-digit telephone number or N11 service code;

“(ii) includes a short message service (commonly referred to as ‘SMS’) message and a multimedia message service (commonly referred to as ‘MMS’) message; and

“(iii) does not include—

“(I) a real-time, 2-way voice or video communication; or

“(II) a message sent over an IP-enabled messaging service to another user of the same messaging service, except a message described in clause (ii).

“(D) **TEXT MESSAGING SERVICE.**—The term ‘text messaging service’ means a service that enables the transmission or receipt of a text message, including a service provided as part of or in connection with a voice service.

“(E) **VOICE SERVICE.**—The term ‘voice service’—

“(i) means any service that is interconnected with the public switched telephone network and that furnishes voice communications to an end user using resources from the North American Numbering Plan or any successor to the North American Numbering Plan adopted by the Commission under section 251(e)(1); and

“(ii) includes transmissions from a telephone facsimile machine, computer, or other device to a telephone facsimile machine.”

(3) **TECHNICAL AMENDMENT.**—Section 227(e) of the Communications Act of 1934 (47 U.S.C. 227(e)) is amended in the heading by inserting “MISLEADING OR” before “INACCURATE”.

**(4) REGULATIONS.—**

(A) **IN GENERAL.**—Section 227(e)(3)(A) of the Communications Act of 1934 (47 U.S.C. 227(e)(3)(A)) is amended by striking “Not later than 6 months after the date of enactment of the Truth in Caller ID Act of 2009, the Commission” and inserting “The Commission”.

(B) **DEADLINE.**—The Commission shall prescribe regulations to implement the amendments made by this subsection not later than 18 months after the date of enactment of this Act.

(5) **EFFECTIVE DATE.**—The amendments made by this subsection shall take effect on the date that is 6 months after the date on which the Commission prescribes regulations under paragraph (4).

**(b) CONSUMER EDUCATION MATERIALS ON HOW TO AVOID SCAMS THAT RELY UPON MISLEADING OR INACCURATE CALLER IDENTIFICATION INFORMATION.—**

(1) **DEVELOPMENT OF MATERIALS.**—Not later than 1 year after the date of enactment of this Act, the Commission, in coordination with the Federal Trade Commission, shall develop consumer education materials that provide information about—

(A) ways for consumers to identify scams and other fraudulent activity that rely upon the use of misleading or inaccurate caller identification information; and

- (B) existing technologies, if any, that a consumer can use to protect against such scams and other fraudulent activity.
- (2) CONTENTS.—In developing the consumer education materials under paragraph (1), the Commission shall—
- (A) identify existing technologies, if any, that can help consumers guard themselves against scams and other fraudulent activity that rely upon the use of misleading or inaccurate caller identification information, including—
- (i) descriptions of how a consumer can use the technologies to protect against such scams and other fraudulent activity; and
- (ii) details on how consumers can access and use the technologies; and
- (B) provide other information that may help consumers identify and avoid scams and other fraudulent activity that rely upon the use of misleading or inaccurate caller identification information.
- (3) UPDATES.—The Commission shall ensure that the consumer education materials required under paragraph (1) are updated on a regular basis.
- (4) WEBSITE.—The Commission shall include the consumer education materials developed under paragraph (1) on its website.
- (c) GAO REPORT ON COMBATING THE FRAUDULENT PROVISION OF MISLEADING OR INACCURATE CALLER IDENTIFICATION INFORMATION.—
- (1) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the actions the Commission and the Federal Trade Commission have taken to combat the fraudulent provision of misleading or inaccurate caller identification information, and the additional measures that could be taken to combat such activity.
- (2) REQUIRED CONSIDERATIONS.—In conducting the study under paragraph (1), the Comptroller General shall examine—
- (A) trends in the types of scams that rely on misleading or inaccurate caller identification information;
- (B) previous and current enforcement actions by the Commission and the Federal Trade Commission to combat the practices prohibited by section 227(e)(1) of the Communications Act of 1934 (47 U.S.C. 227(e)(1));
- (C) current efforts by industry groups and other entities to develop technical standards to deter or prevent the fraudulent provision of misleading or inaccurate caller identification information, and how such standards may help combat the current and future provision of misleading or inaccurate caller identification information; and
- (D) whether there are additional actions the Commission, the Federal Trade Commission, and Congress should take to combat the fraudulent provision of misleading or inaccurate caller identification information.
- (3) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the findings of the study under paragraph (1), including any recommendations regarding combating the fraudulent provision of misleading or inaccurate caller identification information.
- (d) RULE OF CONSTRUCTION.—Nothing in this section, or the amendments made by this section, shall be construed to modify, limit, or otherwise affect any rule or order adopted by the Commission in connection with—
- (1) the Telephone Consumer Protection Act of 1991 (Public Law 102–243; 105 Stat. 2394) or the amendments made by that Act; or
- (2) the CAN–SPAM Act of 2003 (15 U.S.C. 7701 et seq.).
- (e) COMMISSION DEFINED.—In this section, the term “Commission” means the Federal Communications Commission.

Amend the title so as to read:

A bill to amend the Communications Act of 1934 to expand and clarify the prohibition on provision of misleading or inaccurate caller identification information, and for other purposes.

#### PURPOSE AND SUMMARY

H.R. 2669 expands the Truth in Caller ID Act, which prohibits the provision of inaccurate caller identification information, to include text messages.

## BACKGROUND AND NEED FOR LEGISLATION

Spoofing is a practice in which a phone number shown on a phone or caller identification device is deliberately falsified, often to portray an official entity such as a government agency or credit card company, typically with malicious intent. Spoofing is a commonly used tool for a number of illegal practices, including phishing for personal information and swatting calling in a fictitious crime in progress in order to generate a police response. The original Truth in Caller ID Act of 2009 prohibits spoofing voice caller identification. However, as communications methods and consumer habits continue to evolve, so too do the attempts by third parties to fraudulently gain personal information for criminal use. Many Americans are now relying on text messaging to stay connected, and this method of communication has become a target for spoofing in much the same way voice calls have been.

H.R. 2669 extends the provisions of the Truth in Caller ID Act to include text messaging as well as Voice over Internet Protocol services. The legislation, introduced by Rep. Barton, Rep. Lance, and Rep. Meng, also addresses the growth of services that allow users to knowingly transmit misleading or inaccurate caller identification information by adding a definition of “spoofing service” to the Truth in Caller ID Act.

In amending H.R. 2669, the Committee significantly changed the definitions of “text message” and “text messaging service.” The changes are designed to exclude from these definitions those online messaging services that use traditional telephone numbers for the purpose of identifying a user’s account, just as other online services may use an email address or username for a similar purpose. The excluded services do not use telephone numbers to interconnect with the public switched telephone network or enable communication with individuals who do not subscribe to the same messaging service. The Committee intends the Commission to devise its rules using the meanings set forth in the legislation. “Short message service” and “multimedia message service” should be narrowly interpreted consistent with current industry standards (see, e.g., ETSI, Technical Specification, 3GPP TS 23.040 version 12.2.0 Release 12, ETSI TS 123 040 v12.2.0 (Oct. 2014), available at [www.etsi.org](http://www.etsi.org)).

The Committee takes notice of the fact that the language set forth in the version of H.R. 2669, as ordered reported, is identical to the text relating to the same subject contained in S. 253, the Communications Act Update Act of 2016, as passed by the U.S. House of Representatives, on September 27, 2016. The House passed S. 253, as amended, by unanimous consent. The foregoing discussion should therefore serve as an explanation of that bill’s provisions for purposes of legislative history.

## HEARINGS

On January 12, 2016, the Subcommittee on Communications and Technology held a hearing on H.R. 2669 and received testimony from:

- Elizabeth Bowles, President & Chair of the Board, Aristotle, on behalf of Wireless Internet Service Providers Association;

- Harold Feld, Senior Vice President, Public Knowledge; and
- Robert McDowell, Partner, Wiley Rein, LLP, Senior Fellow, Hudson Institute; former Commissioner of the Federal Communications Commission.

#### COMMITTEE CONSIDERATION

On September 12 and 13, 2016, the Subcommittee on Communications and Technology met in open markup session and forwarded H.R. 2669, without amendment, to the full Committee by a voice vote.

On September 20 and 21, 2016, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 2669, as amended, favorably reported to the House by a 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 recorded votes taken in connection with ordering H.R. 2669 reported.

#### COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

#### STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal and objective of H.R. 2669 is to prohibit the use of inaccurate caller identification information via text message.

#### NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 2669 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

#### EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives, the Committee finds that H.R. 2669 contains no earmarks, limited tax benefits, or limited tariff benefits.

#### 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:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, October 14, 2016.*

Hon. FRED UPTON,  
*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. 2669, the Anti-Spoofing Act of 2016.

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

Sincerely,

KEITH HALL.

Enclosure.

*H.R. 2669—Anti-Spoofing Act of 2016*

Under current law, the Federal Communications Commission (FCC) has the authority to levy penalties and criminal fines against individuals that use fake information about a caller's identification to defraud or harm another. H.R. 2669 would expand that authority to include the use of text messages and would apply the authority to violators outside of the United States if the recipient is within the United States. The bill also would direct the FCC to develop consumer education materials that provide information for consumers on identifying fraudulent caller activities. Finally, H.R. 2669 would direct the Government Accountability Office (GAO) to conduct a study on actions taken by the FCC to combat the provision of inaccurate caller information and identify additional steps that could be taken by the agency.

Based on an analysis of information from the FCC about the agency's current enforcement capabilities, CBO estimates that implementing H.R. 2669 would increase the agency's costs by less than \$500,000 to enforce the expanded prohibition and to update current consumer education materials. Moreover, the FCC is authorized to collect fees sufficient to offset the costs of its regulatory activities each year; therefore, CBO estimates that the net effect on discretionary spending would be negligible, assuming appropriation actions consistent with that authority. Based on the costs of similar reports conducted by GAO, CBO estimates that the increased costs to conduct the required study would be insignificant.

H.R. 2669 would broaden the coverage of current laws relating to the use of misleading or inaccurate caller identification information. As a result, the government might be able to pursue cases that it otherwise would not be able to prosecute. Because those prosecuted and convicted under H.R. 2669 could be subject to criminal fines, the federal government might collect additional fines. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and later spent without further appropriation action; therefore, pay-as-you-go procedures apply. CBO expects that any additional revenues and subsequent direct spending would not be significant because the legislation would probably affect only a small number of cases.

CBO estimates that enacting H.R. 2669 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 2669 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Stephen Rabent. The estimate was approved by H. Samuel Papenfuss, 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.

#### DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 2669 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

#### DISCLOSURE OF DIRECTED RULE MAKINGS

H.R. 2669 directs no rule makings within the meaning of 5 U.S.C. 551.

#### ADVISORY COMMITTEE STATEMENT

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

#### 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*

This section provides that the Act may be cited as the “Anti-Spoofing Act of 2016”.

##### *Section 2. Spoofing prevention*

This section amends the Communications Act to expand the Truth in Caller Act to include text messaging services, as well as communications from outside of the United States. This section defines the terms “text message,” “text messaging service,” and “voice service.”

This section also requires the Commission, in coordination with the Federal Trade Commission, to develop consumer education materials regarding caller ID scams and technologies that can help consumers protect themselves against fraudulent activity.

This section also requires a Government Accountability Office report on the actions taken by the Federal Communications Commission and FTC to combat caller ID fraud.

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, and 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) 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 THE 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, or any person outside the United States if the recipient is within 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, unless such call is made solely to collect a debt owed to or guaranteed by the United States;

(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, is made solely pursuant to the collection of a debt owed to or guaranteed by the United States, 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;

(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; and

(H) may restrict or limit the number and duration of calls made to a telephone number assigned to a cellular telephone service to collect a debt owed to or guaranteed by the United States.

(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 directories 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 *MISLEADING OR 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** or any person outside the United States if the recipient is within the United States, in connection with any voice service or text messaging 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 2009, the Commission** *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.

(4) REPORT.—Not later than 6 months after the enactment of the Truth in Caller ID Act of 2009, 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 of 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) EFFECT ON OTHER LAWS.—This subsection 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.

(8) 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] *voice service or a text message sent using a text messaging service.*

(B) CALLER IDENTIFICATION SERVICE.—The term “caller identification service” means any service or device de-

signed 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** *voice service or a text message sent using a text messaging 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.**]**

**(C) TEXT MESSAGE.—***The term “text message”—*

*(i) means a message consisting of text, images, sounds, or other information that is transmitted to or from a device that is identified as the receiving or transmitting device by means of a 10-digit telephone number or N11 service code;*

*(ii) includes a short message service (commonly referred to as “SMS”) message and a multimedia message service (commonly referred to as “MMS”) message; and*

*(iii) does not include—*

*(I) a real-time, 2-way voice or video communication; or*

*(II) a message sent over an IP-enabled messaging service to another user of the same messaging service, except a message described in clause (ii).*

**(D) TEXT MESSAGING SERVICE.—***The term “text messaging service” means a service that enables the transmission or receipt of a text message, including a service provided as part of or in connection with a voice service.*

**(E) VOICE SERVICE.—***The term “voice service”—*

*(i) means any service that is interconnected with the public switched telephone network and that furnishes voice communications to an end user using resources from the North American Numbering Plan or any successor to the North American Numbering Plan adopted by the Commission under section 251(e)(1); and*

*(ii) includes transmissions from a telephone facsimile machine, computer, or other device to a telephone facsimile machine.*

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

**(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.

(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.

(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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