

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Rules and Regulations Implementing the Truth) WC Docket No. 11-39
in Caller ID Act of 2009)
)
)

REPLY COMMENTS OF VERIZON AND VERIZON WIRELESS

Caller ID is a valuable service that gives consumers the ability to decide whether to answer a call based on the telephone number and/or caller name displayed. As providers of Caller ID services, Verizon and Verizon Wireless¹ have supported government efforts, including The Truth in Caller ID Act of 2009,² to prohibit calling parties from defrauding the called party by causing false or misleading Caller ID information to be transmitted (a practice known as “spoofing”).

As a number of commenters have suggested, as the Commission implements the Act, it must take into account the limited role that telecommunications carriers and interconnected VoIP providers play in providing the Caller ID information that is displayed. As such, the Commission should provide certainty to these providers that the Act and rules will not be inappropriately applied to them by including exemptions in its rules that encompass existing business practices where providers do not “cause” the service to transmit information or the Act’s requisite intent is clearly absent.

¹ In addition to Verizon Wireless, the Verizon companies participating in this filing (“Verizon”) are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

² See 111 Pub. L. 331; 124 Stat. 3572 (the “Act”).

Alternatively, the Commission could amend its proposed rule to ensure that the prohibition focuses exclusively on conduct by the caller that is intended to harm the call recipient. Finally, the Commission should ensure that its rules do not stifle the variety of new, innovative services offered by carriers and interconnected VoIP providers that enable customers to enhance the Caller ID information that is conveyed.

DISCUSSION

I. **The Commission Should Expressly Exempt Certain Conduct by Carriers and Interconnected VoIP Providers Not Covered by the Act.**

The Act prohibits:

any person within the United States, in connection with any telecommunications service or IP-enabled voice service, to cause any caller identification service to knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value, *unless such transmission is exempted pursuant to paragraph (3)(B).*³

Included among the specific exemptions, Congress specifically tasked the Commission with “includ[ing] such exemptions from the [Act’s] prohibition . . . as the Commission determines is appropriate.”⁴

By its very terms, the Act would not cover existing practices relating to Caller ID by carriers and interconnected VoIP providers because the providers would lack the necessary knowledge and intent. However, the Commission should make clear that the Act and its rules do not apply to these practices that might be inappropriately characterized as “misleading or inaccurate” in some respect. Specific exemptions in the rules implementing the Act would protect these providers and their customers from litigation – either government-led enforcement actions or private suits for damages – in

³ 47 U.S.C. § 227(e)(1) (emphasis added).

⁴ *Id.* § 227(e)(3)(B)(i).

which providers would be forced to engage in time-consuming and expensive discovery to prove that their existing activities are not misleading, and were not undertaken with the requisite intent.

The House Commerce Committee recognized the various issues facing providers of Caller ID services and sought to distinguish providers from persons that spoof Caller ID information when it passed companion legislation in April 2010:

The Committee intends that the Commission's authority to promulgate rules under subsection (e)(3) includes the authority to specify exemptions from the prohibition where the requisite intent of the statute is not met, for example where the carrier or provider is merely transmitting the information it receives from another carrier, provider, or customer. Furthermore, the prohibition is not intended to stifle innovative new services such as pick your own area code, location, or call back number services.⁵

The House Committee's views are consistent with the Act, and the Commission should incorporate them into three limited exemptions.

1. The prohibition in the Act and the implementing rules should not apply to *providing or not providing caller identification information that was originated by a customer, user, another carrier, or another interconnected VOIP service provider.*

Providers have little or no control over many of the technical, service, and other issues that affect the content and transmission of calling party number and calling party name information in connection with particular calls. In many instances, a provider simply passes on caller identification information received from another carrier (including those located outside the United States that are not subject to the Commission's jurisdiction) or from an enterprise or government customer that maintains its own switch, even if such information is garbled, incorrect, or incomplete. In addition,

⁵ H. Rep. No. 111-461 at 7-8 (2010) ("House Report").

callers themselves may use an application or other service, including applications available through non-carrier third parties, to change the caller identification information displayed to the called party, without the knowledge or involvement of their underlying carriers.⁶ Similarly, providers of caller identification services may rely on third parties for the provision of caller name information, and there may be situations where such information is unavailable or – in the opinion of the called party – misleading or inaccurate in some respect.

From a practical standpoint, moreover, providers have no ability to determine whether the information they receive is accurate, misleading to the called party, or meets any legal requirements imposed on the calling party. Thus, providers cannot serve as gatekeepers to block offending calls. In the Notice, the Commission acknowledges as much, stating that “in many instances, the caller identification service has no way of knowing whether or not the caller identification information it receives has been manipulated.”⁷ For these reasons, AT&T, ATIS, USTelecom, the VON Coalition, and NECA all support such an exemption in their comments.⁸

2. The prohibition in the Act and the rules implementing the Act should not apply to *conduct by a carrier or interconnected VOIP service provider that is authorized or required by law.*

⁶ Such third party applications may be downloadable directly from an application provider’s website, or via an app store.

⁷ *Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, NPRM, 26 FCC Rcd 4128, ¶ 13 (2011) (“Notice”).

⁸ See AT&T Comments at 7-8; Alliance for Telecommunications Industry Solutions (ATIS) Comments at 5; National Exchange Carrier Association, Inc. *et al.* (NECA) Comments at 10-11; United States Telecom Association (USTelecom) Comments at 3-4; Voice on the Net (VON) Coalition Comments at 4-5.

Section 64.1601 enumerates a number of circumstances in which carriers are required and are not required to provide caller identification information. For instance, providers are not required to pass caller identification information when the caller blocks it, when the call is from a payphone, when the call is from a public agency's emergency line, or when the call is initiated by law enforcement. In addition, new rules are currently being contemplated in the context of "phantom traffic" in the Commission's proceeding on intercarrier compensation reform. There, providers would be required to transmit caller identification information only when feasible with network technology deployed at the time a call is originated. To avoid claims that such acts or omissions are misleading and undertaken with an attempt to defraud, cause harm, or wrongfully obtain anything of value, the Commission should state explicitly that conduct authorized or required by law is excluded from coverage of the Act and the rules.⁹

3. The prohibition in the Act and the rules implementing the Act should not apply *to conduct by a carrier or interconnected VOIP service provider that is related to the provision of service to its customers and is undertaken without intent to defraud, cause harm, or wrongfully obtain anything of value.*

Some services offered by carriers and interconnected VoIP providers may allow customers to select which account information is displayed in connection with caller identification service. For example, where a caller's city and state associated with the account are displayed, such information may inappropriately be alleged to be misleading in connection with wireless calls placed from outside that city or state. The information is associated with the call by the carrier based on information in its billing or other

⁹ USTelecom endorses a similar exemption in its comments. *See* USTelecom Comments at 4.

records, and could be inappropriately viewed as misleading or inaccurate because of the conduct of the caller, such as roaming. Also, as with the second exemption, this exemption would mitigate the risk of intercarrier compensation disputes brought under these rules.

II. The Commission Should Revise its Proposed Prohibition To Focus on Conduct by the Caller That Is Intended To Harm the Call Recipient.

As an alternative to enacting exemptions, the Commission could make clear that the conduct that its rules prohibit is not conduct by carriers and interconnected VoIP providers. The Commission proposes to codify the Act’s prohibition in its rules such that the focus is on the individual *caller* since “in many instances, the caller identification service has no way of knowing whether or not the caller identification information it receives has been manipulated.”¹⁰

While Verizon agrees that the Commission’s focus is the right one, the proposed rule, which as written, applies to a “person or entity,” could still potentially be interpreted to encompass carriers and interconnected VoIP providers. The following revision to the proposed § 64.1604(a)¹¹ would resolve the need for the proposed exemptions:

No person or entity in the United States, shall, with the intent to defraud, cause harm, or wrongfully obtain anything of value from the called party, initiate a call and in connection with such call, knowingly cause, directly or indirectly, any caller identification service to transmit or display misleading or inaccurate caller identification information.

The addition of the phrase “initiate a call and in connection with such call” would ensure that the focus is on the caller’s conduct – not that of carriers and interconnected VoIP

¹⁰ Notice ¶ 13.

¹¹ See Notice, Appendix A at 5.

providers. At the same time, the additional text “from the called party” would help avoid any intercarrier compensation disputes from being brought under these rules.

III. The Commission Should Ensure That Its Rules Do Not Stifle Innovative Services Offered by Carriers and Interconnected VoIP Providers.

Congress sought to ensure that the Commission not interpret a prohibition of Caller ID spoofing in a manner that could inhibit or discourage carriers’ development of new, innovative services.¹² Moreover, imposing onerous verification or other requirements on providers of these services could have a similar impact. The Commission should take care as it implements the Act to avoid such consumer-harming effects.

Carriers and interconnected providers have recently introduced such services for use by wholesale, enterprise, and retail customers that benefit both the callers and the call recipients. Many of these services are possible due to enhancements in Line Information Database (LIDB)-based services that will increasingly enable carriers to improve the caller ID services they make available to customers and remain integral to service provision. The procedures that carriers use to populate these call-related databases with customer information are not the “spoofing” activities prohibited by the Act or the third party services that were of concern to Congress. Carriers have ample incentive to ensure

¹² See S. Rep. No. 111-96, at 2 (2010) (as “there are innovative services that legitimately involve changes in caller ID information, such as providing consumers with the ability to provide a temporary callback number that is different from their assigned caller ID ... efforts to curtail ID spoofing should focus on actions by persons with intent to deceive or cause harm”); House Report at 7 (legislation “provides the FCC with the authority to write regulations in a way that prohibits caller ID manipulation for nefarious purposes but permits legitimate services like those discussed above and numerous others that exist in the marketplace today or might emerge in the future”).

that customers do not misuse these services through contractual safeguards and customer service processes.

Furthermore, as acknowledged in the Notice, there are beneficial pick-your-own-area-code services that allow customers to select phone numbers that are not geographically associated with their location.¹³ Other services permit customers to select which account information is displayed in connection with caller identification service. For example, a drugstore with a national footprint may place calls from a centralized location to remind customers to refill their prescriptions, but choose to convey the caller identification information associated with the specific drugstore from which the customer first filled the prescription to facilitate the customer's ability to contact his or her local pharmacy. In addition, where a caller chooses to have his city and state associated with the account displayed, such information may no longer be linked to the location information when a wireless or VoIP call is placed from outside that city.

It would be inappropriate to view these services as providing misleading information about the source of a call. Consistent with AT&T's comments, the Commission should ensure that its rules and forthcoming Order cannot be interpreted such that originating carriers or their customers could be liable under the Act for offering or subscribing to such legitimate services.¹⁴ The Commission should also ensure that its rules do not provide carriers with incentives to initiate disputes under these rules by claiming that they were defrauded from intercarrier compensation based on the caller

¹³ See Notice ¶ 24.

¹⁴ See AT&T Comments at 8-9 (describing the practice of AT&T's telemarketers to substitute AT&T's contact information in the Caller ID).

identification information. These rules cannot serve as a substitute to setting appropriate intercarrier compensation terms.

At the same time, the Commission should avoid placing specific requirements on the carriers and interconnected VoIP providers that provide such services to verify the information customers select to deter fraudulent spoofing, as some commenters seem to suggest.¹⁵ Consumers may change their Caller ID information through a variety of ways, including an inquiry to their principal service provider's customer care operations or website, or use of a third party's application or service. Carriers cannot be expected to police or second-guess the accuracy of all the "caller identification information" a customer provides.¹⁶ Congress opted for a minimalist approach with respect to the Commission's regulations, focusing exclusively on those individuals who provide misleading or inaccurate information to service providers and enumerating the scope of the regulations. While the Department of Justice has suggested that the Commission regulate third-party spoofing service providers (over which carriers have only negligible, if any, influence),¹⁷ the Commission should not impose requirements on carriers and interconnected VoIP providers.

In no event should the Commission mandate particular technical solutions that may be costly or otherwise difficult to implement. The Commission could encourage the

¹⁵ See Department of Justice Comments at 4-5 (proposing verification call to spoofed number); Minnesota Attorney General Comments at 3 (same); Transaction Network Services (TNS) Comments at 7 (requiring terminating carriers to query originating carrier's database). The Department of Justice's comments appear to be focused on third-party spoofing services as set forth in the Notice. Notice ¶ 21.

¹⁶ The Commission's proposed rules would define the term "caller identification information" expansively to include a telephone number (or portion thereof), location information, or "other information regarding the source or apparent source of a telephone call." See Notice at Appendix A at 4 (proposed rule § 64.1600(g)).

¹⁷ See Department of Justice Comments at 6-14.

industry to work together to develop best practices in this regard, but in any event, service providers will require flexibility.¹⁸ In addition, the Commission should not require that a “flag” or other signal be transmitted to the called party. Such an obligation goes well beyond what Congress intended, could result in unnecessary customer confusion, and would have costly burdensome technical implications that warrant a much more comprehensive record and deliberation than is possible before the June 2011 deadline to implement the Act. While the Department of Justice also expresses concern for access to intercept information in the absence of such a requirement,¹⁹ carriers have an overarching obligation under CALEA and Title 18 to ensure that their services and processes are compatible with and accommodate real-time intercepts and to access data in storage. Therefore, no additional regulations are necessary to achieve this objective.

CONCLUSION

For the reasons described above, the Commission should enact three narrow exemptions for conduct by carriers and interconnected VoIP providers. Alternatively, the Commission could achieve the same result by revising its proposed prohibition to focus on the caller’s conduct that would affect the called party. Finally, the Commission should make clear that existing innovative services offered by carriers and interconnected VoIP providers do not violate the Act or rules and avoid any verification mandates on these providers that would stifle the development of innovative Caller ID services.

¹⁸ For example, a service that allows a retail customer to change the calling party name associated with her outgoing calls (e.g., when a customer marries or prefers that a nickname be displayed) is far different – with a far less likely risk of harm to the called party – from a third party service that allows the calling party to modify the calling number without regard to the originating carrier’s customer database information. It is noteworthy in this regard that the Department of Justice’s concerns appear to relate exclusively to the calling number. *See* Department of Justice Comments at 4-5.

¹⁹ *See id.*

Respectfully submitted,

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