

Congress Passes Comprehensive Legislation to Address Illegal Robocalls

December 19, 2019

On Thursday, December 19, 2019, the Senate passed the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, known as the “Pallone-Thune TRACED Act.” This final bill, which already passed the House on December 4, 2019, reconciles the Senate Traced Act (S. 151) and the House Stopping Bad Robocalls Act (H.R. 3375). We anticipate that the President will sign the bill into law, resulting in a substantial uptick in regulatory activity at the Federal Communications Commission (FCC) and a number of other federal agencies. All industry stakeholders should pay close attention to this legislative development, as the upcoming agency proceedings will provide significant opportunities for input from across the voice and messaging ecosystems, including providers and analytics engines.

The Pallone-Thune TRACED Act has three central functions. **First**, and most prominently, it imposes new call authentication requirements, obligating voice service providers to implement call authentication frameworks within certain timeframes. While the bill distinguishes between IP-based networks and non-IP networks, there are call authentication expectations for *both*. **Second**, the bill bolsters enforcement and reporting mechanisms under current robocall mitigation laws in Section 227 of the Communications Act (Section 227). **Third**, the new bill addresses an assortment of other issues pertaining to illegal robocall mitigation, including call blocking programs and industry traceback efforts.

Call Authentication Frameworks To Be Required. The bill calls for voice service providers to establish call authentication processes. For IP-based networks, it calls explicitly for the STIR/SHAKEN protocol. The bill also calls for call authentication on non-IP networks, such as those

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utilizing time-division multiplexing (TDM), to the extent possible. If within 12 months of enactment the FCC determines that call authentication deployment is insufficient, the FCC would be required to mandate that providers implement STIR/SHAKEN on IP networks and take “reasonable measures” to implement “an effective call authentication framework” on non-IP networks. The mandates would be established within 18 months of enactment. Even if the FCC determines that a regulatory mandate is not needed—either for IP and/or non-IP networks—it must issue a report to Congress providing its assessment. The bill also establishes mechanisms for the FCC to consider and grant extensions of any call authentication mandates, including a general exemption for non-IP networks with an interim requirement to establish a robocall mitigation program; requires the FCC to issue call authentication best practices to ensure the efficacy of the call authentication frameworks; and prohibits providers from assessing line item charges to consumers or small business customers for call authentication technologies. Notably, the bill requires the FCC to develop rules establishing when a voice provider may block a voice call and establishing a safe harbor for a voice provider that may unintentionally block or mislabel a call.

Strengthened Enforcement and Reporting. The final bill also significantly amends portions of Section 227 to expand illegal robocalling enforcement. For example, the bill establishes that the FCC may issue civil penalties of up to \$10,000 per call for intentional violations of the prohibitions on using certain automated telephone equipment. Additionally, the bill streamlines enforcement by eliminating the citation requirement for certain violations of Section 227. Furthermore, the FCC must submit annual updates to Congress detailing the number of complaints received in the previous 5 calendar years, along with information such as the number of notices of apparent liability issued in the preceding year. The bill also calls for significant interagency coordination on robocall enforcement, including the Interagency Working Group, which will be convened by the Attorney General in consultation with the FCC Chairman. The group will study prosecutions under Section 227 and will be comprised of the Department of Commerce, Department of State, and the Federal Trade Commission (FTC) among others. The final bill also requires coordination between the FCC’s Chief of the Enforcement Bureau and the Attorney General on “willful, knowing, and repeated” violations of Section 227.

Other Issues Regarding Illegal Robocall Mitigation. Finally, the bill addresses a host of other important robocall mitigation issues. Of particular note, the bill obligates the FCC to take a “final agency action” with respect to its June 2019 Declaratory Ruling regarding opt-out and opt-in call blocking. Any action taken by the FCC must ensure that robocall blocking services are provided with transparency and redress options for both consumers and call originators, and that such services are provided with no additional line item charge to consumers. The FCC must also ensure that “all reasonable efforts” are made to avoid blocking emergency public safety calls. The bill also addresses industry traceback efforts. The new legislation calls for an annual traceback report, as well as the designation of a single traceback entity (or “consortium”). Further, the bill: requires the FCC to examine its ability to restrict access to number resources by illegal robocallers and consider whether registration or compliance obligations, including know-your-customer practices, should be established for such numbering resources; calls for the FCC to initiate a rulemaking related to protections from spoofed calls; contemplates specific recordkeeping and registration requirements for VoIP providers; requires the FCC to report on the reassigned number database; directs the FCC to establish rules to streamline voluntary information sharing from private entities to the Commission; establishes a Hospital Robocall

Protection Group;" and initiates various measures associated with "one-ring scams;" among other things.

For a detailed summary and analysis of the Pallone-Thune TRACED Act, please reach out to a member of our team. We have a deep and experienced robocalling and robotexting bench. Our experts handle federal and state policy issues; compliance with federal and state requirements; complex TCPA issues, including political and charitable outreach; and TCPA enforcement actions and investigations.