

TRUTH IN CALLER ID ACT OF 2010

APRIL 13, 2010.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WAXMAN, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 1258]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 1258) to amend the Communications Act of 1934 to prohibit manipulation of caller identification information, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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AMENDMENT

The amendments are as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Truth in Caller ID Act of 2010”.

SEC. 2. PROHIBITION REGARDING MANIPULATION OF CALLER ID INFORMATION.

Section 227 of the Communications Act of 1934 (47 U.S.C. 227) is amended—

(1) by redesignating subsections (e), (f), and (g) as subsections (f), (g), and (h), respectively; and

(2) by inserting after subsection (d) the following new subsection:

“(e) PROHIBITION ON PROVISION OF DECEPTIVE CALLER ID INFORMATION.—

“(1) IN GENERAL.—It shall be unlawful for any person within the United States, in connection with any real time voice communications service, regardless of the technology or network utilized, to cause any caller ID service to transmit misleading or inaccurate caller ID information, with the intent to defraud or deceive.

“(2) PROTECTION FOR BLOCKING CALLER ID INFORMATION.—Nothing in this subsection may be construed to prevent or restrict any person from blocking the capability of any caller ID service to transmit caller ID information.

“(3) REGULATIONS.—

“(A) DEADLINE.—Not later than 6 months after the date of enactment of this subsection, the Commission shall prescribe regulations to implement this subsection.

“(B) CONSIDERATION OF RELATED REGULATIONS.—In conducting the proceeding to prescribe the regulations required by subparagraph (A), the Commission shall examine whether the regulations under subsection (b)(2)(B) should be revised to require calls that are not made for a commercial purpose to residential telephone lines using an artificial or prerecorded voice to deliver a message to transmit caller ID information that is not misleading or inaccurate.

“(4) LAW ENFORCEMENT EXCEPTION.—This section does not prohibit 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 any activity authorized under chapter 224 of title 18, United States Code.

“(5) SAVINGS PROVISION.—Except as provided for in paragraph (3)(B), nothing in this subsection may be construed to affect or alter the application of the Commission’s regulations regarding the requirements for transmission of caller ID information, issued pursuant to the Telephone Consumer Protection Act of 1991 (Public Law 102–243) and the amendments made by such Act.

“(6) DEFINITIONS.—For purposes of this subsection:

“(A) CALLER ID INFORMATION.—The term ‘caller ID information’ means information provided to an end user by a caller ID service regarding the name or the telephone number of the caller or other information regarding the origination of a call made using any real time voice communications service, regardless of the technology or network utilized.

“(B) CALLER ID SERVICE.—The term ‘caller ID service’ means any service or device designed to provide the user of the service or device with the name or the telephone number of the caller or other information regarding the origination of a call made using any real time voice communications service, regardless of the technology or network utilized. Such term includes automatic number identification services.”.

Amend the title so as to read:

A bill to amend the Communications Act of 1934 to prohibit manipulation of caller ID information, and for other purposes.

PURPOSE AND SUMMARY

H.R. 1258, the Truth in Caller ID Act of 2010, was introduced on March 3, 2009, by Reps. Eliot L. Engel (D–NY) and Joe Barton (R–TX). The legislation would require the Federal Communications Commission (FCC) to adopt rules prohibiting the manipulation of

caller identification information with the intent to defraud or deceive.

BACKGROUND AND NEED FOR LEGISLATION

Caller identification (caller ID) is a service offered by most telephone companies to consumers for a fee. Caller ID service allows phone calls to be identified with the name and number of the incoming call. This consumer offering is derived from the Signaling System Seven (SS7) database, which carriers are required to transmit along with a call through the traditional telephone system. SS7 provides carriers involved in transmitting a call with the area code, phone number, and name of the calling party to ensure proper routing and billing of calls between carriers. Carriers must block the delivery of the SS7 information to the called party at the calling party's request. Callers can block their caller ID information on a per-call basis by dialing *67 before a phone call is made.

Voice over internet protocol (VoIP) is a service that allows users to make telephone calls over an Internet connection. Although it functions in the same manner as a traditional telephone call, this service has typically not been subject to the same regulatory treatment as traditional telephony, including the requirement to transmit caller identification information. Some VoIP providers allow consumers to change the caller ID information that is transmitted once a call is made, while others do not.

H.R. 1258 would protect against a practice referred to as caller ID "spoofing," where a caller falsifies the original caller ID information during the transmission of a phone call. Typically, caller ID spoofing will involve a caller changing the number or the name of the calling party as shown on the call recipient's caller ID. Spoofing has been possible for years but generally required expensive equipment to change the outgoing call information. With the growth of VoIP, however, spoofing has become easier and less expensive to execute. A number of Internet Web sites also now offer spoofing services, as well as other tools such as voice scrambling services.

The proliferation of these technologies and services means that individuals and entities that wish to defraud or deceive others through caller ID manipulation can do so with relative ease. Spoofing threatens a number of business applications, including credit card verification and automatic call routing, because these systems rely on the telephone number as one piece of a verification and authentication process. At other times, however, spoofing may be utilized to protect consumers. For example, domestic violence shelters sometimes use spoofing to mask the identity of the caller for protective purposes.

The House of Representatives has passed near-identical legislation in each of the past two Congresses.

LEGISLATIVE HISTORY

Reps. Engel and Barton introduced H.R. 1258 on March 3, 2009. H.R. 1258 was referred to the Subcommittee on Communications, Technology, and the Internet on March 4, 2009. Similar legislation by Mr. Engel and Mr. Barton was introduced in previous Congresses: H.R. 5126 in 2006 (109th Congress) and H.R. 251 in 2007 (110th Congress). Subcommittee hearings were held in the 109th

Congress on May 18, 2006, and the 110th Congress on February 28, 2007.¹ Both measures passed in the House by a voice vote but Senate action was not completed before the Congresses ended.

COMMITTEE CONSIDERATION

On Thursday, October 8, 2009, the Subcommittee on Communications, Technology, and the Internet met in open markup session and favorably forwarded H.R. 1258, amended, to the full Committee by a voice vote. An amendment in the nature of a substitute offered by Subcommittee Chairman Boucher was previously adopted by a voice vote.

On Wednesday, March 10, 2010, the full Committee met in open mark up session to consider H.R. 1258. An amendment in the nature of a substitute offered by Mr. Boucher was adopted by a voice vote. The Committee subsequently ordered H.R. 1258 favorably reported to the House, amended, by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Waxman to order H.R. 1258 favorably reported to the House, amended, was agreed to by a voice vote. There were no recorded votes taken during the consideration of the bill.

STATEMENT OF COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by H.R. 1258. Article I, section 8, clauses 3 and 18 of the Constitution of the United States grants the Congress the power to enact this law.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 1258 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI of the Rules of the House of Representatives.

¹House Committee on Energy and Commerce, 109th Cong. (June 6, 2006) (H. Rept. No. 109-489) and 110th Cong. (June 11, 2007) (H. Rept. No. 110-188).

FEDERAL ADVISORY COMMITTEE STATEMENT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., section 5(b).

APPLICABILITY OF LAW TO THE LEGISLATIVE BRANCH

The Committee finds that H.R. 1258 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of Public Law 104-1.

FEDERAL MANDATES STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104-4) requires a statement whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee adopts as its own the estimates of federal mandates prepared by the Director of the Congressional Budget Office.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the cost estimate on H.R. 1258 prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 1258 from the Director of the Congressional Budget Office:

APRIL 7, 2010.

Hon. HENRY A. WAXMAN,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1258, the Truth in Caller ID Act of 2010.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 1258—Truth in Caller ID Act of 2010

H.R. 1258 would amend the Communications Act of 1934 to prohibit caller identification services (known as Caller ID) from transmitting misleading or inaccurate information with the intent to defraud or deceive. Caller ID allows consumers to see the names and telephone numbers of incoming calls. Prohibitions under the bill

would apply to both traditional telephone and voice over Internet protocol services.

Based on information from the Federal Communications Commission (FCC), CBO expects that developing and enforcing regulations required under the bill would cost about \$1 million annually, assuming appropriation of the necessary amounts. Furthermore, under current law, the FCC is authorized to collect fees from the telecommunications industry sufficient to offset the cost of its regulatory program. Therefore, CBO estimates the net budgetary impact of H.R. 1258 would be negligible.

Enacting H.R. 1258 would not affect direct spending or revenues; therefore, pay-as-you-go procedures would not apply.

By prohibiting entities from providing caller ID information that is deceptive, the bill would impose an intergovernmental and private-sector mandate, as defined in the Unfunded Mandates Reform Act (UMRA). The number of entities affected by the mandate would depend on decisions made by the FCC in its rulemaking process. For example, the prohibition could affect entities such as domestic violence shelters that provide false caller ID numbers to prevent call recipients from discovering the location of victims. The costs of complying with the mandate would be the expenditures necessary to use other means to protect the identity of a caller, such as using disposable cell phones to make calls. The legislation also would direct the FCC to consider requiring entities to transmit accurate caller ID information when making noncommercial calls with an artificial or prerecorded message to households. Such a requirement, if implemented by the FCC, would impose a mandate on those entities. Based on information from industry sources, CBO expects that the total cost of the mandates in the bill would fall well below the annual thresholds for intergovernmental and private-sector mandates established in UMRA (\$70 million and \$141 million, respectively, in 2010, adjusted annually for inflation).

On August 24, 2009, CBO transmitted an estimate for S. 30, the Truth in Caller ID Act of 2009, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on August 5, 2009. The Senate legislation includes language that would authorize civil and criminal penalties for violations of the Caller ID provisions; H.R. 1258 does not. S. 30 also contains a narrower prohibition on entities that transmit inaccurate caller ID information and thus would not impose the mandates that would be imposed by H.R. 1258. The estimates for each bill reflect those differences.

The CBO staff contacts for this estimate are Susan Willie (for federal costs), Elizabeth Cove Delisle (for intergovernmental mandates), and Sam Wice (for private-sector mandates). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This Act is entitled the “Truth in Caller ID Act of 2010”.

Section 2. Prohibition regarding manipulation of caller identification information

Section 2 adds a new subsection (e) to section 227 of the Communications Act. Subsection (e)(1) makes it unlawful for any person, in connection with any real-time voice telecommunications service, regardless of technology, to cause any caller identification service to transmit misleading or inaccurate caller ID information with the intent to defraud or deceive.

To be legally actionable, fraud and deceit require the intent to cause harm to the person to whom misleading information is being conveyed.² H.R. 1258 recognizes that there are legitimate reasons and service offerings that permit manipulation of caller ID information. For example, domestic abuse shelter residents need to manipulate caller ID information to protect their identity. Because certain businesses will not accept calls where the caller ID information is blocked by the calling party, relying only on call blocking would deny these residents access to such businesses. Therefore, H.R. 1258 would permit caller ID manipulation in these circumstances. Similarly, VoIP services often allow subscribers to select an area code and number that is independent from the actual location where the service is being used. This “nomadic” phone number might, for example, allow subscribers to designate a phone number in an area that is local for frequent callers, family members, or business customers.

Similarly, call-routing services, also referred to as unified-communications services, offer subscribers a single telephone number as a point of contact that will then route calls to phone numbers the subscriber has pre-determined to receive calls based on such factors as time of day or caller identity. These services provide subscribers with the ability to manage their incoming calls more efficiently. Additionally, there are business services that allow companies to use a single telephone number, regardless of the internal extension that the call actually originates from, as the information displayed to called parties so that the called party has a better understanding of the caller’s identity.

By including the intent standards defraud or deceive, both of which require harm to be legally actionable, H.R. 1258 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.

Subsection (e)(2) ensures that nothing in the bill prevents or restricts any person from blocking caller identification information. Subsection (e)(3) requires the FCC to prescribe regulations within six months of the date of enactment and to consider whether to revise related regulations to require non-commercial calls to residential telephone lines using an artificial or pre-recorded voice to deliver a message that transmits caller ID information that is not misleading or inaccurate.

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

²See definition of “deceit” in Black’s Law Dictionary (8th ed. 2004).

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.

In the rulemaking conducted pursuant to subsection (e)(3)(A), the Committee anticipates that the Commission will consider imposing obligations on entities that provide caller ID spoofing services to the public. The widespread availability of caller ID spoofing services presents a significant potential for abuse and hinders law enforcement's ability to investigate crime. The prohibition in this bill of the use of such services with the intent to defraud or deceive could be of limited value if entities continue to provide these services without making any effort to verify their users' ownership of the phone number being substituted.

Subsection (e)(4) contains an exception for law enforcement to ensure that lawfully authorized investigations or intelligence activity utilizing spoofing will remain permissible after enactment.

Subsection (e)(5) clarifies that the bill will not alter the application of the FCC's regulations issued pursuant to the Telephone Consumer Protection Act of 1991.

Subsection (e)(6) contains the definitions of "caller ID information" and "caller ID service." Caller ID information is defined as any information provided to an end user by a caller ID service regarding the name or telephone number of the caller or other information regarding the origination of a call using "any real time voice communications service, regardless of the technology or network utilized." In recognition of the evolving communications marketplace, the legislation defines caller ID information and caller ID service in a manner that is agnostic to the means by which the call is made. This permits the FCC to ensure that its regulations can be updated to meet market changes and to stay aligned with consumers' expectations when receiving caller ID information.

Caller ID service means any service or device designed to provide the user of the service or device with the name or telephone number of the caller or other information regarding the origination of a call made using any real time voice communications service, regardless of the technology or network utilized.

EXPLANATION OF AMENDMENTS

During subcommittee consideration of the bill, Chairman Boucher offered an amendment in the nature of a substitute to H.R. 1258. The amendment made changes to harmonize H.R. 1258 with a related bill approved by the House Committee on the Judiciary. The substitute amendment was adopted by a voice vote.

Subcommittee Chairman Boucher offered an amendment in the nature of a substitute during full Committee consideration of H.R. 1258. The Committee adopted the substitute amendment on a voice vote. The original legislation contained a legal standard that made spoofing unlawful in those cases where the party manipulating the caller ID information did so with the intent to "defraud or cause harm." The Boucher substitute amendment modified that language to "defraud or deceive" in order to make the intent standard less subjective. The Committee is concerned that various parties may interpret a determination of whether certain conduct caused "harm" quite differently. Harm for one party may be only a nui-

sance to another. In contrast, the question of whether deception has occurred is less subjective and should be more directly linked to objective criteria.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

* * * * *

TITLE II—COMMON CARRIERS

PART I—COMMON CARRIER REGULATION

* * * * *

SEC. 227. RESTRICTIONS ON THE USE OF TELEPHONE EQUIPMENT.

(a) * * *

* * * * *

(e) PROHIBITION ON PROVISION OF DECEPTIVE CALLER ID INFORMATION.—

(1) *IN GENERAL.*—It shall be unlawful for any person within the United States, in connection with any real time voice communications service, regardless of the technology or network utilized, to cause any caller ID service to transmit misleading or inaccurate caller ID information, with the intent to defraud or deceive.

(2) *PROTECTION FOR BLOCKING CALLER ID INFORMATION.*—Nothing in this subsection may be construed to prevent or restrict any person from blocking the capability of any caller ID service to transmit caller ID information.

(3) *REGULATIONS.*—

(A) *DEADLINE.*—Not later than 6 months after the date of enactment of this subsection, the Commission shall prescribe regulations to implement this subsection.

(B) *CONSIDERATION OF RELATED REGULATIONS.*—In conducting the proceeding to prescribe the regulations required by subparagraph (A), the Commission shall examine whether the regulations under subsection (b)(2)(B) should be revised to require calls that are not made for a commercial purpose to residential telephone lines using an artificial or prerecorded voice to deliver a message to transmit caller ID information that is not misleading or inaccurate.

(4) *LAW ENFORCEMENT EXCEPTION.*—This section does not prohibit 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 any activity authorized under chapter 224 of title 18, United States Code.

(5) SAVINGS PROVISION.—Except as provided for in paragraph (3)(B), nothing in this subsection may be construed to affect or alter the application of the Commission’s regulations regarding the requirements for transmission of caller ID information, issued pursuant to the Telephone Consumer Protection Act of 1991 (Public Law 102–243) and the amendments made by such Act.

(6) DEFINITIONS.—For purposes of this subsection:

(A) CALLER ID INFORMATION.—The term “caller ID information” means information provided to an end user by a caller ID service regarding the name or the telephone number of the caller or other information regarding the origination of a call made using any real time voice communications service, regardless of the technology or network utilized.

(B) CALLER ID SERVICE.—The term “caller ID service” means any service or device designed to provide the user of the service or device with the name or the telephone number of the caller or other information regarding the origination of a call made using any real time voice communications service, regardless of the technology or network utilized. Such term includes automatic number identification services.

[(e)] (f) EFFECT ON STATE LAW.—

(1) * * *

* * * * *

[(f)] (g) ACTIONS BY STATES.—

(1) * * *

* * * * *

[(g)] (h) JUNK FAX ENFORCEMENT REPORT.—The Commission shall submit an annual report to Congress regarding the enforcement during the past year of the provisions of this section relating to sending of unsolicited advertisements to telephone facsimile machines, which report shall include—

(1) * * *

* * * * *