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April 18, 2011

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: Notice of Proposed Rulemaking Concerning Caller Rules and Regulations Implementing the Truth in Caller ID Act — FCC 11-41

Dear Ms. Dortch:

The Office of the Minnesota Attorney General ("OAG" or "Office") submits the following written comments to the Federal Communications Commission ("Commission") in response to the above-entitled notice of proposed rulemaking ("NPRM") published in the Federal Register on March 23, 2011 concerning caller rules and regulations implementing the Truth in Caller ID Act. Caller ID "spoofing" is a substantial problem that must be addressed through comprehensive regulation of the industry. Accordingly, while this Office generally supports the Commission's proposed rule, it writes to urge the Commission to more explicitly address in its final rule the role that third party caller ID spoofing services play in the fraudulent activity Congress sought to address.

I. Congressional Intent Requires Regulation of Third Party Caller ID Spoofing Services

Caller ID is the primary manner in which consumers identify who is calling them, and whether they desire to answer the call. Accordingly, the "spoofing" of Caller ID services is a substantial problem for Minnesota consumers and their ability to protect themselves against criminal activity conducted by telephone.[1] In passing the Truth in Caller ID Act of 2009, Congress concluded that spoofing is a national problem of significant magnitude and that legislation was necessary because Caller ID spoofing is being used to orchestrate numerous

[1] This remains true notwithstanding a Minnesota statute expressly prohibiting the "blocking" or "circumvent[ion]" of a Minnesota consumer's Caller ID. *See* Minn. Stat. § 325E.312, subd. 3 ("No caller who makes a telephone solicitation to a residential subscriber in this state shall knowingly use any method to block or otherwise deliberately circumvent the subscriber's use of a caller identification service.").

fraudulent scams, and was more generally ripe for abuse "by criminals, identity thieves, and others who wish to harm or deceive someone."[2]

In light of Congress' determination that spoofing poses a serious threat to citizens of criminal activity, it is critical that the final rule enacted by the Commission to implement the Truth in Caller ID Act regulate both the caller ID spoofers and the third party spoofing services they use. As the Department of Justice ("DOJ") noted in its January 26, 2011 letter to the Commission: "Congress expressed its intent that the Commission adopt such regulations as it finds necessary and feasible to address the problems caused by the widespread public availability of caller ID spoofing services." The proposed rule focuses only on the caller ID spoofers and fails to address the problems caused by the widespread public availability of the third party spoofing services. This limited approach to addressing the serious threat of spoofing, if incorporated into the final rule, will severely undermine the rule's effectiveness as a tool to combat fraudulent activity. As the DOJ put it: "it is unlikely that criminals who are intent on breaking the law are going to be significantly deterred from spoofing caller ID by the potential for an additional criminal charge." To fulfill Congress' intent in passing the Truth in Caller ID Act, it is necessary that the Commission modify its currently proposed rule to address the conduct of third party spoofing services that provide the gateway for many spoofers to commit fraud.

II. Necessary Changes to the Proposed Rule to Fulfill Congressional Intent

The OAG urges the Commission to address two aspects of its currently proposed rule to fulfill Congress' intent. First, the Commission should explicitly prohibit third party spoofing services from knowingly transmitting false or misleading caller ID information that is intended to defraud citizens. The Commission notes that the current language of the proposed rule "provides that the person or entity prohibited from 'knowingly' causing transmission or display of inaccurate or misleading caller identification *is the same person* or entity that must be acting with intent to defraud, cause harm or wrongfully obtain anything of value."[3] Such a rule, however, is based on a too narrow and incorrect reading of the Truth in Caller ID Act and fails to account for the routine practice of third party spoofing services that knowingly transmit misleading and inaccurate caller ID information that is intended by caller ID spoofers to defraud citizens. These third party spoofing services may become aware that certain spoofers who use their services are engaging in fraudulent activities by direct contact with law enforcement agencies. If a third party spoofing service is aware that a spoofer is using its service to commit fraud or engage in other unlawful conduct, it should be held responsible for assisting in the commission of that unlawful conduct. The Commission should modify its final rule to prohibit third party spoofing services from knowingly transmitting misleading or inaccurate caller ID information that is intended to defraud citizens.

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[2] *See* Truth in Caller ID Act of 2009, S. Rep. No. 111-96, at 1-2 (2009).

[3] 76 Fed. Reg. 56, 16369 (Mar. 23, 2011) (emphasis added).

Similarly, the OAG supports the DOJ's proposal that the Commission adopt rules requiring that third party spoofing services take affirmative steps to curtail their participation in fraudulent activity, such as by making a good-faith effort to verify that a user has the authority to use a substituted number. These requirements will help ensure that third party spoofing services are not purposefully turning a blind eye to the fraudulent activities that their services help perpetuate. In addition, these requirements will help protect citizens by reducing fraudulent spoofing without requiring affirmative action by law enforcement agencies that are trying to keep up with this rapidly evolving industry. While there may be limited legitimate reasons for altering Caller ID information that prevented Congress from issuing an outright ban on spoofing,[4] such instances are exceedingly rare. Rather, the vast majority of spoofing is used for illegitimate purposes. Accordingly, the Commission should adopt requirements that ensure that third party spoofing services take minimal, common-sense steps to verify that the services they offer are being used for legitimate purposes.

III. CONCLUSION.

I ask that the Commission consider these comments in connection with its *Notice of Proposed Rulemaking Concerning Caller Rules and Regulations Implementing the Truth in Caller ID Act — FCC matter number 11-41*. In the meantime, please feel free to contact this Office if there is any additional information that would be helpful to the Commission in considering the above comments.

Sincerely,

LORI SWANSON
Attorney General

AG: #2804082-v1

[4] *See* Truth in Caller ID Act of 2009, S. Rep. No. 111-96, at 2 (2009) (discussing how spoofing may be beneficial in the context of calls made from a domestic violence shelter).