



JANUARY 2020 • NO. 1

TRACED Act Further Expands Scope of Telephone Consumer Protection Act Liability

In response to the rising number of unwanted robocalls, Congress passed the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence (“TRACED”) Act, Public Law No: 116-105, signed into law by President Donald J. Trump on December 30, 2019. The TRACED Act seeks to decrease the amount of unwanted robocalls by implementing enhancements to the legal landscape of the Telephone Consumer Protection Act (“TCPA”), including—most significantly—increased civil penalties via government enforcement. Companies engaging in customer-facing communications should get up to speed on these new requirements and make the necessary modifications to their compliance programs.

The TRACED Act aims to crack down on illegal robocalls by amending the TCPA in several significant respects, including the following:

- **Increased FCC Enforcement Power:** The Act provides the Federal Communications Commission (“FCC”) with greatly enhanced enforcement authority to target entities responsible for illegal robocalls. In particular, the Act expands the FCC’s authority to impose civil penalties of up to \$10,000 per call against companies that intentionally violate telemarketing restrictions. With each unlawful call constituting a violation, penalties may be significant for active robocallers. The FCC has also been afforded the authority to pursue scammers for first-time violations of the law.
- **Expanded Statute of Limitations:** The Act expands the applicable statute of limitations for government enforcement actions for violating the TCPA’s robocalling

restrictions to four years for intentional violations, and one year for non-intentional violations.

- **Increased DOJ Involvement:** The Act requires the FCC to submit evidence of certain criminal robocall violations to the U.S. Department of Justice (“DOJ”) for criminal prosecution, and requires the FCC to publish a report annually detailing how frequently the FCC submitted such evidence to the DOJ.
- **Call Authentication:** The Act requires, over time, implementation of the STIR/SHAKEN authentication system to ensure caller-ID information is appropriately authenticated with no additional line item charge for consumers on their bill. To the extent some carriers need additional implementation time, the FCC will find alternative methodologies for authenticating calls, and those carriers will need to implement separate robocall mitigation strategies. A safe harbor has also been

included to help incentivize carriers to authenticate calls and block unlawful robocalls, where appropriate.

- **Free Access to Robocall Blocking Services:** The Act mandates that robocall blocking services be provided by carriers to consumers with no additional line item charge on their bill, and ensures callers have transparency as to when a number has been blocked and effective redress. Currently, such services are not automatically provided.

- **Consumer Protections from Spoofed Calls:** The Act requires the FCC to complete rulemaking within one year to protect consumers from receiving unwanted calls or text messages using, in part, new methods for authenticating calls, while also protecting those that do not have access to call authentication.

- **Consumer Protections from Robocall Exemptions:** The Act requires the FCC to implement consumer protections with respect to the FCC's exempted classes of robocalls, including specific limits on: (1) the classes of parties that may make such calls; (2) the classes of parties that may be called; and (3) the number of calls allowed under the exemption. With the TCPA itself coming before the U.S. Supreme Court on First Amendment challenges, Case No. 19-631, the Act's exemptions may continue to change.

- **Consumer Protections from One-Ring Scams:** The Act requires the FCC to initiate a proceeding to protect consumers from one-ring scams—which involve overseas scammers making a call to a consumer's number to induce the consumer to call the scammer's number back, thereby subjecting the consumer to charges—including by working with foreign governments to address one-ring scams and by incentivizing carriers to stop calls made to perpetrate one-ring scams.

Compliance Tips

At a time when TCPA civil litigation abuse continues to run rampant, the TRACED Act further increases the already-expansive liability companies face by bolstering agency authority to proceed with enforcement actions. With the TRACED Act in effect, businesses must make the necessary changes to bring themselves into compliance with the law's new requirements. Simultaneously, businesses should also remain on the lookout for additional regulatory developments pertaining to the range of actions the FCC is required to take during the next year and beyond, which would require further fine-tuning compliance programs.

For additional information, please contact:

Ana Tagvoryan
424.239.3465 | atagvoryan@blankrome.com

Jeffrey N. Rosenthal
215.569.5553 | rosenthal-j@blankrome.com

David J. Oberly
513.362.8711 | doberly@blankrome.com