

Congress Enacts Truth in Caller ID Act

January 12, 2011

On December 22, 2010, President Obama signed the Truth in Caller ID Act of 2009, creating Public Law 111-331 (the “Act”). The Act amends the Telephone Consumer Protection Act, 47 U.S.C. § 227, and prohibits any person within the United States from causing any caller identification service to knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value.

“Caller identification information” includes the telephone number of, or other information regarding the origination of, a call made using a telecommunications service or IP-enabled voice service.

The Act directs the Federal Communications Commission (the “Commission”) to promulgate regulations implementing the Act within six months, including exemptions to the blanket prohibition, “as the Commission determines is appropriate.” There is no indication in the Act itself whether specific types of communications, like collection calls from creditors, will be exempt, particularly in the wake of the Commission’s attempt to repeal the established business relationship exemption. The Act does contain a specific exemption for transmissions in connection with any authorized activity of a law enforcement agency and transmissions in connection with a court order that specifically authorizes the use of caller identification manipulation.

The penalties for violating the Act include a civil forfeiture penalty payable to the United States in an amount not to exceed \$10,000 for each violation or 3 times that amount for each day of a continuing violation. However, the amount assessed for any continuing violation shall not exceed a total of \$1,000,000 for any single act or failure to act and for willful and knowing violations, shall not be more than \$10,000 for each violation, and shall not be more than 3 times that amount for each day of a continuing violation. These penalties are enforced in lieu of other fines for such violations but in addition to potential imprisonment.

We recommend that all creditors and servicers consider this new Act and its potential impact on servicing practices and expect to receive regulations and guidance from the Commission within the next few months.