Published on *The National Law Review* https://natlawreview.com

FCC Acts on Serial Spoofing; Warns that TCPA and Wire Fraud Activities Must Cease

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At its monthly Open Meeting on June 22, the FCC voted to issue a Notice of Apparent Liability for Forfeiture (NAL) finding that Adrian Abramovich (Abramovich) apparently perpetrated one of the largest spoofed robocall campaigns that the agency has ever investigated. Through its Enforcement Bureau (Bureau), the FCC concurrently released a separate Citation and Order notifying Abramovich of violations of the Telephone Consumer Protection Act (TCPA) as well as the federal wire fraud statute by making illegal telemarketing calls to emergency lines, wireless phones, and residential phones, and that the calls included prerecorded messages falsely claimed affiliation with well-known U.S. travel and hotel companies, thus defrauding unsuspecting consumers receiving these calls.

The FCC has deputized an industry Task Force to formulate strategies to combat spoofing and other forms of harassing robocalls, and the work of that Task Force work continues. However, it is currently technically feasible for an unscrupulous caller to create inaccurate caller ID information that, when deployed, deprives consumers of the ability to make informed decisions about which calls to accept or to determine whether the calling party is reputable or is in fact who they purport to be. This practice, known as "spoofing" is particularly problematic when combined with illegal robocalls. And as technology has improved, the FCC's NAL observes that illegal robocalling campaigns using spoofing have become harder to stop and are more deceptive.

Acting on complaints from travel and hospitality companies and from many consumers, the Bureau investigated Abramovich's alleged origination of spoofed robocalls that appeared to come from local phone numbers and that offered discounted holiday vacations and cruises to popular destinations in Mexico, the Caribbean, and Florida. The callers claimed to be affiliated with well-known travel and hospitality companies—including TripAdvisor, Expedia, Marriott, and Hilton—but the callers soliciting business instead connected consumers to unaffiliated third parties in an attempt to sell them these vacation packages.

Based on this investigation, it appears that Abramovich's spoofed numbers were an integral part of the calling scheme for which he received payment. Call records obtained from Abramovich's underlying carrier showed that between October 2016 and December 2016, Abramovich made 96,758,223 robocalls. These records contained the called number, caller ID number, time stamp, call duration, and the caller's IP address. Bureau analysis of a representative sample of these calls found that the first six digits of each caller ID number matched the first six out of ten digits of the called consumer—a practice often referred to as "neighbor spoofing" that results in the display of misleading and inaccurate caller ID information. Based upon this large sample, the FCC found that Abramovich apparently knowingly caused the display of inaccurate caller ID information.

The NAL observes that this form of calling is both disruptive and an invasion of privacy, and thus the type of harmful conduct that Congress sought to prevent in enacting the Truth in Caller ID Act. Also, the misrepresentation that these calls were associated with well-known travel and hospitality companies harmed those companies' reputations, and spoofing made the calls harder to detect or prevent. The FCC concluded that Abramovich placed these spoofed telemarketing calls with the intent to cause harm, defraud, or wrongfully obtain something of value, thus apparently violating the Truth in Caller ID Act of 2009, as codified in Section 227(e) of the Communications Act of 1934, and Section 64.1604 of the FCC's rules. These provisions prohibit any person within the United States, in connection with any telecommunications service or Internet Protocol-enabled voice service, to knowingly cause, directly or indirectly, any caller ID service to transmit or display misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value.

The Truth in Caller ID Act of 2009 and FCC rules prohibit anyone from falsifying or faking a phone number with the intent to defraud, cause harm, or wrongfully obtain anything of value. Section 227(e) of the Act and the Section 1.80 of the rules also authorize the FCC to impose a forfeiture against any person that engages in unlawful spoofing of up to $11,052 for each spoofing violation, or three times that amount for each day of a continuing violation, up to a statutory maximum of $1,105,241 for any single act or failure to act. The Truth in Caller ID Act empowers the FCC "to proceed expeditiously to stop and . . . assess a forfeiture penalty against, any person or entity engaged in prohibited caller ID spoofing without first issuing a citation" against the violator. This allowed the FCC to issue the Notice of Apparent Liability for spoofing, rather than first issuing a citation about the practice. Given the egregious nature of the conduct in question, the FCC's forfeiture amount was set at $120,000,000. This is the first time that the full FCC has proposed a forfeiture for spoofing under the Truth in Caller ID Act and the amount of the forfeiture plainly seems to be calibrated to send a strong signal that the FCC is serious about enforcement in mass spoofing and fraudulent calling situations.

The Bureau's concurrently released Citation provides additional detail as to Abramovich's robocalling 2016 campaigns. The Bureau investigated the numerous consumer complaints it received about these specific robocalls and each consumer contacted by Bureau staff denied having given consent to receive these telemarketing calls. As a result, the Bureau concluded that all of the nearly 76 million robocalls placed to wireless phones violated the TCPA's prohibitions on unauthorized robocalls to wireless phones. Calls that flooded pagers used as emergency alert devices for medical personnel were also found to violate both the TCPA and FCC rules, as were the telemarketing calls that were placed to residential phone lines without prior express consent.

Section 503(b)(1)(D) of the Communications Act and Section 1.80(a)(5) of the rules permits the FCC to propose a forfeiture against any person who violates the federal wire fraud provisions in Section 1343 of Title 18 of the U.S. Code. Section 1343 states that a violation of the wire fraud statute occurs when a person:

[H]aving devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs signals, pictures, or sounds for the purpose of executing such schemes or artifice. . . .

Under Section 1343, there are two elements to a fraud violation: “(1) a scheme to defraud, and (2) the use of an interstate wire or radio communication to further the scheme.” The Bureau had no trouble determining that there was indeed a scheme to defraud both the parties called with an enticement for “discounted” travel and to defraud known and reputable travel and hospitality companies by appropriating their good names and reputation. The fact that interstate communications were used in furtherance of the scheme was also plain.

Nevertheless, the FCC lacks the authority to impose proposed forfeitures for these unauthorized and disruptive prerecorded telemarketing calls without first formally notifying the caller that he – or his affiliated companies – violated TCPA and wire fraud statutes. The Citation directed Abramovich to take immediate steps to comply with the TCPA and FCC rules which prohibit making autodialed or prerecorded message calls to emergency phone lines, wireless phones, or residential telephone lines unless the calls are made for emergency purposes or with the prior express consent of the called party. It also directed that Abramovich take immediate steps to comply with the federal wire fraud statute and stated that failure to comply with these laws could lead to liability for significant fines. Specifically, the FCC may impose sanctions for violation by imposing monetary forfeitures of up to $19,246 per violation of Section 227 and a base forfeiture of $5,000 per violation of wire fraud pursuant to Section 503(b)(1)(D) of the Communications Act.

Abramovich is free to contest the findings in the NAL and he also can request a meeting with the Bureau to discuss the matters covered in its Citation.

National Law Review, Volume VII, Number 198