

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 1.80 of the Commission's)
Rules)
)
Implementing Section 3 of the Pallone-Thune)
Telephone Robocall Abuse Criminal Enforcement)
and Deterrence Act)
(TRACED Act))

ORDER

Adopted: May 1, 2020

Released: May 1, 2020

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In crafting the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act),¹ Congress acknowledged the need for enhanced penalties and additional time for the Commission to pursue entities that violate the restrictions on robocalls.² Section 3 of the TRACED Act (Section 3) directs the Commission to prescribe implementing regulations for that provision within 270 days after enactment.³ Accordingly, this Order amends section 1.80 of the Commission's rules.⁴ 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).⁵

II. BACKGROUND

2. 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

¹ Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274 (2019) (TRACED Act).

² TRACED Act § 3, 133 Stat. at 3274-76.

³ Id.

⁴ 47 CFR § 1.80.

⁵ See 5 U.S.C. § 553(b)(B). See also Komjathy v. Nat'l Transp. Safety Bd., 832 F.2d 1294, 1296-97 (D.C. Cir. 1987) (notice and comment is unnecessary where the regulation does no more than repeat, virtually verbatim, the statutory grant of authority), cert. denied, 486 U.S. 1057 (1988); Metzenbaum v. Federal Energy Regulatory Commission, 675 F.2d 1282, 1291 (D.C. Cir. 1982) (agency order, issued pursuant to Congressional waiver of certain provisions of federal law that otherwise would have governed construction and operation of Alaskan natural gas pipeline, was appropriately issued without notice and comment under the APA's "good cause" exception as a nondiscretionary ministerial action).

caller ID information.⁶ Section 227 of the Communications Act is known as the Telephone Consumer Protection Act (TCPA).⁷

3. *Section 227(b)*. Section 227(b) restricts calls using an automatic telephone dialing system or an artificial or prerecorded voice.⁸ 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.⁹ 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.¹⁰

4. *Section 227(e)*. 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[.]”¹¹ Such practices are known colloquially as “spoofing.”

5. *Section 3 of the TRACED Act*. 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).¹² 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.”¹³ Third, Section 3 sets a four-year statute of limitations period in which it may take enforcement action against intentional violations of section 227(b); previously the statute of limitations was one year.¹⁴ Fourth, Section 3 sets a four-year statute of limitations period in which it may take enforcement action against violations of section 227(e); previously the statute of limitations was two years.¹⁵

III. DISCUSSION

6. 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

⁶ 47 U.S.C. § 227.

⁷ Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (codified at 47 U.S.C. § 227).

⁸ 47 U.S.C. § 227(b)(1)(A).

⁹ 47 U.S.C. § 227(b)(1)(B).

¹⁰ 47 U.S.C. § 227(b)(1)(C). There are limitations to these exceptions.

¹¹ 47 U.S.C. § 227(e); *see also* 47 CFR § 64.1604. The prohibition does not apply to “lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States; or [to a]ctivity engaged in pursuant to a court order that specifically authorizes the use of caller identification manipulation.” 47 CFR § 64.1604(b); *see also* 47 U.S.C. § 227(e)(3)(B)(ii); 47 U.S.C. § 227(e)(7).

¹² *See* TRACED Act § 3(a)(1)(4)(A)-(B), 133 Stat. at 3274.

¹³ *Id.* at § 3(a)(1)(4)(B), 133 Stat. at 3274. Such amounts are recoverable under section 504(a) of the Communications Act. *See* 47 U.S.C. § 504(a).

¹⁴ *See* 47 CFR § 1.80(c)(4).

¹⁵ *See* 47 CFR § 1.80(c)(3).

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.

7. *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.¹⁶

8. *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.¹⁷

9. *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.

10. Consistent with previous decisions, we amend our rules as set forth above without providing for prior public notice and comment.¹⁸ 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.¹⁹

IV. PROCEDURAL MATTERS

11. The Enforcement Bureau is responsible for, among other things, rulemaking proceedings regarding general enforcement policies and procedures.²⁰ In the TRACED Act, Congress mandated the Commission to prescribe implementing regulations for Section 3 within 270 days after enactment.²¹ 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.

12. *Effective Date*. The rules adopted in this *Order* shall be effective 30 days after publication in the Federal Register.

¹⁶ See 47 U.S.C. § 503(b).

¹⁷ S. Rep. No. 116-41, at 11-12 (2019).

¹⁸ See, e.g., *Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (“SHVERA”)*, Order, 20 FCC Rcd 7780, para. 1 & n.3 (2005); *Implementation of Section 505 of the Telecommunications Act of 1996* (Scrambling of Sexually Explicit Adult Video Service Programming), Order and Notice of Proposed Rulemaking, 11 FCC Rcd 5386, 5387, para. 3 (1996); *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996* (Broadcast License Renewal Procedures), Order, 11 FCC Rcd 6363, 6364, para. 6 (1996); *Implementation of Sections 202(a) and 202(b)(1) of the Telecommunications Act of 1996* (Broadcast Radio Ownership), Order, 11 FCC Rcd 12368, 12371, para. 5 (1996); *Implementation of Sections 202(c)(1) and 202(e) of the Telecommunications Act of 1996* (National Broadcast Television Ownership and Dual Network Operations), Order, 11 FCC Rcd 12374, 12377, para. 7 (1996).

¹⁹ See 5 U.S.C. § 553(b)(B).

²⁰ See 47 CFR § 0.111(a)(22). Bureau action is appropriate here, because this proceeding does not require notice and comment. See 47 CFR § 0.311(a)(1); see also *supra* para. 10.

²¹ TRACED Act § 3, 133 Stat. at 3274-76.

13. *Paperwork Reduction Act of 1995 Analysis.* We have analyzed the actions taken herein with respect to the Paperwork Reduction Act of 1995 (PRA),²² and we find them to impose no new or modified information collection(s) subject to the PRA. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,²³ our actions do not impose any new or modified “information collection burden for small business concerns with fewer than 25 employees.”²⁴

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. *People with Disabilities.* To request material in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

16. *Further Information.* For further information, contact Kimbarly Taylor, Attorney Advisor, Telecommunications Consumers Division, Enforcement Bureau, at (202) 418-1188 or Kimbarly.Taylor@fcc.gov.

V. ORDERING CLAUSES

17. 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 Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. 116-105, 133 Stat. 3274, that this *Order* **IS ADOPTED**.

18. **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.

19. **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.

20. **IT IS FURTHER ORDERED** that the Commission’s Consumer & Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this *Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold
Chief
Enforcement Bureau

²² Pub. L. No. 104-13, 109 Stat. 163 (codified at 13 U.S.C. § 91, 44 U.S.C. § 101 note, and 44 U.S.C. §§ 3501-20).

²³ Pub. L. No. 107-198, 116 Stat. 729 (codified at 5 U.S.C. § 601 note, 44 U.S.C. §§ 101 note, 3504, 3506, 3520, 3521).

²⁴ See 44 U.S.C. § 3506(c)(4).

APPENDIX

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1---PRACTICE AND PROCEDURE

Subpart A---General Rules of Practice and Procedure

Miscellaneous Proceedings

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 revising paragraph (a)(4) to 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

* * * * *

3. Amend § 1.80 by redesignating paragraphs (b)(5), (6), (7), (8), and (9) as paragraphs (b)(6), (7), (8), (9), and (10).

4. Amend § 1.80 by adding paragraph (b)(5) to read as follows:

§ 1.80 Forfeiture proceedings.

(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 subparagraphs (A)-(F) of section 503(b)(2) plus an additional penalty not to exceed \$10,000.

* * * * *

5. Amend § 1.80 by redesignating paragraph (c)(4) as (c)(5); revising paragraph (c)(3); and adding paragraph(c)(4) to read as follows:

§ 1.80 Forfeiture proceedings.

* * * * *

(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.

(5) In all other cases, no penalty shall be imposed if the violation occurred more than 1 year prior to the date on which the appropriate notice is issued.

* * * * *

6. Amend § 1.80 by revising paragraph (d) to read as follows:

§ 1.80 Forfeiture proceedings.

* * * * *

(d) *Preliminary procedure in some cases; citations.* Except for a forfeiture imposed under subsections 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:

* * * * *