



712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 64

[EB Docket No. 20-22; FCC 20-11; FRS 16480]

Implementing the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes rules to implement the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act) to establish a registration process for the registration of a single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls.

DATES: Comments are due on or before **[INSERT DATE 10 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and reply comments are due on or before **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by EB Docket No. 20-22, by any of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs2/>.
- **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.

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. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes 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 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

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 FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Sonja Rifken of the Telecommunications Consumers Division, Enforcement Bureau, at Sonja.Rifken@fcc.gov or (202) 418-1730.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, FCC 20-11, EB Docket No. 20-22, adopted on February 5, 2020 and

released on February 6, 2020. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street SW, Room CY-A257, Washington, DC 20554, or online at <https://docs.fcc.gov/public/attachments/FCC-20-11A1.pdf>. To request this document in accessible formats for people with disabilities (e.g., Braille, large print, electronic files, audio format, etc.) or to request reasonable accommodations (e.g., accessible format documents, sign language interpreters, CART, etc.), send an email to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Synopsis

1. In this Notice of Proposed Rulemaking (NPRM), the Federal Communications Commission (Commission) proposes to implement section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement Act (TRACED Act). Unlawful prerecorded voice message calls—robocalls—plague the American public. Despite the Commission’s efforts to combat unlawful robocalls, which includes efforts to trace unlawful spoofed robocalls to their origination—a process known as traceback—these calls persist. Congress recognized the continued problem and enacted the TRACED Act to further aid the Commission’s efforts. Congress acknowledged the beneficial collaboration between the Commission and the private sector on traceback issues and, in section 13(d) of the TRACED Act, required the Commission to issue rules for the registration of a single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls.

2. The Commission proposes rules to implement a simple registration process. First, we propose that the Enforcement Bureau issue an annual public notice seeking registration of a single consortium that conducts private-led efforts to trace back the origin of suspected unlawful

robocalls. The Enforcement Bureau would issue the public notice no later than April 28 this year, as required by the TRACED Act, and by that date annually thereafter. We invite comment on this proposal.

3. Second, we propose to require an entity that plans to register as the consortium for private-led traceback efforts to submit in this docket a letter of notice of its intent to conduct private-led traceback efforts and its intent to register as the single consortium. We propose that the letter of notice include the name of the entity and a statement of its intent to conduct private-led traceback efforts and its intent to register with the Commission as the single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls. We invite comment on this proposal.

4. Third, we propose to mandate that the entity address the statutory requirements in such letter by:

(a) demonstrating that the consortium is a neutral third party competent to manage the private-led effort to trace back the origin of suspected unlawful robocalls;

(b) including a copy of the consortium's written best practices regarding management of its traceback efforts and regarding providers of voice services' participation in the consortium's efforts to trace back the origin of suspected unlawful robocalls, and an explanation thereof;

(c) certifying that, consistent with section 222(d)(2) of the Communications Act, the consortium's efforts will focus on fraudulent, abusive, or unlawful traffic; and

(d) certifying that the consortium has notified the Commission that it intends to conduct traceback efforts of suspected unlawful robocalls in advance of registration as the single consortium.

We invite comment on this proposal. We also invite comment on how to construe the terms used in these four statutory criteria and whether we should adopt any specific rules to ensure compliance with them. In addition, we seek comment on whether we should require any additional information or consider any other factors.

5. Fourth, we note that the statute contemplates a single registrant with the Commission, and so we must select a single consortium if more than one qualified consortium seeks to register. To do that, we propose that the Enforcement Bureau select the single registered consortium based on its analysis of any letter and associated documentation submitted by an entity seeking to register as the single consortium. Our judgment of compliance with the TRACED Act's requirements will be informed by the work we have done with the private sector, particularly the Industry Traceback Group. We propose to heavily weight the consortium applicant's expertise in both managing and improving the traceback process to the benefit of interested parties, including the Commission. Moreover, we propose to heavily weight whether the consortium applicant is open to all voice service providers. The degree of openness is indicative of the level of neutrality we would expect in order to accept a consortium's registration. We invite comment on these proposals and also seek comment on methods we should use to select between or among any competing consortium applicants. We welcome comment on other factors that merit consideration in evaluating any consortium application.

6. Fifth, while we propose to continue to solicit interest by public notice on an annual basis, in order to minimize the burdens of the registration process we propose not to require the incumbent consortium to file a new application each year. Rather, under our proposal, our rules will require that each certification in a letter extend for the duration of each subsequent year that the incumbent consortium serves, unless the incumbent consortium notifies

the Commission otherwise in writing on or before the date for the filing of such letters set forth in the annual public notice. In the event of any delays in our annual selection process, we also propose to authorize the incumbent consortium to continue its traceback efforts during the pendency of that process, until the effective date of the selection of any new consortium. We propose that the Bureau shall select any new consortium no later than 90 days after the date set forth in the annual public notice. We seek comment on these proposals.

7. Initial Regulatory Flexibility Certification. As required by the Regulatory Flexibility Act, see 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Certification reflecting its analysis that there will be no significant economic impact on small entities by the implementation of the policies and rules addressed in this Notice. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” 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 Small Business Administration (SBA).

8. In this NPRM, the Commission seeks comment on a limited and simple process for registration with the Commission of a single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls as required by section 13 of the TRACED Act. We reasonably expect, based on our experience, that no more than a few entities, and

perhaps only one, would apply to serve as the consortium. Moreover, the proposals contained herein impose minimal registration burdens such that they will have no more than a *de minimis* economic impact on any entity that has the resources to perform the private-led traceback efforts. Therefore, we certify that the proposals in this NPRM, if adopted, will not have a significant economic impact on a substantial number of small entities.

9. The Commission will send a copy of this NPRM, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration. This initial certification will also be published in the *Federal Register*.

10. Initial Paperwork Reduction Act of 1995 Analysis. 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 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).

11. Ex Parte Rules. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. 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.

12. *Ordering Clauses.* 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) and 154(j), and section 13(d) 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.

13. 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 Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in Parts 0 and 64

Authority delegations (Government agencies)

Telecommunications

FEDERAL COMMUNICATIONS COMMISSION

Cecilia Sigmund,
Federal Register Liaison Officer

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 is revised to read as follows:

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

2. Amend section 0.111 by revising paragraph (i) and adding paragraph (j) to read as follows:

§ 0.111 - Functions of the Bureau.

* * * * *

(i) Conduct the annual registration and selection of a single consortium to conduct private-led efforts to trace back the origin of suspected unlawful robocalls, under section 13(d) of the TRACED Act, 133 Stat. at 3287, and § 64.1203 of this chapter.

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

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, 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 § 64.1203 to subpart L to read as follows:

§ 64.1203 – Consortium registration process.

(a) The Enforcement Bureau shall issue a public notice no later than April 28th annually seeking registration of a single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls.

(b) Except as provided in paragraph (c) of this section, an entity that seeks to register as the single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls must submit a letter and associated documentation in response to the public notice issued pursuant to paragraph (a) of this section. In the letter, the entity must:

(1) Demonstrate that the consortium is a neutral third party competent to manage the private-led effort to trace back the origin of suspected unlawful robocalls;

(2) Include a copy of the consortium's written best practices regarding the management of its traceback efforts and regarding providers of voice services participation in the consortium's efforts to trace back the origin of suspected unlawful robocalls and an explanation thereof;

(3) Certify that, consistent with section 222(d)(2) of the Communications Act of 1934, as amended, the consortium's efforts will focus on fraudulent, abusive, or unlawful traffic; and

(4) Certify that the consortium has notified the Commission that it intends to conduct traceback efforts of suspected unlawful robocalls in advance of registration as the single consortium.

(c) The entity selected to be the registered consortium will not be required to file the letter mandated in paragraph (b) of this section in subsequent years after the consortium's initial registration. The registered consortium's initial certifications, required by paragraph (b) of this section, will continue for the duration of each subsequent year unless the registered consortium notifies the Commission otherwise in writing on or before the date for filing letters set forth in the annual public notice issued pursuant to paragraph (a) of this section.

(d) The current registered consortium shall continue its traceback efforts until the effective date of the selection of any new registered consortium.

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