



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[DA 20-460; FRS 16754]

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

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts final rules, as required by the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act), to enhance penalties and provide additional time for the Commission to pursue entities that violate the restrictions on robocalls. The TRACED Act directed the Commission to prescribe implementing regulations in accordance with section 3 of the TRACED Act within 270 days after enactment.

DATES: The rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Kimbarly Taylor of the Telecommunications Consumers Division, Enforcement Bureau, at Kimbarly.Taylor@fcc.gov or (202) 418-1188.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, DA 20-460, adopted on May 1, 2020 and released on May 1, 2020, which is the subject of this rulemaking. 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/DA-20-460A1.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 crafting the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act), Congress acknowledged the need for enhanced penalties and additional time for the Commission to pursue entities that violate the restrictions on robocalls. In this Order, the Federal Communications Commission (Commission) adopts final rules to implement section 3 of the TRACED Act (Section 3).

2. Accordingly, this Order amends section 1.80 of the Commission's rules. We move directly to an order here because implementation of Section 3 entails no exercise of our administrative discretion and, therefore, notice and comment procedures are unnecessary under the "good cause" exception to the Administrative Procedure Act (APA).

3. Section 227 of the Communications Act of 1934, as amended (the Communications Act) is designed to protect consumers from unsolicited, unlawful calls by restricting autodialed or pre-recorded message calls and unsolicited facsimiles, and by minimizing transmission of misleading or inaccurate caller ID information. Section 227 of the Communications Act is known as the Telephone Consumer Protection Act (TCPA).

4. Section 227(b) restricts calls using an automatic telephone dialing system or an artificial or prerecorded voice. It prohibits calls to residential phones if the call uses an artificial

or prerecorded voice message, unless the called party consents or the call is for an emergency purpose. Absent coverage by a relevant exception, such practices are known colloquially as illegal “robocalling.” The provision also prohibits unsolicited advertisements to facsimile machines unless the party receiving the facsimile has a preexisting business relationship with the sender, has consented to receive the facsimile, or has agreed to make available its facsimile number for public distribution.

5. Section 227(e), also known as the Truth in Caller ID Act, prohibits “caus[ing] any caller identification service” in connection with any voice service or text message service to “knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm or wrongfully obtain anything of value[.]” Such practices are known colloquially as “spoofing.”

6. Section 3 of the TRACED Act amends section 227(b) of the TCPA in several respects. First, it removes the requirement that the Commission issue a citation, or warning, pursuant to section 503(b)(5) of the Communications Act before the Commission may propose a monetary forfeiture under section 227(b). Second, Section 3 prescribes an additional potential monetary penalty for violations of section 227(b) if the Commission determines that the person violated section 227(b) “with the intent to cause such violation.” Third, Section 3 sets a four-year statute of limitations period in which the Commission may take enforcement action against intentional violations of section 227(b); previously the statute of limitations was one year. Fourth, Section 3 sets a four-year statute of limitations period in which the Commission may take enforcement action against violations of section 227(e); previously the statute of limitations was two years.

7. We amend section 1.80 of our rules to implement Section 3. *First*, consistent with the amendments that Section 3 makes to section 227(b) of the Communications Act, we amend section 1.80 of our rules to provide that the Commission may in the first instance impose a penalty against any person or entity that violates Section 227(b), as amended. The TRACED Act removes the requirement that the Commission must first issue a citation to any person or entity that violates section 227(b) if that person or entity not hold any license, permit, certificate, or other authorization issued by the Commission, or is not an applicant for any license, permit, certificate, or other authorization issued by the Commission.

8. *Second*, we amend section 1.80 of our rules to augment existing penalties for those violators that commit intentional violations of section 227(b). Under the amended rule, the Commission has the authority to impose a penalty of up to \$10,000 per intentional unlawful robocall in addition to the forfeiture penalty amount that may be proposed under section 503(b) of the Communications Act.

9. *Third*, we amend section 1.80 of our rules to extend the statute of limitations period to four years for intentional violations of section 227(b). By extending the enforcement period for intentional violations, Congress granted the Commission additional time to pursue violators that intentionally violate laws restricting the use of prerecorded or artificial voice messages and/or automatic telephone dialing systems.

10. *Fourth*, we amend section 1.80 of our rules to extend the statute of limitations period to four years for violations under section 227(e) of the Act.

11. Consistent with previous decisions, we amend our rules as set forth above without providing for prior public notice and comment. Our action here is largely ministerial because it simply effectuates regulations established by legislation and requires no exercise of

administrative discretion. For this reason, we conclude that prior notice and comment would serve no useful purpose and are unnecessary. We therefore find that this action comes within the “good cause” exception to the notice and comment requirements of the APA.

12. The Enforcement Bureau is responsible for, among other things, rulemaking proceedings regarding general enforcement policies and procedures. In the TRACED Act, Congress mandated the Commission to prescribe implementing regulations for Section 3 within 270 days after enactment. Therefore, action on delegated authority is properly taken in this Order amending section 1.80 of our rules, which is part of the Commission’s general enforcement policies and procedures. In addition, because a notice of proposed rulemaking is not required for these rule changes, no regulatory flexibility analysis is required.

13. Paperwork Reduction Act of 1995 Analysis. The Order does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, the Order 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).

14. Congressional Review Act. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Order in a report to be sent to Congress and the Government Accountability Office, pursuant to 5 U.S.C. 801(a)(1)(A).

15. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), and 227 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 227, sections 0.111(a)(22)

and 0.311(a)(1) of the Commission's rules, 47 CFR 0.111(a)(22), 0.311(a)(1), and section 3 of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. 116-105, 133 Stat. 3274, that this Order IS ADOPTED.

16. IT IS FURTHER ORDERED that section 1.80 of the Commission's rules, 47 CFR 1.80, is AMENDED as set forth in the Appendix below.

17. IT IS FURTHER ORDERED that this Order and the foregoing amendments to the Commission's rules SHALL BE EFFECTIVE thirty (30) days after the date of publication in the Federal Register. IT IS FURTHER ORDERED that the Enforcement Bureau shall coordinate with the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, TO SEND a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 1

Administrative Procedure, Penalties.

FEDERAL COMMUNICATIONS COMMISSION

Lisa Gelb,
Deputy Chief, Enforcement Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47

CFR part 1 as follows:

Part 1 – PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

2. Amend § 1.80 by:

a. Revising paragraph (a)(4);

b Redesignating paragraphs (b)(5) through (9) as paragraphs (b)(6) through (10).and

adding a new paragraph (b)(5);

c. Revising paragraph (c)(3);

d.Redesignating paragraph (c)(4) as (c)(5) and adding a new paragraph (c)(4); and

e. Revising paragraph (d) introductory text.

The revisions and additions read as follows:

§ 1.80 Forfeiture proceedings.

(a) * * *

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

* * * * *

(b) * * *

(5) Any person determined to have violated section 227(b)(4)(B) of the Communications Act or the rules issued by the Commission under section 227(b)(4)(B) of the Communications Act shall be liable to the United States for a forfeiture penalty determined in accordance with paragraphs (A)-(F) of section 503(b)(2) plus an additional penalty not to exceed \$10,000.

* * * * *

(c) * * *

(3) In the case of a forfeiture imposed under section 227(e), no forfeiture will be imposed if the violation occurred more than 4 years prior to the date on which the appropriate notice was issued.

(4) In the case of a forfeiture imposed under section 227(b)(4)(B), no forfeiture will be imposed if the violation occurred more than 4 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 sections 227(b) and 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:

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[FR Doc. 2020-11252 Filed: 6/25/2020 8:45 am; Publication Date: 6/26/2020]