redesignation, classification, or reclassification was in error, EPA may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

Pursuant to section 110(k)(6), EPA is proposing to find that its approval of these State and local provisions was in error, and to clarify and, as necessary, narrow its approval of certain regulations in the Washington SIP so that EPA's approval of those regulations as part of the Washington SIP is limited to their application to those pollutants that are reasonably related to attainment or maintenance of the NAAQS, that is, NAAQS pollutants and their precursors. EPA has previously similarly relied on section 110(k)(6) of the CAA to remove from other States' SIPs provisions that do not relate to attainment or maintenance of the NAAQS or to narrow SIP provisions consistent with CAA requirements. *See, e.g.,* 75 FR 2440 (January 15, 2010) (removing from Kentucky SIP rule regulating hazardous air pollutants); 74 FR 27442 (June 10, 2009) (removing from the Indiana SIP provisions relating to hazardous air pollutants); 73 FR 21546 (April 22, 2008) (removing the word "odor" from the definition of air contaminant in the New York SIP); 70 FR 58311 (October 6, 2005) (removing from the Idaho SIP a cross-reference to toxic air pollutants); 66 FR 57391 (November 15, 2001) (removing from the Missoula City-County portion of the Montana SIP provisions relating to, among other things, fluoride emission standards); see also Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule, 75 FR 82536, 82543–44 (Dec. 30, 2010) (relying on the authority of CAA 110(k)(6) to narrow the scope of Federal approval of State Prevention of Significant Deterioration (PSD) SIP provisions to ensure that federally enforceable requirements of the PSD programs of these States did not apply at lower thresholds for greenhouse gases than those under Federal PSD requirements in the Tailoring Rule).

Narrowing EPA's approval of these regulations to NAAQS pollutants and their precursors will have no affect on Washington's ability to demonstrate attainment and maintenance of the NAAQS or to meet any other requirement of the CAA.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely corrects EPA's prior SIP approvals to be consistent with Federal requirements and does not impose additional requirements beyond those imposed by the State's law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in Washington,[3] and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 16, 2011.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2011–6872 Filed 3–22–11; 8:45 am]

BILLING CODE 6560–50–P

[3] The one exception is within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided State and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 64

[WC Docket No. 11–39; FCC 11–41]

Implementation of the Truth in Caller ID Act of 2009

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: In this Notice of Proposed Rulemaking (NPRM), the Commission proposes rules to implement the Truth in Caller ID Act of 2009. The proposed rules prohibit caller ID spoofing done with the intent to defraud, cause harm, or wrongfully obtain anything of value. The Commission also seeks comments that will assist the Commission in preparing a statutorily required report 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 services or IP-enabled voice services.

DATES: Comments are due on or before April 18, 2011 and reply comments are due on or before May 3, 2011.

ADDRESSES: You may submit comments, identified by WC Docket No. 11–39, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.

• *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the supplementary information section of this document.

FOR FURTHER INFORMATION CONTACT: Lisa Hone, Wireline Competition Bureau, Competition Policy Division, 202–418–1580.

SUPPLEMENTARY INFORMATION: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before April 18, 2011 and reply comments on or before May 3, 2011. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/*or the Federal *eRulemaking Portal: http://www.regulations.gov.*

• *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone: (202) 488–5300, fax: (202) 488–5563, or via e-mail *http://www.bcpiweb.com.*

Initial Paperwork Reduction Act of 1995 Analysis

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Below is a synopsis of the Commission's Notice of Proposed Rulemaking in WC Docket No. 11–39, adopted March 9, 2011, and released March 9, 2011.

Synopsis of Further Notice of Proposed Rulemaking

1. In this NPRM, the Commission seeks comment on proposed rules to implement the Truth in Caller ID Act of 2009 (Truth in Caller ID Act, or Act), signed into law on December 22, 2010. Caller ID services identify the telephone numbers and sometimes the names associated with incoming calls. The Truth in Caller ID Act prohibits anyone in the United States from causing any caller identification service to knowingly transmit misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value. The Truth in Caller ID Act requires the Commission to issue implementing regulations within six months of the law's enactment. It also requires the Commission, by the same date, to submit a report 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 services or IP-enabled voice services."

2. In order to implement the Truth in Caller ID Act, the Commission proposes to (i) add a section to the Commission's current rules governing Calling Party Number (CPN) services, and (ii) enhance the Commission's forfeiture rules. The proposed additions to the Commission's CPN rules are modeled on the Act's prohibition against engaging in caller ID spoofing with fraudulent or harmful intent, and include the statutory exemptions to the prohibition. The proposed rules also include new definitions. The proposed amendments to the Commission's forfeiture rules implement the forfeiture penalties and forfeiture process provided for in the Act.

A. Proposed Amendments to the Commission's Rules Relating to Calling Party Numbers

3. The Commission proposes rules that would prohibit any person or entity in the United States, with the intent to defraud, cause harm, or wrongfully obtain anything of value, from knowingly causing, directly or indirectly, any caller identification service to transmit or display misleading or inaccurate caller identification information. The Act's prohibition is directed at spoofing "in connection with any telecommunications service or IP-enabled voice service." The proposed rules define "caller identification service" and "caller identification information" to encompass both types of calls; therefore, the proposed rules would apply to calls made using both types of services. The Commission seeks comment on this approach, and whether the Commission needs to take any other steps to ensure that calls made using telecommunications services and interconnected VoIP services are covered by the proposed rules.

4. The Commission also seeks comment on the use of the word "knowingly" in the statute and our proposed rules. The statutory language prohibits anyone 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" and could be read to require knowledge by either the caller identification service or the actor employing the caller identification service. However, in many instances, the caller identification service has no way of knowing whether or not the

caller identification information it receives has been manipulated. The proposed rules thus focus on whether the caller has knowingly manipulated the caller identification information that is seen by the call recipient in order to defraud, cause harm, or wrongfully obtain anything of value. Our proposed rules provide that the person or entity prohibited from "knowingly" causing transmission or display of inaccurate or misleading caller identification is the same person or entity that must be acting with intent to defraud, cause harm, or wrongfully obtain anything of value. The proposed rules address both transmitting and displaying inaccurate caller identification information to make clear that, even if a carrier or interconnected VoIP provider transmits accurate caller identification information, it would be a violation for a person or entity to cause a device that displays caller identification information to display inaccurate or misleading information with the intent to defraud, cause harm, or wrongfully obtain anything of value. The Commission seeks comment on whether these proposed rules accurately reflect Congress' intent. Are there any changes to the proposed rules that would improve how this prohibition is expressed?

5. The Commission also seeks comment on whether the proposed prohibition on causing any caller identification service to transmit or display "misleading or inaccurate" caller identification information with the "intent to defraud, cause harm, or wrongfully obtain anything of value" provides sufficiently clear guidance about what actions are prohibited. Do the proposed rules provide the public with "ascertainable certainty" about what would constitute a violation of the Act? Are the terms used in the proposed rules sufficiently well understood concepts that the public reasonably should know which actions are prohibited? For example, must the legal elements of common law "fraud" be met for a finding of intent to "defraud" under the Commission's proposed rules? Are there other statutes that provide relevant and well-defined standards for what it means to "defraud" someone? To the extent that greater specification is desirable, how should the proposed rules be changed to provide the desired clarity while remaining faithful to Congress' intent? The Commission also seeks comment on the different methods that a person or entity can employ to cause a caller identification service to transmit misleading or inaccurate information, and whether our proposed rules adequately encompass all such methods.

6. *Definitions.* The Act specifies that "IP-Enabled Voice Service" has the same meaning as § 9.3 of the Commission's regulations (47 CFR 9.3). The Commission's regulations define "Interconnected VoIP service" rather than "IP-Enabled Voice Services." Although the Act's use of a term other than the one set forth in the Commission's regulations might allow other interpretations, the Act's specific reference to the Commission's rule defining interconnected VoIP service indicates that Congress intended the scope of the caller ID spoofing prohibition to track the Commission's definition of interconnected VoIP service. Consequently, the proposed rules use the term "Interconnected VoIP service" and specify that it has the same meaning given the term "Interconnected VoIP service" in 47 CFR 9.3 as it currently exists or may hereafter be amended. The Commission seeks comment on this proposal. The Department of Justice (DOJ) has suggested that the Commission could instead model a definition of IP-enabled voice service on the definition of that term in 18 U.S.C. 1039(h)(4). DOJ's proposed definition is broader than the Commission's and would not require the user to have a broadband connection, and would not require that users be able to originate traffic to *and* terminate traffic from the public switched telephone network. The Commission seeks comment on DOJ's suggestion, and on other suggestions for defining "IP-Enabled Voice Service," including the advantages and disadvantages of adopting a particular definition. Commenters should also explain how such an interpretation is in accord with the reference to 47 CFR 9.3 in the statute.

7. The Commission proposes defining "Caller identification information" to mean "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 interconnected VoIP service," and defining "Caller identification service" to mean "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 interconnected VoIP service. Such term includes automatic number identification services." The Commission's proposed rules adopt the definitions in the Act, except that, as described above, the proposed definitions use the term "interconnected VoIP services" instead of "IP-enabled voice services."

8. The Commission seeks comment on whether the definitions of "Caller identification information" and "Caller identification service" in the proposed rules are sufficiently clear. Are there services other than traditional caller ID services (*i.e.,* services that terminating carriers and Interconnected VoIP provide to their subscribers) that are, or should be, included within the definition of "Caller identification service"? For example, spoofing caller identification information transmitted to emergency services providers is a particularly dangerous practice, and one which Congress was particularly concerned about when adopting the Truth in Caller ID Act. Should the delivery of caller identification information to E911 public safety answering points, which use automatic number identification (ANI) to look up the caller's name and location information on emergency calls, be considered a type of "Caller identification service" for purposes of our rules? What are the benefits and drawbacks to including information about calling parties provided to E911 public safety answering points as "Caller identification information?"

9. The term "Caller identification service" in the Act explicitly includes "automatic number identification services." The Commission's current rules relating to the delivery of CPN services define ANI as the "delivery of the calling party's billing number by a local exchange carrier to any interconnecting carrier for billing or routing purposes, and to the subsequent delivery of such number to end users. We seek comment on whether we should use a different definition of ANI for purposes of the Truth in Caller ID Act. In particular should we include in the proposed rules a definition of ANI that encompasses charge party numbers delivered by interconnected VoIP providers? What are the consequences of referencing automatic number identification services in the definition of "Caller identification service," but not in the definition of Caller identification information?

10. The Act and proposed rules define "Caller identification Information" and "Caller identification service" to include "the telephone number of, or other information regarding the origination of, a call." The Commission proposes to define "information regarding the origination" to mean any: (i) Telephone number; (ii) portion of a telephone number, such as an area code; (iii) name; (iv) location information; or (v)

other information regarding the source or apparent source of a telephone call. The Commission seeks comment on this proposed definition. Are there other things that should be included in the definition? For example, should the definition explicitly reference information transmitted in the SS7 Jurisdiction Information Parameter (JIP) code that provides information about the location of a caller who has ported his number or is calling over a mobile service? Does the proposed definition provide sufficient clarity about what is included?

11. The Act is directed at "any person," but does not define the term "person." In order to make clear that the rules are not limited to natural persons and to be consistent with the Commission's current rules concerning the delivery of CPN, the proposed amendments to the CPN rules use the phrase any "person or entity." By contrast, the proposed amendments to the Commission's forfeiture rules use the term "person" in order to be consistent with the use of the term "person" in the forfeiture rules. In both cases, the Commission intends for the entities covered to be those that are considered to be a "person" under the definition of "person" in the Communications Act. The Commission seeks comment on this approach. Should the Commission, consistent with its stated intent, incorporate the Communications Act definition of person in both rules rather than use different terminology in each rule? The Commission also seeks comment on whether it should exclude any class of persons or entities from the definition of "person" and if so, whom it should exclude. Should the same rules apply to individuals and businesses? The Commission also seeks comment on whether there are other terms that should be defined in the Commission's implementing regulations.

12. *Third-Party Spoofing Services.* There are numerous third-party providers of caller ID spoofing services, which can make it easy for callers to engage in caller ID spoofing. Third-party spoofing services can facilitate lawful and legitimate instances of caller ID manipulation as well as unlawful and illegitimate caller ID manipulation. DOJ has urged the Commission to consider adopting rules requiring "public providers of caller ID spoofing services to make a good-faith effort to verify that a user has the authority to use the substituted number, such as by placing a one-time verification call to that number." The Commission invites comment on whether the Commission can, and should, adopt rules imposing obligations on providers of caller ID spoofing services when they are not themselves acting with intent to defraud, cause harm, or wrongfully obtain anything of value. For example, are there reporting or record-keeping requirements that we can and should impose on third-party spoofing services that would assist the Commission in preventing callers from knowingly spoofing caller identification information with intent to defraud, cause harm, or wrongfully obtain anything of value or that would assist the Commission in identifying callers who engage in such practices? The Commission also seeks comment on DOJ's specific proposal relating to providers of caller ID spoofing services, and more broadly on what rules we can adopt to discourage or prevent caller ID spoofing services from enabling or facilitating unlawful conduct. If a third-party provider knows or has reason to believe that a caller is seeking to use the caller ID spoofing service for impermissible purposes, should the third party be held liable, or have a duty to report its concerns to the Commission? What jurisdiction does the Commission have to impose obligations on third-party providers? How would DOJ's proposal, or other possible approaches to address third-party services that may facilitate unlawful activity, affect the callers that use third-party services for permissible purposes?

13. *Exemptions.* The Act directs the Commission to exempt from its regulations: (i) any authorized activity of a law enforcement agency; and (ii) court orders that specifically authorize the use of caller identification manipulation. The Act also makes clear that it "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." The proposed rules therefore incorporate the two exemptions specified in the Act, and expand the exemption for law enforcement activities to cover protective and intelligence activities. The Commission seeks comment on this proposal.

14. The Act gives the Commission authority to adopt additional exemptions to the prohibition on using caller ID spoofing as the Commission determines appropriate. Therefore, the Commission also seeks comment on whether it should adopt any additional exemptions. Do carriers or interconnected VoIP providers engage in legitimate conduct that could be implicated by the proposed rules? For example, in many instances, the carrier or provider merely transmits the caller ID information it receives from another carrier, provider, or customer. Should the Commission expressly exempt carrier or provider conduct under these circumstances, even if the information conveyed is not accurate? Should the Commission more generally exempt conduct by carriers or interconnected VoIP providers that is necessary to provide services to their customers? The Act exempts authorized activity of law enforcement agencies and court orders that specifically authorize the use of caller identification manipulation. Should the proposed rules also exempt conduct by carriers or interconnected VoIP providers that is authorized or required by law? Are any such exemptions for carriers and interconnected VoIP providers necessary, given the Act's requirement that a violation involve intent to defraud, cause harm, or wrongfully obtain anything of value?

15. Some caller identification manipulation services allow customers to select which caller identification information is displayed. Likewise, certain services—such as pick-your-own-area-code—enable customers to select phone numbers that are not geographically associated with their location, and thus are potentially misleading with respect to the "origination of" calls by such persons. Does the Commission need to adopt an exemption to avoid stifling innovative new services such as call back services or services that involve manipulation of area codes, or location?

16. *Caller ID Blocking.* The Truth in Caller ID Act specifies that it is not intended to be construed to prevent or restrict any person from blocking the transmission of caller identification information. The legislative history shows that Congress intended to protect subscribers' ability to block the transmission of their own caller identification information to called parties. Therefore, the proposed rules provide that a person or entity that blocks or seeks to block a caller identification service from transmitting or displaying that person or entity's own caller identification information shall not be liable for violating the Commission's Truth in Caller ID Act implementing rules. The Commission seeks comment on whether the proposed rules appropriately implement this provision of the Act.

17. Although the Commission's rules generally allow callers to block caller ID, telemarketers are not allowed to do so. Telemarketers are required to transmit caller identification

information, and the phone number they transmit must be one that a person can call to request placement on a company-specific do-not-call list. This requirement benefits consumers and law enforcement. It allows consumers to more easily identify incoming telemarketing calls and to make informed decisions about whether to answer particular calls. It also facilitates consumers' ability to request placement on company-specific do-not-call lists. The requirement also assists law enforcement investigations into telemarketing complaints. Therefore, the proposed rules specify that any person or entity that engages in telemarketing, as defined in § 64.1200(f)(10) of the Commission's rules, remains obligated to transmit caller identification information under § 64.1601(e) of the Commission's rules. The Commission seeks comment on this provision of the proposed rules.

18. Some entities—often the same ones that offer spoofing services—also offer the ability to unmask a blocked number, effectively stripping out the privacy indicator chosen by the calling party. Are there ways that carriers and interconnected VoIP providers can prevent third parties from overriding calling parties' privacy choice? If so, would it be appropriate for the Commission to impose such obligations? What legal authority does the Commission have to address this practice? Commenters that support amending the Commission's rules should identify specific rule changes that will prevent these practices while ensuring that consumers' privacy preferences are respected.

19. Finally, we seek comment on the benefits and burdens, including the burdens on small entities, of adopting the proposed rules implementing the provisions of the Truth in Caller ID Act. Are there any other considerations the Commission should take into account as it evaluates rules to implement the Act?

B. Enforcement Issues

20. The Truth in Caller ID Act provides for additional forfeiture penalties for violations of section 227(e) of the Communications Act, and new procedures for imposing and recovering such penalties. In order to implement the forfeiture provisions of the Truth in Caller ID Act, we propose modifications to the Commission's forfeiture rules. We seek comment on the proposed amendments to our forfeiture rules and on some additional issues relating to enforcement of the Truth in Caller ID Act.

21. *Amount of Penalties.* The Act specifies that the penalty for a violation of the Act "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." These forfeitures are in addition to penalties provided for elsewhere in the Communications Act. Thus the Truth in Caller ID Act establishes the maximum amount of additional forfeiture the Commission can assess for a violation of the Act, but it does not specify how the Commission should determine the forfeiture amount in any particular situation. Therefore, the Commission proposes to amend § 1.80(b) of our rules to include a provision specifying the maximum amount of the additional fines that can be assessed for violations of the Truth in Caller ID Act. The Commission also proposes to employ the balancing factors we typically use to inform the amount of a forfeiture, which are set forth in section 503(b)(2)(E) of the Communications Act and § 1.80(b)(4) of the Commission's rules. The balancing factors include "the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require." The Commission seeks comment on these proposals.

22. *Procedure for Determining Penalties.* With respect to the procedure for determining or imposing a penalty, the Act provides that "[a]ny person that is determined by the Commission, in accordance with paragraphs (3) and (4) of section 503(b) [of the Communications Act], to have violated this subsection shall be liable to the United States for a forfeiture penalty." It also states that "[n]o forfeiture penalty 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) [of the Communications Act]." Taken together, sections 503(b)(3) and 503(b)(4) allow the Commission to impose a forfeiture penalty against a person through either a hearing or a written notice of apparent liability (NAL), subject to certain procedures. The Truth in Caller ID Act makes no reference to section 503(b)(5) of the Communications Act, which states that the Commission may not assess a forfeiture under any provision of section 503(b) against any person, who: (i) "does not hold a license, permit, certificate, or other authorization issued by the Commission;" (ii) "is not an applicant for a license, permit, certificate, or other authorization issued by the Commission;" or (iii) is not "engaging in activities for which a license, permit, certificate, or other authorization is required," unless the Commission first issues a citation to such person in accordance with certain procedures. That omission suggests that Congress intended to give the Commission the authority to proceed expeditiously to stop and, where appropriate, assess a forfeiture against, unlawful caller ID spoofing by any person or entity engaged in that practice without first issuing a citation. Therefore, the proposed rules would allow the Commission to determine or impose a forfeiture penalty for a violation of section 227(e) against "any person," regardless of whether that person holds a license, permit, certificate, or other authorization issued by the Commission; is an applicant for any of the identified instrumentalities; or is engaged in activities for which one of the instrumentalities is required. The proposed rules clarify that the citation-first requirements in the Commission's rules do not apply to penalties imposed for violations of the Truth in Caller ID Act. The Commission invites comment on this interpretation of the relationship between the Truth in Caller ID Act and section 503(b)(5) of the Communications Act.

23. In contrast to section 503(b)(1)(B) of the Communications Act, which provides for a forfeiture penalty against anyone who has "willfully or repeatedly" failed to comply with any provisions of the Communications Act, or any regulations issued by the Commission under the Act, the Truth in Caller ID Act does not require "willful" or "repeated" violations to justify imposition of a penalty. Therefore, the Commission proposes to amend § 1.80(a) of the Commission's rules to add a new paragraph (a)(4) providing that forfeiture penalties may be assessed against any person found to have "violated any provision of section 227(e) or of the rules issued by the Commission under that section of the Act." The Commission seeks comment on that proposal.

24. *Statute of Limitations.* The Truth in Caller ID Act specifies that "[n]o forfeiture penalty shall be determined or imposed against any person under [section 227(e)(5)(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." This statute differs from the one in section 403(b)(6) of the Communications Act, which provides for a one-year statute of limitations. The Commission proposes to adopt a two-year statute of limitations for taking

action on violations of the Truth in Caller ID Act. The Commission seeks comment on this proposal.

25. *Miscellaneous.* The Commission also takes this opportunity to propose redesignating as "Note to paragraph 1.80(a)" the undesignated text in section 1.80(a) and revising the new "Note to paragraph 1.80(a)" to address issues not directly relating to implementation of the Truth in Caller ID Act. First, in order to ensure that the language in the rule encompasses the language used in all of the statutory provisions, the Commission proposes amending the rule to say that the forfeiture amounts set forth in § 1.80(b) are inapplicable "to conduct which is subject to a forfeiture penalty *or fine*" under the various statutory provisions listed. (Emphasis added.) Second, the Commission proposes changing the references to sections 362(a) and 362(b) to sections 364(a) and 364(b) in order that the statutory provision references match those used in the Communications Act, rather than the U.S. Code. (Section 364 of the Communications Act is codified as 47 U.S.C. 362.) Third, the Commission proposes deleting section 503(b) from the list of statutory provisions to which the forfeiture amounts in § 1.80(b) do not apply, because the inclusion was error; § 1.80(b) implements the forfeiture amounts of section 503(b), and so the penalties set forth in § 1.80(b) apply to forfeiture under section 503(b). The Commission seeks comment on these proposed changes to its forfeiture rules.

C. Report

26. The Truth in Caller ID Act requires the Commission to issue a report to Congress within six months of the law's enactment on "whether additional legislation is necessary to prohibit the provisions of inaccurate caller identification information in technologies that are successor or replacement technologies to telecommunications services or IP-enabled voice services." The Commission seeks comment on which technologies parties anticipate will be successor or replacement technologies to telecommunications services or IP-enabled voice services. The Commission also seeks comment on the provision of inaccurate caller ID information with respect to such technologies, and whether the Commission will need additional authority to address concerns about caller ID spoofing associated with such successor or replacement technologies. In particular, the Commission seeks comment on communications services that are not interconnected with the public switched telephone network. In addition, the Commission seeks comment on whether there are other issues that the Commission should include in its report to Congress.

Procedural Matters

A. Paperwork Reduction Act Analysis

27. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burdens for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

B. Initial Regulatory Flexibility Analysis

28. As required by the Regulatory Flexibility Act of 1980, as amended, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this NPRM of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this notice of proposed rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the further notice of proposed rulemaking. The Commission will send a copy of the notice of proposed rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the SBA.

C. Ex Parte Presentations

29. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules.

Ordering Clauses

30. Accordingly, *it is ordered* that, pursuant to section 2 of the Truth in Caller ID Act of 2009, Pub. Law 11–331, and sections 1, 4(i), 4(j), 227, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 227 and 303(r) this Notice, with all attachments, *is adopted.*

31. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rule Making (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in this NPRM. The Commission will send a copy of this NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

A. Need for, and Objectives of, the Proposed Rules

2. The Truth in Caller ID Act of 2009 (Truth in Caller ID Act, or Act) was enacted on December 22, 2010. The Act prohibits anyone in the United States from causing any caller identification service to knowingly transmit misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value. The Truth in Caller ID Act requires the Commission to issue implementing regulations within six months of the law's enactment. It also requires the Commission, by the same date, to submit a report 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 services or IP-enabled voice services." The NPRM proposes to (i) add a new section and new definitions to the Commission's current rules governing Calling Party Number (CPN) services, 47 CFR 64.1600 *et seq.,* and (ii) enhance the Commission's forfeiture rules, 47 CFR 1.80.

3. The proposed additions to the Commission's CPN rules are modeled on the Act's prohibition against engaging in caller ID spoofing with fraudulent or harmful intent. The proposed rules would prohibit any person or entity in the United States, with the intent to defraud, cause harm, or wrongfully obtain anything of value, from knowingly causing, directly or indirectly, any caller identification

service to transmit or display misleading or inaccurate caller identification information. The Act directs the Commission to exempt from its regulations: (i) any authorized activity of a law enforcement agency; and (ii) court orders that specifically authorize the use of caller identification manipulation. The Act also makes clear that it "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." The proposed rules therefore incorporate the two exemptions specified in the Act, and expand the exemption for law enforcement activities to cover protective and intelligence activities.

4. The proposed amendments to the Commission's forfeiture rules are intended to implement the penalties and procedures for imposing penalties provided for in the Act. The Act specifies that the penalty for a violation of the Act "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." These forfeitures are in addition to penalties provided for elsewhere in the Communications Act. Therefore, the proposed amendments to § 1.80(b) of the Commission's rules include a provision specifying the maximum amount of the additional fines that can be assessed for violations of the Truth in Caller ID Act. Also, consistent with the specifications of the Act, the proposed rules would allow the Commission to determine or impose a forfeiture penalty for a violation of section 227(e) against "any person," regardless of whether that person holds a license, permit, certificate, or other authorization issued by the Commission; is an applicant for any of the identified instrumentalities; or is engaged in activities for which one of the instrumentalities is required.

5. The proposed rules do not impose recording keeping or reporting obligations on any entity. The NPRM does, however, seek comment on whether the Commission can and should adopt rules imposing obligations on providers of caller ID spoofing services. The NPRM also seeks comment on whether there are ways that carriers and interconnected VoIP providers can prevent third parties from unmasking a blocked number and overriding calling parties' privacy choice.

B. Legal Basis

6. The proposed action is authorized under the Truth in Caller ID Act, Pub. Law 111–331, codified at 47 U.S.C. 227(e), and sections 1, 4(i), 4(j), and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), and 303.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business" and "small organization." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

8. Small Business. Nationwide as of 2009, there are approximately 27.5 million small businesses, according to the SBA.

9. Small Organizations. Nationwide as of 2002, there were approximately 1.6 million small organizations. A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."

10. The Small Businesses and Small Organizations that will be directly affected by the proposed rules are those that knowingly spoof caller ID with the intent to defraud, cause harm, or wrongfully obtain anything of value. We are not aware of any attempts to quantify the number of small businesses or organizations engaged in such practices, nor have we have identified a feasible way to quantify the number of such entities.

11. In addition to entities that spoof their caller identification information, there are entities that provide caller ID spoofing services—services that make it possible for callers to alter or modify the caller identification information that is displayed to call recipients by their caller ID services. We have not proposed rules that directly affect providers of caller ID spoofing services, however, the NPRM requests comment on whether the Commission can and should adopt rules imposing obligations on providers of caller ID spoofing services. We are not aware of any attempts to quantify the number of caller ID spoofing services and we have not identified a feasible way to quantify the number of such entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

12. The proposed rules prohibit any person or entity acting with the intent to defraud, cause harm, or wrongfully obtain anything of value from knowingly causing a caller ID service to alter or manipulate caller ID information. That prohibition does not distinguish between large businesses and entities, small businesses and entities, or individuals. The NPRM does not propose rules that include any reporting or record keeping requirements. However, the NPRM does invite comment on whether the Commission can and should adopt rules imposing obligations, including record keeping and reporting obligations, on providers of caller ID spoofing services when they are not themselves acting with intent to defraud, cause harm, or wrongfully obtain anything of value. Certain providers of caller ID spoofing services may be considered small businesses or small entities.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

13. The Truth in Caller ID Act, which prohibits anyone in the United States from causing any caller identification service to knowingly transmit misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value, does not distinguish between small entities and other entities and individuals. The Commission has sought comment on the benefits and economically adverse burdens, including the burdens on small entities, of adopting the proposed rules implementing the provisions of the Truth in Caller ID Act. In addition the Commission seeks comment, focused on the issue of reducing economically adverse impact of the proposed rules on small entities, on alternatives to any proposed rule, or of alternative ways of implementing any proposed rule.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

14. None.

List of Subjects

47 CFR Part 1

Penalties.

47 CFR Part 64

Communications common carriers, Caller identification information, Telecommunications, Telegraph, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1 and 64 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1, of Title 47 of the Code of Federal Regulation is revised to read as follows:

Authority: 15 U.S.C. 79 *et seq;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309.

§ 1.80 [Amended]

2. Amend section 1.80 as follows:

a. Designate the undesignated paragraph following (a)(4) as "Note to Paragraph (a)" and revise it;

b. Redesignate paragraphs (a)(4), (b)(3), (b)(4), (b)(5), and (c)(3), as paragraphs (a)(5), (b)(4); (b)(5), (b)(6), and (c)(4), respectively;

c. Redesignate "Note to Paragraph (b)(4)" as "Note to paragraph (b)(5)";

d. Add new paragraphs (a)(4), (b)(3), and (c)(3);

e. Revise redesignated paragraph (b)(4); and

f. Revise paragraph (d).

§ 1.80 Forfeiture proceedings.

(a) * * *

(4) Violated any provision of section 227(e) of the Communications Act or of the rules issued by the Commission under section 227(e) of the Act; or

Note to pararaph (a): A forfeiture penalty assessed under this section is in addition to any other penalty provided for by the Communications Act, except that the penalties provided for in paragraphs (b)(1), (b)(2), (b)(3), (b)(4) of this section shall not apply to conduct which is subject to a forfeiture penalty or fine under sections 202(c), 203(e), 205(b), 214(d), 219(b), 220(d), 223(b), 364(a), 364(b), 386(a), 386(b), 506, and 634 of the Communications Act. The remaining provisions of this section are applicable to such conduct.

* * * * *

(b) * * *

(3) Any person determined to have violated section 227(e) of the Communications Act or of the rules issued by the Commission under section 227(e) of the Communications Act shall be liable to the United States for a forfeiture penalty of not more than $10,000 for each violation or three 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. Such penalty shall be in addition to any other forfeiture penalty provided for by the Communications Act.

(4) In any case not covered by paragraphs (b)(1), (b)(2) or (b)(3) of this section, the amount of any forfeiture penalty determined under this section shall not exceed $16,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $112,500 for any single act or failure to act described in paragraph (a) of this section.

* * * * *

(c) * * *

(3) In the case of a forfeiture imposed under section 227(e), no forfeiture will be imposed if the violation occurred more than 2 years prior to the date on which the appropriate notice is issued.

(d) *Preliminary procedure in some cases; citations.* Except for a forfeiture imposed under subsection 227(e)(5) of the Act, no forfeiture penalty shall be imposed upon any person under this section of the Act if such person does not hold a license, permit, certificate, or other authorization issued by the Commission, and if such person is not an applicant for a license, permit, certificate, or other authorization issued by the Commission, unless, prior to the issuance of the appropriate notice, such person:

(1) Is sent a citation reciting the violation charged;

(2) Is given a reasonable opportunity (usually 30 days) to request a personal interview with a Commission official, at the field office which is nearest to such person's place of residence; and

(3) Subsequently engages in conduct of the type described in the citation.

However, a forfeiture penalty may be imposed, if such person is engaged in (and the violation relates to) activities for which a license, permit, certificate, or other authorization is required or if such person is a cable television operator, or in the case of violations of section 303(q), if the person involved is a nonlicensee tower owner who has previously received notice of the obligations imposed by section 303(q) from the Commission or the permittee or licensee who uses that tower. Paragraph (c) of this section does not limit the issuance of citations. When the requirements of this paragraph have been satisfied with respect to a particular violation by a particular person, a forfeiture penalty may be imposed upon such person for conduct of the type described in the citation without issuance of an additional citation.

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

3. The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 154, 254(k), 227; secs. 403(b)(2)(B), (c), Pub. L. 104–104, 100 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 207, 228, and 254(k) unless otherwise noted.

4. Section 64.1600 is amended by redesignating paragraphs (c), (d), (e) and (f) as paragraphs (e), (f), (i) and (j) respectively and by adding new paragraphs (c), (d), (g), and (h) to read as follows:

§ 64.1600 Definitions.

* * * * *

(c) *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 interconnected VoIP service.

(d) *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 interconnected VoIP service. Such term includes automatic number identification services.

* * * * *

(g) *Information regarding the origination.* The term "Information regarding the origination" means any:

(1) Telephone number;

(2) Portion of a telephone number, such as an area code;

(3) Name;

(4) Location information; or

(5) Other information regarding the source or apparent source of a telephone call

(h) *Interconnected VoIP service.* The term "Interconnected VoIP service" has the same meaning given the term "Interconnected VoIP service" in 47 CFR 9.3 as it currently exists or may hereafter be amended.

§ 64.1604 [Redesignated as § 64.1605]

5. Section 64.1604 is redesignated as § 64.1605, and a new section 64.1604 is added to read as follows:

§ 64.1604 Prohibition on transmission of inaccurate or misleading caller identification information.

(a) No person or entity in the United States, shall, with the intent to defraud, cause harm, or wrongfully obtain anything of value, knowingly cause, directly or indirectly, any caller identification service to transmit or display misleading or inaccurate caller identification information.

(b) *Exemptions.* Paragraph (a) of this section shall not apply to:

(1) 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; or

(2) Activity engaged in pursuant to a court order that specifically authorizes the use of caller identification manipulation.

(c) A person or entity that blocks or seeks to block a caller identification service from transmitting or displaying that person or entity's own caller identification information shall not be liable for violating the prohibition in paragraph (a) of this section. This subsection does not relieve any person or entity that engages in telemarketing, as defined in § 64.1200(f)(10) of the obligation to transmit caller identification information under § 64.1601(e).

[FR Doc. 2011–6877 Filed 3–22–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[WT Docket No. 09–209; Report No. 2926]

Petition for Reconsideration of Action of Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration.

SUMMARY: In this document, a Petition for Reconsideration (Petition) has been filed in the Commission's Rulemaking proceeding listed in this document (Amendment of the Amateur Service Rules Governing Vanity and Club Station Call Signs). In the Rulemaking proceeding, the Commission amended the rules governing amateur radio service vanity and club station call signs to, among other things, limit club stations to holding one vanity call sign and limit individuals to serving as the trustee for one club. ARRL, the national association for Amateur Radio, formerly known as the American Radio Relay League, Inc. (ARRL), filed a Petition for Reconsideration arguing that the rule amendments adopted by the Commission are capable of being evaded, and thus do not fully effectuate the Commission's intent of preventing individuals from using club station licenses to hoard vanity call signs. ARRL proposes alternate regulatory language that it believes would better prevent hoarding of vanity call signs.

DATES: Oppositions to the Petitions must be filed by April 7, 2011. Replies to an opposition must be filed April 18, 2011.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FUTHER INFORMATION CONTACT: Scot Stone, Wireless Competition Bureau, 202–418–0638.

SUPPLEMENTARY INFORMATION: This is a summary of Commission's document, Report No. 2926, released February 15, 2011. The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). The Commission will not send a copy of this *Notice* pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because this *Notice* does not have an impact on any rules of particular applicability.

This document published pursuant to 47 CFR 1.429(e). *See* 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)).

Subject: In the Matter of Amendment of the Amateur Service Rules Governing Vanity and Club Station Call Signs (WT Docket No. 09–209); Petition for Rule Making: Amateur Radio Service (Part 97); Petition to change Part 97.19(c)(2) of the Amateur Radio Service Rules.

Number of Petitions Filed: 1.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–5523 Filed 3–22–11; 8:45 am]

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