

## Ex Parte comments in Docket 18-335, Ray Baum's Act, 2nd R&O, Extraterritorial Jurisdiction assertion

Tony Rutkowski

Wed 8/7/2019 2:49 PM

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1 attachments (313 KB)

18-335\_20190907\_exparte\_yaana.pdf;

Please find attached, ex parte comments in the subject proceeding which address the Commission's treatment of extraterritorial jurisdiction in the 2nd R&O, FCC 19-73, 5 Aug. 2019.  
[http://www.circleid.com/posts/20190807\\_fcc\\_ignorant\\_extraterritorial\\_jurisdiction\\_bravado/](http://www.circleid.com/posts/20190807_fcc_ignorant_extraterritorial_jurisdiction_bravado/)

respectfully,  
Anthony M. Rutkowski



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# FCC's Ignorant Extraterritorial Jurisdiction Bravado

Aug 07, 2019 8:24 AM PDT | Comments: 0 | Views: 265

By [Anthony Rutkowski](#)



The Federal Communications Commission yesterday released a [Report and Order \(R&O\) in the matter of its implementation of Ray Baum's Act](#) Section 503 and international call spoofing.

The FCC mostly did the right things in the R&O except in one rather extraordinary assertion of legal ignorance and bravado. It asserted unilaterally that it could exercise "extraterritorial jurisdiction that Congress expressly provided in section 503 of the Ray Baum's Act," and it furthermore knew of no "treaty obligation [contravened],...nor other legal barrier...and...are aware of none." It goes on to cite an essentially irrelevant 1999 Federal appellate decision, and its participation in a variety of bilateral and multilateral activities. Only one FCC Commissioner — O'Rielly — expressed concern in a separate statement.

The problem here is that today's FCC does not seem to understand the meaning of "extraterritorial jurisdiction." (As a former FCC senior staff member, it certainly was not always that way.) The term "extraterritorial" refers to the exercise of FCC regulatory authority outside the United States. The FCC simply cannot unilaterally do that, and Ray Baum's Act proscription of international call spoofing does not provide the FCC with extraterritorial jurisdiction.

Furthermore, the most fundamental and enduring construct of public international law for all telecommunication for the past 169 years that is contained innumerable treaties signed and ratified by the U.S. and all nations [begins with words](#) "fully recognizing the sovereign right of each State to regulate its telecommunication..." The existence of all transnational electronic communication today occurs within the scope that basic

instrument — and it was the United States itself which repeatedly over the past hundred years helped cement it in place to enable global communication.

What the FCC can do — pursuant to longstanding public international law provisions — is exercise its authority to inspect, stop, or suspend non-compliant electronic communications at the border or implement bilateral arrangements at a U.S. territorial gateway. It can also cooperate and act through other nations to deal with the perpetrators. What it cannot do is exercise that authority extraterritorially. Few if any nations would relinquish their sovereign right to regulate their own telecommunication to another nation, and accepting the notion that any nation can assert that jurisdiction on its own is an untenable act of foreign aggression.

The concern here is amplified by the extremely broad rule promulgated in the Order. FCC Sec. 64.1604 defines caller identification and service in essentially unbounded terms that includes anything and everything associated with the call or text and every provider in the transit or processing path. Further, the Rule applies in vague and abstract terms to "any person or entity outside the United States." The breadth of the Rule here in conjunction with a unilaterally asserted extraterritorial jurisdiction should give rise to concern, and deserves further clarification by either the Commission or the Dept. of State under whose delegated authority the FCC operates pursuant to treaty instruments.

The FCC needs to skip the jurisdictional bravado and engage in bilateral and multilateral activities described in footnote 36 of the R&O. There is only one global intergovernmental organization with jurisdiction here, and it is the International Telecommunication Union, and its ITU-T Study Group 2 collaborating with other bodies like 3GPP and GSMA, are the right places to pursue the necessary arrangements.

By [Anthony Rutkowski](#), Principal, Netmagic Associates LLC

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## Comments

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