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SPOOFING PREVENTION ACT OF 2017

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 134

JUNE 6, 2017.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

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SPOOFING PREVENTION ACT OF 2017

JUNE 6, 2017.—Ordered to be printed

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

R E P O R T

[To accompany S. 134]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 134) to expand the prohibition on misleading or inaccurate caller identification information, and for other purposes, 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

S. 134 would provide the Federal Communications Commission (FCC or Commission) with updated authority to address "spoofing" in the United States. Specifically, the FCC would be empowered to combat spoofing originating from international locations, by text message and by other voice communications services. It also would direct the FCC, in conjunction with the Federal Trade Commission (FTC), to assess and make available resources and measures the public can use to protect themselves from spoofing.

BACKGROUND AND NEEDS

As the FCC noted over 5 years ago, "[i]ncreasingly, bad actors are altering or manipulating caller ID information—known as caller ID spoofing—to further a wide variety of malicious schemes, from identity theft to placing false emergency calls to SWAT teams. Using spoofing services accessible through the web or prepaid cards, anyone can inexpensively mask the origin of a call with fake

caller identification information."[1] Although the FCC has promulgated rules to address spoofing, there has been increased spoofing coming from outside the United States. In testimony before the Committee, then-FCC Chairman Tom Wheeler noted that he had himself been spoofed by a party claiming to be the Internal Revenue Service: "This was a U.S. number, but it was coming from abroad."[2] Former FCC Commissioner Jessica Rosenworcel stated, "[t]hat fraud has moved offshore. It's now coming from international locations."[3]

The increase in fraud committed through spoofing is not limited to calls originating from overseas. As communications technologies have evolved, so has spoofing activity. In recent years, spoofing scams in the United States have used text messaging services and other alternative voice communications services. One 2014 survey estimated that spoofing fraud affected 17.6 million Americans over the 12 months preceding the survey, with that fraudulent activity costing them $8.6 billion.[4] That same survey indicated that the actual amount of fraud was likely higher than these numbers revealed given the reluctance of many to report that they were victims of fraud. One story last year recounted the experience of a Tennessee resident who committed suicide after losing thousands of dollars to a Jamaican lottery scam perpetrated using caller ID spoofing.[5]

Congress first addressed the practice of caller ID spoofing in the Truth in Caller ID Act of 2009 (Public Law 111–331; 124 Stat. 3572).[6] That Act directed the FCC to prepare a report making recommendations to Congress on 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.[7] The FCC's report recommended such additional legislation, in particular with respect to expanding the agency's jurisdiction to pursue spoofing originating from overseas, as well as spoofing activity using text messaging services and other voice communications services not already covered by the law.[8] Congress has yet to update the Communications Act of 1934 (47 U.S.C. 151 et seq.) in response to those recommendations.

LEGISLATIVE HISTORY

S. 134 was introduced on January 12, 2017, by Senators Nelson, Fischer, Klobuchar, and Blunt, and was referred to the Committee on Commerce, Science, and Transportation of the Senate. On Janu-

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[1] Federal Communications Commission (FCC), "Consumers Gain New Protections against Fraudulent Call ID 'Spoofing,'" News Release, June 23, 2011, at https://www.fcc.gov/document/consumers-gain-new-protections-against-fraudulent-caller-id-spoofing.

[2] U.S. Congress, Senate Committee on Commerce, Science, and Transportation, *Oversight of the Federal Communications Commission*, 114th Congress, 2nd session, March 2, 2016, S.Hrg 114-607.

[3] Ibid.

[4] Weisbaum, Herb, "Americans Lost $8.6 billion to Phone Fraud in last Year, Survey Suggests," *Today*, August 27, 2014, at http://www.today.com/money/americans-lost-8-6-billion-phone-fraud-last-year-survey-1D80108259.

[5] Drash, Wayne, "Driven to Death by Phone Scammers," *CNN*, October 7, 2015, at http://www.cnn.com/2015/10/07/us/jamaica-lottery-scam-suicide.

[6] Public Law 111–331; codified at 47 U.S.C. §227(e).

[7] 47 U.S.C. §227(e)(4).

[8] FCC Report: Caller Identification Information in Successor or Replacement Technologies, June 22, 2011, at https://apps.fcc.gov/edocs_public/attachmatch/DA-11-1089A1.pdf.

ary 24, 2017, the Committee met in open Executive Session and, by voice vote, ordered S. 134 reported with an amendment (in the nature of a substitute). The Committee approved an amendment by Senator Nelson stating that, except as otherwise provided, a "text message" would not include a message sent over an IP-enabled messaging service to another user of the same messaging service.

On January 10, 2017, Representatives Meng, Barton, and Lance introduced H.R. 423, the Anti-Spoofing Act of 2017, a bill substantially similar to S. 134. On January 23, 2017, the House of Representatives agreed to that Act by roll call vote, 398 to 5. On January 24, 2017, H.R. 423 was received by the Senate and referred to the Committee.

S. 134 is substantially similar to legislation previously reported favorably by the Committee in 2016. In the 114th Congress, Senators Nelson and Fischer introduced S. 2558, the Spoofing Prevention Act of 2016. On April 27, 2016, the Committee held an Executive Session during which S. 2644, the FCC Reauthorization Act of 2016, was considered. That bill, containing an amended version of S. 2558, was ordered reported favorably, by voice vote, with an amendment (in the nature of a substitute).

A similar bill, H.R. 2669, the Anti-Spoofing Act of 2015, was introduced in the House of Representatives by Representatives Meng, Barton, and Lance on June 4, 2015. On November 14, 2016, H.R. 2669, as amended, was agreed to in the House of Representatives by a roll call vote, 382 to 5, and was received by the Senate on November 15, 2016. The House of Representatives-passed version of H.R. 2669 was substantially similar to the version of S. 2558 that was passed by the Committee as part of S. 2644.

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:

S. 134–Spoofing Prevention Act of 2017

Under current law, the Federal Communications Commission (FCC) has the authority to levy penalties and criminal fines against individuals who use fake information about a caller's identification to defraud or harm another. S. 134 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, S. 134 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 to 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 S. 134 would increase the agency's costs by less than $500,000 to enforce the expanded prohibition and to update current consumer education materials However, 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.

S. 134 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 S. 134 could be subject to criminal fines, the federal collections might increase. 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 S. 134 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 134 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.

REGULATORY IMPACT

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

The bill would for the first time extend spoofing prohibitions to persons outside the United States. It also would expand the categories of services in the United States, namely text messaging and other voice services as defined by the bill, subject to spoofing prohibitions. The bill, though, is not expected to have a significant impact on the number of types of individuals and businesses regulated in the United States, as nearly all offerors of such services already are regulated under the Communications Act of 1934.

ECONOMIC IMPACT

By reducing consumer harms related to misleading or inaccurate caller identification information, the bill is expected to have a positive economic impact.

PRIVACY

The bill is not expected to have an adverse effect on the personal privacy of any individuals.

PAPERWORK

The Committee does not anticipate an increased paperwork burden on regulated entities as a result of this bill.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

This section would provide that this Act may be cited as the "Spoofing Prevention Act of 2017."

Section 2. Definition.

This section would define "Commission" to mean the Federal Communications Commission.

Section 3. Spoofing Prevention.

Section 3(a) would amend section 227(e)(1) of the Communications Act of 1934 (47 U.S.C. 227(e)(1)) to extend the current prohibition of misleading or inaccurate caller identification information to include those acting from outside the United States if the recipient of the call or text is within the United States. This section also would provide new definitions of text messaging and voice services, and would include both under the prohibition against spoofing. The section would provide that, except as otherwise provided, a "text message" would not include a message sent over an IP-enabled messaging service to another user of the same messaging service.

Section 3(a) also would provide a technical amendment to the heading of section 227(e) of that Act, inserting "misleading or" so that the heading would read, "prohibition on provision of misleading or inaccurate caller identification information." This mirrors the language of the statute itself.

Finally, section 3(a) would require the FCC to implement the amendments made by the section not later than 18 months after the date of enactment of the Act, and would provide that such regulations be effective 6 months after the Commission prescribes them.

Section 3(b) would require the Commission, in collaboration with the FTC, to develop consumer educations materials that provide information about ways for consumers to identify scams and other fraudulent activities that rely on the use of misleading or inaccurate caller identification information; and existing technologies, if any, that consumers can use to protect against such scams and other fraudulent activities. The Commission would be required to include these consumer education materials on its website and to update the materials on a regular basis.

Section 3(c) would require the Government Accountability Office (GAO) to study FCC and FTC actions to combat spoofing and the additional measures that could be taken to combat such activity. GAO would be required to submit a report on this study that includes the following: (1) trends in spoofing activity; (2) previous and current FCC and FTC enforcement actions; (3) current efforts by industry groups to develop technical standards to deter or prevent spoofing and how those may help combat spoofing; and (4) whether there are additional actions the FCC, FTC, and Congress

should take to combat spoofing. The Committee is aware of the fact that in 2016 the FCC convened a Robocall Strike Force to address spoofing and related issues, and it intends for GAO to review the work done by that strike force in this report, including making recommendations based upon the strike force's work. GAO would be required to submit this report on its findings and recommendations to the Committee and to the Committee on Energy and Commerce of the House of Representatives not later than 18 months after the date of enactment of the Act.

Section 3(d) would provide a rule of construction stating that nothing in the section shall affect or modify the Commission's authority under the Telephone Consumer Protection Act of 1991 (Public Law 102–243; 105 Stat. 2394) or the CAN-SPAM Act of 2003 (15 U.S.C. 7701 et seq.).

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. 151 et seq.]

SEC. 227. RESTRICTIONS ON USE OF TELEPHONE EQUIPMENT.[9]

[47 U.S.C. 227]

* * * * * * *

(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 of the call 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.—

[9] The amendments to this section would take effect on the date that is 6 months after the date on which the Federal Communications Commission presecribes 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 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) 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 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] *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 from or received by a device that is identified as the transmitting or receiving device by means of a 10-digit telephone number;

(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, two-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 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.

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