

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

In the Matter of)	
)	
Rules and Regulations Implementing the Truth in Caller ID Act of 2009)	WC Dkt. 11-39
)	

REPLY COMMENTS OF GOOGLE INC.

Google Inc. (“Google”) files these reply comments in response to the Notice of Proposed Rulemaking¹ proposing rules to implement the Truth in Caller ID Act of 2009.² Google supports the steps Congress and the Federal Communications Commission (“FCC” or “Commission”) have taken to ensure consumers are shielded from bad actors who manipulate caller identification (“caller ID”) information with the intent to harm consumers. Adopting the proposed rules will protect consumers while ensuring that beneficial and legitimate technologies and business practices are not harmed.

DISCUSSION

I. The FCC’s Proposed Rules are Appropriately Tailored to Protect Consumers

Congress properly sought to protect consumers by passing the TCID Act. Instances of caller ID manipulation with the intent to defraud or harm individuals are on the rise, as are the numbers of bad actors using misleading or inaccurate information to

¹ *Rules and Regulations Implementing the Truth in Caller ID Act of 2009, Notice of Proposed Rulemaking*, WC Dkt. 11-39, FCC 11-41 (rel. Mar. 9, 2011) (“NPRM”). Unless otherwise noted, all Comments referred to in these Reply Comments were submitted on April 18, 2011 in WC Dkt. 11-39.

² Truth in Caller ID Act of 2009, Pub. L. No. 111-331, codified at 47 U.S.C. § 227(e) (“TCID Act” or “Act”).

engage in identity theft, financial scams, and fraudulent emergency calls.³ In crafting proposed rules to implement the Act, the FCC recognized that Congress took a “measured approach. . . to prohibit malevolent caller ID spoofing.”⁴ Further, by limiting liability under the Act to persons “manipulating caller identification information with intent to deceive or cause harm,”⁵ Congress recognized that altering caller ID information – a practice sometimes referred to as “spoofing” – also may be used for many beneficial purposes.

Innovators are pioneering new technologies that offer services and applications that, although they may alter caller ID information, offer legitimate and desirable uses, such as protecting domestic abuse victims, establishing a local market presence for nationwide companies, and freeing consumers from a particular device or location.⁶ A far cry from the nefarious uses intended to harm consumers, these existing and emergent services should be promoted – not suppressed. As such, the proposed rules have been carefully tailored to fulfill Congress’ intent to stop harmful practices while ensuring that legitimate conduct is not stifled by unnecessary regulations.

³ See NPRM at ¶¶ 1, 8.

⁴ *Id.* at ¶ 10.

⁵ Truth in Caller ID Act of 2009, Report of the Committee on Commerce, Science, and Transportation on S. 30, S. REP. NO. 111-9 6, at 2 (2009).

⁶ See, e.g., Comments of National Network to End Domestic Violence at 1 (describing how spoofing “can be used for positive ends, such as disguising the identity and location of calls from a victim service provider to victims’ homes.”); Comments of inContact, Inc. at 1-2 (describing its cloud-based calling platform that enables call centers to use at-home or multi-site employees by allowing local numbers to overlay an IP address); Comments of NobelBiz, Inc. at 1 (describing a service that allows businesses to have a local market presence through use of local area codes); Comments of Student Loan Service Alliances and Private Loan Committee at 1-2 (noting useful reasons why the caller ID information may not correspond to the actual calling number, such as displaying a main or call-back number). See also Comments of American Teleservices Association at 4; Comments of Copilevitz & Cantar, L.L.C. at 2, 3.

For this reason, the draft regulations correctly focus on persons that *knowingly* manipulate caller ID information with the intent to cause harm⁷ by imposing liability on *callers* who manipulate caller ID information.⁸ Thus, pursuant to the TCID Act’s directives, the proposed rules make clear that the entity subject to liability for “knowingly” causing a transmission is the actor who employs the caller ID service, and not the service provider that enables alteration or transmission of information.⁹ This approach will ensure that service providers without any actual knowledge of the manipulated information are not unfairly penalized.

The TCID Act also seeks to prevent the transmission or display of “misleading or inaccurate” information only where there is “intent to defraud, cause harm, or wrongfully obtain anything of value.”¹⁰ The statutory language and the proposed rule¹¹ provide sufficient guidance to enable parties to determine the actions that are prohibited and those that fall outside the scope of the rules.¹² Indeed, under the FCC’s draft language, alteration of caller ID information is not on its own sufficient to violate the Act. Instead, only malevolent manipulations made “with the intent to defraud, cause harm, or wrongfully obtain anything of value” violate the TCID Act. By contrast, alteration of caller ID information for beneficial purposes falls well outside the reach of the

⁷ NPRM at ¶ 13; proposed rule 47 C.F.R. § 64.1604(a) (“[N]o person or entity. . . shall, with the intent to defraud, cause harm, or wrongfully obtain anything of value, knowingly cause. . . any caller identification service to transmit or display misleading or inaccurate caller identification information.”).

⁸ NPRM at ¶ 13 (“The proposed rules thus focus on whether the *caller* has knowingly manipulated the caller identification information that is seen by the call recipient in order to defraud, cause harm, or wrongfully obtain anything of value. . . .”).

⁹ *Id.*

¹⁰ TCID Act, 47 U.S.C. § 227(e)(1).

¹¹ Proposed rule 47 C.F.R. § 64.1604(a).

¹² NPRM at ¶ 14.

proscriptions. This ensures that providers of legitimate services – so long as they do not engage in the prohibited actions – remain free to innovate and offer consumer-friendly services. To provide added certainty, the FCC should explicitly state in its final order that the proposed rules do not apply to caller ID alteration for legitimate business purposes.

II. The FCC Correctly Proposes to Limit the Scope of the Rules to Interconnected VoIP

The FCC correctly interprets the TCID Act to apply only to interconnected Voice over Internet Protocol (“IVoIP”) services,¹³ and not to a more expansive set of Internet protocol-based (“IP”) voice services. The TCID Act directs the Commission to define IP voice services in accordance with the “meaning given that term by section 9.3 of the Commission’s regulations.”¹⁴ The IVoIP definition in Section 9.3 of the FCC’s rules¹⁵ was carefully debated and analyzed prior to adoption,¹⁶ and the FCC has extensive experience applying requirements to services that fall within its scope.¹⁷ As the FCC

¹³ NPRM at ¶ 15.

¹⁴ TCID Act, 47 U.S.C. § 227(e)(8)(C).

¹⁵ 47 C.F.R. § 9.3.

¹⁶ *See IP-Enabled Services; E911 Requirements for IP-Enabled Services, First Report and Order and Order on Reconsideration*, 20 FCC Rcd. 10245, ¶¶ 22-24 (2005), *aff’d*, *Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006).

¹⁷ *See, e.g., Communications Assistance for Law Enforcement Act and Broadband Access and Services, First Report and Order and Further Notice of Proposed Rulemaking*, 20 FCC Rcd. 14989, ¶ 41 (2005) (applying CALEA obligations), *aff’d*, *American Council on Educ. v. FCC*, 451 F.3d 226 (D.C. Cir. 2006); *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information, Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd. 6927, ¶ 54 (2007) (applying CPNI obligations); *Universal Service Contribution Methodology, Report and Order and Notice of Proposed Rulemaking*, 21 FCC Rcd. 7518, ¶ 34 (2006) (applying federal USF obligations), *aff’d in part, vacated in part, Vonage Holdings Corp. v. FCC*, 489 F.3d 1232, 1244 (D.C. Cir. 2007); *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996, Report and Order*, 22 FCC Rcd. 11275, ¶ 18 (2007) (applying disability access obligations).

recognized, using the Section 9.3 IVoIP definition is most consistent with the language of TCID Act.

Legislative history confirms that the FCC's draft rules follow Congressional intent. The House companion bill to the TCID Act, H.R. 1258, would have applied broadly to "any real time voice communications service, regardless of the technology or network utilized."¹⁸ Significantly, however, Congress ultimately adopted the more narrow language of the Senate bill, showing that Congress considered and rejected the use of a broad definition in favor of the IVoIP definition in Section 9.3.¹⁹ Further, by asking the Commission to issue a separate report, Congress clearly evinces its intent to move incrementally and in a reasonable fashion. Given the express language and legislative history of the Act, Congress intended the FCC to adopt rules applicable only to services that fall within the established IVoIP definition.

As such, the FCC should reject suggestions that it act here to subject a new and open-ended set of IP-based voice services to regulation for the first time.²⁰ The Commission has never taken such action before, and this expedited proceeding is no place for such regulatory expansionism. It should continue this course, consistent with the Congressional mandate of Section 230 to "preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services,

¹⁸ Truth in Caller ID Act of 2010, H.R. 1258, 111th Cong. § 2 (2010).

¹⁹ TCID Act, 47 U.S.C. § 227(e)(4).

²⁰ *See, e.g.*, Comments of AT&T Inc. at 4-5; Comments of ATIS at 4. These parties urge the FCC to apply its rules to "IP-enabled voice services," defined in the criminal statute regarding the sale and purchase of confidential phone records. *See* 18 U.S.C. § 1039(h)(4). There is no precedent or evidence that Congress intended the FCC to reach into the criminal statute in implementing the TCID Act.

unfettered by Federal or State regulation.”²¹ Thus, in adopting its rules as proposed, the FCC will follow the measured approach Congress instructed it to take.

CONCLUSION

The FCC’s proposed rules implementing the TCID Act correctly focus on legislative concerns, while protecting entities that provide beneficial and valuable services. Google looks forward to working with the FCC to implement the proposed rules and address any additional concerns implicated by malicious caller ID manipulation.

Respectfully submitted,



Richard S. Whitt, Esq.,
Director/Managing Counsel,
Telecom and Media Policy

Megan Anne Stull
Telecom Policy Counsel

GOOGLE INC.
Public Policy Department
1101 New York Avenue NW
Second Floor
Washington, DC 20005

Mark J. O’Connor
Jennifer P. Bagg

LAMPERT, O’CONNOR & JOHNSTON, P.C.
1776 K Street NW, Suite 700
Washington, DC 20006
(202) 887-6230 tel
(202) 887-6231 fax

Counsel for Google Inc

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²¹ 47 U.S.C. § 230(b).