

# FCC Streamlines and Strengthens Enforcement Mechanisms Against Illegal Robocallers

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The Federal Communications Commission (FCC or Commission) continues to move forward with the implementation of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act) at a fast pace. On May 1, 2020, the FCC's Enforcement Bureau (Bureau) issued an Order that eliminates the citation requirement for alleged robocall violations, increases fines that the FCC can impose, and extends the statute of limitations, under certain instances. In a press release accompanying the Order, FCC Chairman Ajit Pai stated that "robocall scam operators don't need a warning these days to know what they are doing is illegal, and this FCC has long disliked the statutory requirement to grant them mulligans."

## The Order Illustrates the Commission's Fast Pace on Implementing the TRACED Act

The Order states that with passage of the TRACED Act, Congress "acknowledged the need for enhanced penalties and additional time for the Commission to pursue entities that violate the restrictions on robocalls." Although the TRACED Act required the FCC to adopt the rules within 270 days of its passage, the FCC's order was released in nearly half that time. This was due in large part to the Bureau's decision to move directly to an Order. Explaining that its action is "largely ministerial because it simply effectuates regulations established by legislation and requires no exercise of administrative discretion," the Bureau concluded that prior notice and comment would "serve no useful purpose and are unnecessary" under the "good cause" exception to the Administrative Procedure Act.

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## The Order Streamlines and Strengthens the FCC's Enforcement Tools to Target Illegal Robocallers

The Order amends three aspects of the FCC's rules under the Telephone Consumer Protection Act (TCPA). **First**, the Order amends Section 1.80 of the FCC's rules to provide that the FCC may in the first instance impose a penalty against any person or entity that violates Section 227(b), which contains the TCPA's restrictions on using certain automated telephone equipment. The TRACED Act removed the requirement that the FCC must first issue a citation to any person or entity that violates Section 227(b) if that person or entity does not hold – or is not applying for – any FCC license, permit or certificate. One notable example of the FCC's prior citation limitation was the FCC's enforcement action against Adrian Abramovich. In that instance, the FCC first issued a citation related to TCPA violations in June 2017, and its final forfeiture order in May 2018.

**Second**, the Order establishes that the FCC may issue civil penalties of up to \$10,000 per call on those individuals who intentionally violate Section 227(b). As noted in a Senate report accompanying an early version of the TRACED Act, changing the evidentiary standard for a violation from "willfully or knowingly" to one committed with "intent" enables the FCC "to pursue the worst of the worst: scammers and lead-generation mills intentionally violating restrictions on the use of automatic telephone dialing systems."

**Third**, the Order increases the FCC's ability to initiate enforcement actions by extending the statute of limitations for civil forfeitures for violations of Section 227(b) to four years for intentional violations and for violations of Section 227(e), which relates to the provision of inaccurate caller ID information.

The rules adopted in the Bureau's Order will be effective 30 days after publication in the Federal Register.

If you have any questions, please contact one of the authors listed on this alert.