

womblebonddickinson.com



# Are Call Authentication Mandates Coming?

Marty Stern, Partner  
Washington, DC

April 2019



# The Robocalling Tsunami

---

- 47.8 billion robocalls in 2018 (60% increase from 2016)
  - Many informational (bank, school, etc.) and legitimate telemarketing to customers
  - But vast numbers are from fraudsters and spammers
- Single largest source of complaints at the FTC and FCC
  - 3.8 million robocalling complaints at the FTC in 2018
  - 232,000 robocalling complaints at the FCC in 2018
- Cheap, ubiquitous autodialing and Caller ID spoofing technologies, IP calling platforms, and off-shore actors have made robocalling a favorite of fraudsters, and detection, tracking and enforcement close to impossible



# Existing Protections: TCPA and Truth in Caller ID Act

---

- Telephone Consumer Protection Act
  - Prohibits autodialed and pre-recorded/artificial voice calls to wireless numbers, absent “prior express consent” of called party
  - Includes text messages
  - Requires heightened prior express written consent for autodialed non-live voice *telemarketing* calls to wireless numbers and non-live voice telemarketing calls to residential numbers
  - National Do Not Call Registry
  - Company-specific Do Not Call Lists



# Existing Protections: TCPA and Truth in Caller ID Act

---

- Telephone Consumer Protection Act (con't)
  - Up to \$1500 per call/text statutory damages
  - Favorite of the class action plaintiff's bar
  - Has grown from 14 TCPA cases filed in 2007 to 3800 cases filed in 2018, including almost 1000 class actions
  - Targets have been legitimate companies, not scammers:
    - Capital One -- \$75 million settlement in 2014
    - Caribbean Cruise Line -- \$76 million 2016 settlement
    - Dish Network -- Verdicts against it totaling \$341 million
    - Western Union -- \$8.5 million 2018 payout

# Existing Protections: TCPA and Truth in Caller ID Act

---

- Truth in Caller ID Act – Aimed at Caller ID Spoofing
  - Prohibits the knowing transmission of misleading or inaccurate Caller ID Information:
  - With the “intent to defraud, cause harm, or wrongfully obtain anything of value”
  - Was aimed at fraudulent and other harmful schemes
  - Has been a handful of FCC enforcement actions, but not widely used

# Existing Protections: TCPA and Truth in Caller ID Act

---

- Bottom Line
  - TCPA has been weaponized against legitimate companies engaged in legitimate calling activities, resulting in millions in payouts for class action plaintiffs and the class action bar, but has had no discernable impact on robocall scams and spam activity
  - Same for Truth in Caller ID Act – While the FCC has adopted several high-value penalties in Truth in Caller ID matters, intended to send a message to robocallers, these too have had no discernable impact on illegal robocalling
  - So what next?



# Carrier-Focused Approaches – Permissive Call Blocking

---

- Carriers have a duty to complete all calls, and historically, FCC has found call blocking to be unjust and unreasonable
- Has liberalized approach, permitting call blocking for certain categories of numbers where calls are likely to be spoofed, spam robocalls:
  - Calls from “Do not Originate” numbers
  - Calls from invalid, unallocated, or unused numbers
- Classified text messages as an information service not subject to common carrier blocking prohibition
- Clarified that consumers can use, and carriers can provide, blocking apps and technologies



# Shift to Carrier-Focused Approaches: Call Authentication – SHAKEN/STIR Model

---

- SHAKEN/STIR -- ATIS/SIP Forum-developed framework that authenticates numbers as legitimate and prevents delivery of calls from spoofed numbers
  - “Utilizes protocols that work together in an end-to-end architecture for the authorization and assertion of a telephone identity by an originating provider and the verification of the identity by a terminating provider”
  - Includes the process for authenticating calls using certificates from a certification authority, i.e., a digital signature for the calling number; and
  - The certificate management and governance model
  - Technical Disclaimer





# Shift to Carrier-Focused Approaches: Call Authentication – SHAKEN/STIR Model

---

- Implementation of SHAKEN/STIR and role of FCC is being considered in an ongoing FCC NOI
- Among other things, significant issue is that SHAKEN/STIR works for calls carried over an IP network using SIP, but not SS7-based systems
- One question NOI asks is whether it is practical to proceed with a framework that applies to IP voice but not legacy signaling systems, and whether FCC should act to facilitate more robust authentication for TDM and SS7 systems
- Chairman Pai also impatient with pace of implementation, demanding that carriers begin providing Caller ID authentication in 2019, or risk regulatory intervention



# Shift to Carrier-Focused Approaches: TRACED Act

---

- Bi-partisan anti-robocalling legislation with 50+ sponsors, passed Senate Commerce in early April, headed to Senate floor, bi-partisan companion bill introduced in House
- Sets FCC penalties for certain robocalling/TCPA violations to \$10,000 per call with increased 3-year S/L
- Requires FCC, within 18 mos of enactment, to require a provider of voice services to implement SHAKEN/STIR in its IP network
  - FCC directed not to take action if provider, within 12 mos of enactment, has adopted and begun to implement and will be capable of fully implementing within 18 mos.

# Shift to Carrier-Focused Approaches: TRACED Act (con't)

---

- FCC can extend implementation for a provider by 12 mos or longer if it determines that purchasing or upgrading equipment to support call authentication would constitute a substantial hardship for a provider or a category of providers
- FCC directed to adopt (1) when provider may block call based on info provided by the framework; (2) safe harbor for liability for unintended or inadvertent blocking, or misidentification based on info provided by framework; and (3) process for calling party whose calls are blocked to verify authenticity of its calls
- Key takeaway: Keep a close eye on TRACED Act – Is given a reasonable likelihood of passage
- Also language not set in stone and may be amended



# Questions?

---

Marty Stern, Team Leader  
Communications, Technology & Media Practice  
Womble Bond Dickinson (US) LLP  
[marty.stern@wbd-us.com](mailto:marty.stern@wbd-us.com)  
202-857-4417



WOMBLE  
BOND  
DICKINSON



---

"Womble Bond Dickinson", the "law firm" or the "firm" refers to the network of member firms of Womble Bond Dickinson (International) Limited consisting of Womble Bond Dickinson (UK) LLP and Womble Bond Dickinson (US) LLP. Each of Womble Bond Dickinson (UK) LLP and Womble Bond Dickinson (US) LLP is a separate legal entity operating as an independent law firm. Womble Bond Dickinson (International) Limited does not practice law. Womble Bond Dickinson (UK) LLP is authorised and regulated by the Solicitors Regulation Authority. Please see [www.womblebonddickinson.com/legal-notice](http://www.womblebonddickinson.com/legal-notice) for further details.

Information contained in this document is intended to provide general information about significant legal developments and should not be construed as legal advice on any specific facts and circumstances, nor should they be construed as advertisements for legal services.