

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Implementing Section 10(a) of the Pallone-Thune
Telephone Robocall Abuse Criminal Enforcement
and Deterrence Act (TRACED Act)
EB Docket No. 20-374

NOTICE OF PROPOSED RULEMAKING

Adopted: December 8, 2020

Released: December 8, 2020

Comment Date: 30 days after date of publication in the Federal Register

Reply Date: 45 days after date of publication in the Federal Register

By the Commission:

I. INTRODUCTION

1. Unlawful robocalls plague the American public. Such calls are frequently coupled with misleading or inaccurate telephone numbers displayed as caller ID information, an act known as spoofing. Spoofed calls are often used to facilitate fraudulent or other harmful activities. Congress enacted the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act) to aid efforts to curb illegal robocalling. Congress recognized the value of industry cooperation in fighting unlawful spoofed robocalls and took steps to formalize such cooperation.

2. In particular, Congress sought to enhance the ability of private entities to convey concerns about calls and texts that violate robocall or caller ID spoofing restrictions. Specifically, Congress directed the Commission to establish regulations, no later than June 30, 2021, to create a process that "streamlines the ways in which a private entity may voluntarily share with the Commission information relating to" a call or text message that violates the law regarding robocalls or spoofing. This Notice of Proposed Rulemaking (Notice) proposes and seeks comment on rules to implement this mandate. We propose to establish an online web portal where private entities may submit information about violations of sections 227(b) and 227(e) of the Communications Act. Under the proposal, the Commission's Enforcement Bureau would monitor the portal.

II. BACKGROUND

3. Section 227 of the Communications Act of 1934, as amended (the Communications Act), is designed to protect consumers from unlawful robocalls. Sections 227(b), (c), and (d) impose specific requirements on telemarketing and prerecorded voice message calls to give consumers the ability to know

1 A robocall is any call made using an automatic telephone dialing system or an artificial or prerecorded voice. 47 U.S.C. § 227.

2 Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274 (2019) (TRACED Act).

3 For example, the TRACED Act requires the Commission to select annually a single, industry-led consortium that will trace back the origin of suspected unlawful robocalls. TRACED Act § 13.

4 TRACED Act § 10(a).

who is calling and to control the calls they receive.⁵ Section 227(e) prohibits unlawful spoofing—the transmission of misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value.⁶ The Commission vigorously enforces violations of section 227.⁷

4. Timely and thorough information from private entities is crucial to enable the Enforcement Bureau to mitigate illegal robocall incidents and bring swift enforcement actions. Our past robocall enforcement actions have relied extensively upon information from private entities. For example, in *Abramovich* and *Roesel*, a medical paging company informed the Enforcement Bureau (Bureau) that its phone lines were being bombarded by spoofed robocalls.⁸ And the Commission issued a Notice of Apparent Liability for Forfeiture against John Spiller, Jakob Mears, and their companies after it received information and data provided by the USTelecom’s Industry Traceback Group (Traceback Group).⁹

5. The TRACED Act directs the Commission no later than June 30, 2021 to “prescribe regulations to establish a process that streamlines the ways in which a private entity may voluntarily share with the Commission information relating” to violations of section 227(b) or 227(e) of the Communications Act.¹⁰

III. DISCUSSION

6. In this *Notice*, we seek comment on proposed rules to implement the TRACED Act’s mandate. Specifically, we propose to establish an online web portal to enable private entities to voluntarily submit information to the Commission about violations of sections 227(b) and 227(e). Under the proposal, the Enforcement Bureau would monitor the portal.

7. *Definition of Private Entity.* We must first determine what constitutes a “private entity” for purposes of section 10 of the TRACED Act. Given the breadth of the term “entity,” which typically goes beyond just persons, we propose to define “private entity” to exclude only governments; in other words, a private entity is anyone (an individual, a company, an organization, an association, etc.) that is not a public entity. We note that Congress did not define the term “private entity” in the TRACED Act, but in other laws Congress has defined “private entity” in a similar manner.¹¹ We seek comment on our proposed interpretation, and whether there is a basis for a different interpretation of what constitutes a private entity.

8. *Streamlined Process.* We propose to create a mechanism for private entities to submit information about suspected robocall and spoofing violations directly to the Enforcement Bureau. We propose to create an online portal located on the FCC website that the Enforcement Bureau would monitor. We believe that this will streamline the collection of information pertaining to robocall and spoofing violations, in conformance with section 10(a) of the TRACED Act. We seek comment on this

⁵ 47 U.S.C. §§ 227(b)-(d).

⁶ 47 U.S.C. § 227(e).

⁷ See, e.g., *Philip Roesel, dba Wilmington Insurance Quotes, and Best Insurance Contracts, Inc.*, Forfeiture Order, 33 FCC Rcd 9204 (2018) (*Roesel Forfeiture Order*); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663 (2018) (*Abramovich Forfeiture Order*).

⁸ *Roesel Forfeiture Order*, 33 FCC Rcd at 9205-06, para. 4; *Abramovich Forfeiture Order*, 33 FCC Rcd at 4664, para. 5.

⁹ *John C. Spiller; Jakob A. Mears; Rising Eagle Capital Group LLC; JSquared Telecom LLC; Only Web Leads LLC; Rising Phoenix Group; Rising Phoenix Holdings; RPG Leads; and Rising Eagle Capital Group – Cayman*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 5948, 5949, para. 5 (2020).

¹⁰ TRACED Act § 10(a).

¹¹ See, e.g., 28 CFR Pt. 36, App. C (“The term ‘private entity’ is defined as any individual or entity other than a public entity.”).

proposal. We propose that this mechanism will be in addition to, and distinct from, the informal complaint process that the Consumer and Governmental Affairs Bureau manages. We anticipate that private entities will use the portal to submit information about suspected robocall or spoofing violations (i.e. “tips”). Based on our experience, we expect that the portal will be particularly valuable to employees who suspect that their company is violating the law, and third parties who have been disrupted by unlawful spoofers.¹² Consumers should continue to submit complaints about robocalls and spoofed calls through the Consumer and Governmental Affairs Bureau’s informal consumer complaint process. We seek comment on this proposal. We also seek comment on alternative or additional methods to streamline collection of information from private entities for potential enforcement of robocalling or spoofing violations.

9. We propose that the online form would require certain minimum information, including the name of the private entity, a point of contact, the caller ID information displayed as well as the phone numbers affected by the robocalling incident, the date(s) and time(s) of the relevant calls or texts, the name of the private entity’s service provider, and a description of the problematic calls or texts. We propose to allow private entities to submit additional information. We invite input on this proposal and seek comment on what other information we should require.

10. We further invite comment on whether there are any regulatory or statutory obligations or mandates that we should consider in developing the new streamlined process for collecting information from private entities under the definition we propose. Specifically, are there any laws or regulations that currently deter private entities from sharing data with the Commission regarding robocalls and spoofed calls and texts? What confidentiality assurances, if any, are necessary to ensure that a private entity would not open itself up to potential liability for any such sharing.

11. What other incentives are needed to encourage private entities to share information with the Commission about illegal robocalling or spoofing campaigns in a timely manner? For example, should we consider creating a safe harbor for private entities that share information through the web portal, and if so, what should be the scope of any such safe harbor? Would additional safe harbor protections be necessary and appropriate to encourage timely reporting of violations? We invite specific suggestions for safe harbors, including our legal authority to adopt such suggestions.

12. *No Impact on Informal Consumer Complaint Process.* We note that our actions here would not affect the process by which a consumer submits an informal complaint about a robocall or spoofed call. The Commission receives thousands of informal consumer complaints a month involving unwanted calls, including robocalls and robotexts.¹³ The unwanted calls complaint form asks for information such as date and time of the incident, caller ID information displayed, telephone number where the unwanted call was received, information about the consumer’s telephone service, and a description of the unwanted call. The Consumer and Governmental Affairs Bureau uses this information to inform Commission consumer protection policies as well as for analytical and consumer education purposes. It also forwards these complaints to the Enforcement Bureau, which may use them to pursue enforcement actions. We recognize that consumers might mistakenly file complaints with the new streamlined process rather than the existing consumer complaint process. In such cases, we propose that the Enforcement Bureau will forward such consumer complaints to the Consumer and Governmental Affairs Bureau. And to mitigate that impact, we propose that the new portal clearly explain its purpose and intended uses. We seek comment on these proposals.

¹² See *Affordable Enterprises of Arizona, LLC*, Forfeiture Order, FCC 20-149, para. 6 (2020) (company tipster); *Roesel Forfeiture Order*, 33 FCC Rcd at 9205-06, para. 4 (affected third party); *Abramovich Forfeiture Order*, 33 FCC Rcd at 4664, para. 5 (affected third party).

¹³ Consumer Complaint Center, FCC, www.consumercomplaints.fcc.gov (last visited July 28, 2020).

IV. PROCEDURAL MATTERS

13. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules addressed in the *Notice*.¹⁴ The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the *Notice* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

14. *Initial Paperwork Reduction Act of 1995 Analysis.* The *Notice* contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

15. *Ex Parte Presentations—Permit-But-Disclose.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁵ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filing in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meeting are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission’s rules. In proceedings governed by section 1.49(f) of the Commission’s rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

16. *Comment Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on or before the dates indicated on the first page of this document in EB Docket No. 20-374. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS).¹⁶

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy 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.

¹⁴ 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

¹⁵ 47 CFR §§ 1.1200 *et seq.*

¹⁶ *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

- 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.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See* FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

17. Comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments must also comply with section 1.49 of the Commission's rules¹⁷ and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments. All parties are encouraged to use a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the Notice in order to facilitate our internal review process.

18. *People with Disabilities.* To request material 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).

19. *Further Information.* For further information, contact Daniel Stepanicich, Attorney, Telecommunications Consumers Division, Enforcement Bureau, at (202) 418-7451 or daniel.stepanicich@fcc.gov.

V. ORDERING CLAUSES

20. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 227, and section 10(a) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. 116-105, 133 Stat. 3274, this *Notice of Proposed Rulemaking*, is hereby ADOPTED.

21. 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.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁷ 47 CFR § 1.49.

APPENDIX A
Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 0 and 64 as follows:

Part 0 – COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: 47 U.S.C. 155, 225 unless otherwise noted.

2. Amend section 0.111 by redesignating paragraph (j) as paragraph (k) and revising paragraph (j) as follows:

§ 0.111 – Functions of the Bureau

* * * * *

(j) Collects and reviews information received from private entities related to violations of § 64.1200(a) and § 64.1604(a) of this Title.

(k) Perform such other functions as may be assigned or referred to it by the Commission.

Part 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 154, 201, 202, 217, 218, 220, 225, 226, 227, 228, 251(e), 254(k), 262, 287, 403(b)(2)(B), (c), 616, 620, 1401-1473, unless otherwise noted.

4. Add section 64.1204 to read as follows:

§ 64.1204 – Private Entity Submissions of Robocall Violations

(a) Any private entity may submit to the Enforcement Bureau information related to a call made in violation of § 64.1200(a).

(b) For the purposes of this section, the term “private entity” shall mean any individual or entity other than a public entity.

5. Add section 64.1606 to read as follows:

§ 64.1606 – Private Entity Submissions of Spoofing Violations

(a) Any private entity may submit to the Enforcement Bureau information related to a call or text message for which misleading or inaccurate caller identification information was caused to be transmitted in violation of § 64.1604(a).

(b) For the purposes of this section, the term “private entity” shall mean any individual or entity other than a public entity.

APPENDIX B**Initial Regulatory Flexibility Analysis**

1. As required by RFA,¹⁸ the Commission has prepared an IRFA of the possible significant economic impact on a substantial number of small entities by the policies and rules addressed in the *Notice*. 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 *Notice*. The Commission will send a copy of the *Notice*, including the IRFA, to the Chief Counsel for Advocacy of the SBA.¹⁹ In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.²⁰

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

2. In the *Notice*, the Commission proposes to streamline the process for private entities to submit information to the Commission about a violation of 47 U.S.C. § 227(b) or 47 U.S.C. § 227(e). The Commission proposes to create a web portal where private entities can submit robocall violation information that will be monitored and reviewed by the Enforcement Bureau. Additionally, the Commission proposes to define “private entity” as any individual or entity other than a public entity.

A. Legal Basis

3. The proposed action is authorized pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 227, and section 10(a) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. 116-105, 133 Stat. 3274.

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

4. 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.²¹ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”²² In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.²³ A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operations; and (3) satisfies any additional criteria established by the SBA.²⁴

5. *Small Business, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could potentially be directly affected herein.²⁵ First, while there are industry specific size standards for small businesses that are used in the RFA, according to

¹⁸ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

¹⁹ See 5 U.S.C. § 603(a).

²⁰ See 5 U.S.C. § 603(a).

²¹ 5 U.S.C. § 603(b)(3).

²² 5 U.S.C. § 601(6).

²³ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

²⁴ 15 U.S.C. § 632.

²⁵ See 5 U.S.C. § 601(3)-(6).

data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.²⁶ These types of small businesses represent 99.9 percent of all businesses in the United States, which translates to 30.7 million businesses.²⁷

6. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."²⁸ The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.²⁹ Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.³⁰

7. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty-thousand."³¹ The rules proposed in this *Notice* exclude public entities and therefore do not apply to small governmental jurisdictions.

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

22. The Commission does not expect the rules proposed in the *Notice* will impose any new and/or additional reporting or recordkeeping and/or compliance obligations on small entities. The proposed web portal is a completely voluntary process that small entities may use to submit information about robocall or spoofing violations. Small entities are advised to retain copies of their submissions to the Commission as well any supporting documentation should the Bureau wish to follow-up with the complainant for more information.

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

23. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for

²⁶ See SBA, Office of Advocacy, "What's New With Small Business?", <https://cdn.advocacy.sba.gov/wpcontent/uploads/2019/09/23172859/Whats-New-With-Small-Business-2019.pdf> (Sept. 2019).

²⁷ *Id.*

²⁸ 5 U.S.C. § 601(4).

²⁹ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

³⁰ See Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for Region 1-Northeast Area (76,886), Region 2-Mid-Atlantic and Great Lakes Areas (221,121), and Region 3-Gulf Coast and Pacific Coast Areas (273,702) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

³¹ 5 U.S.C. § 601(5).

such small entities; (3) the use of performance rather than design standards; and (4) the exemption from coverage of the rule, or any part thereof, for such small entities.”³²

24. Congress directed the Commission to streamline the process for private entities to submit information about robocall violations. We determined that creating a web portal would best meet the Congressional mandate while also placing as few burdens as possible on private entities. Furthermore, the use of the portal is entirely voluntary and does not place any additional requirements on small entities. We also considered whether to make changes to the existing Consumer Complaint Center, but we determined that any such changes would be disruptive and counterproductive to consumers and small entities. We propose to give maximum flexibility to small entities as they may still continue to submit robocall complaints to the Consumer Complaint Center. This flexibility limits any undue burdens on small entities. We seek comment on whether we should consider any alternative proposals to reduce the impact on small entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

25. None.

³² 5 U.S.C. § 603(c)(1)-(4).