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# THE PALLONE-THUNE “TRACED ACT”: EXPANDING CONSUMER PROTECTION IN THE FIGHT AGAINST ROBOCALLS

Caitlin Figueroa\*

## I. INTRODUCTION

Prerecorded telemarketing calls, more commonly known as “robocalls,” continue to be one of the top consumer complaints at the Federal Communications Commission (FCC).<sup>1</sup> For years, the FCC, Congress, and other federal organizations have actively worked to combat robocalls and to protect consumers’ privacy. In 1991, Congress enacted the Telephone Consumer Protection Act (TCPA): the first national legislation designed to prevent the rapid increase in robocalls.<sup>2</sup> The TCPA restricts the use of automatic telephone dialing systems and artificial or prerecorded messages, and requires businesses to maintain company-specific do-not-call lists.<sup>3</sup> In 2003, a national Do-Not-Call registry (DNC) was established by the FCC and the Federal Trade Commission (FTC) in order to assist in the prevention of unwanted sales calls.<sup>4</sup> In 2012, the FCC revised the TCPA, requiring businesses to 1) obtain prior express written consent from consumers before subjecting them to robocalls, and 2) provide an “opt-out” option during each robocall to allow consumers to notify the business to stop calling.<sup>5</sup>

On December 30, 2019, President Trump signed the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement

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<sup>1</sup> *The FCC’s Push to Combat Robocalls & Spoofing*, FED. COMM. COMM’N [hereinafter FCC to Combat Robocalls], <https://www.fcc.gov/spoofed-robocalls>.

<sup>2</sup> *FCC Actions on Robocalls, Telemarketing*, FED. COMM. COMM’N, <https://www.fcc.gov/general/telemarketing-and-robocalls>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

and Deterrence (TRACED) Act (the Act) into law.<sup>6</sup> Representing the latest update to robocall regulations, the Act essentially broadens the FCC’s authority to combat illegal robocalls, and amends the TCPA to allow the FCC to levy penalties of up to \$10,000 per call against violators; the FCC may also now punish first-time violators of the law.<sup>7</sup> As well, the Act extends the statute of limitations to four years for violations of the TCPA’s intentional robocall prohibitions, and requires phone service providers to implement authentication procedures in order to help identify and block robocalls at no additional charge to consumers.<sup>8</sup> Therefore, the new TRACED Act will not only impact consumers, but countless service providers and businesses as well.

As of June 2019, the FTC has brought approximately 141 cases against robocall and DNC violators, including actions against 465 businesses and 377 individuals which has led to more than \$1.5 billion in judgments and \$124 million paid by defendants.<sup>9</sup> To give just one example, Pointbreak Media, LLC, a Delaware limited liability company, was ordered to pay over \$3 million to the FTC in April 2019 for unjust gains as a result of placing nearly 75 million robocalls (15 million of which were to numbers on the DNC) to consumers on a weekly, and sometimes daily basis.<sup>10</sup>

Recent events have shown that robocalls are not only negatively impacting consumers’ financial and economic wellbeing, but also affecting their access to healthcare. When patients are referred to a specialist by their doctor, they often do not answer the phone when the specialist’s office calls and assume the unrecognized number is a robocall.<sup>11</sup> A recent Consumer Reports survey revealed that 70 percent of Americans do not answer their phones

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<sup>6</sup> Manatt, Phelps & Phillips, LLP, *TRACED Act Becomes Law*, JDSUPRA.COM [hereinafter TRACED Act] (January 31, 2020), <https://www.jdsupra.com/legalnews/traced-act-becomes-law-84517/>.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Andrew Smith, *Operation Call it Quits: Press Conference Statement* (June 25, 2019), [https://www.ftc.gov/system/files/documents/public\\_statements/1530800/smith\\_-\\_operation\\_call\\_it\\_quits\\_remarks\\_6-25-19.pdf](https://www.ftc.gov/system/files/documents/public_statements/1530800/smith_-_operation_call_it_quits_remarks_6-25-19.pdf).

<sup>10</sup> *See* Fed. Trade Comm’n. v. Pointbreak Media, LLC, 376 F.Supp.3d 1257, 1276 (S.D. Fla. 2019).

<sup>11</sup> Tim Harper, *Why Robocalls Are Even Worse Than You Thought*, CONSUMER REPORTS (May 15, 2019) <https://www.consumerreports.org/robocalls/why-robocalls-are-even-worse-than-you-thought/>.

when they do not recognize the incoming number.<sup>12</sup> The effects felt by the healthcare industry are but one example of the many ways robocalls are rapidly destroying everyday communications that are essential to consumers' well-being.

Though the TRACED Act is projected to strengthen overall consumer protection against robocalls, the law is too recent to render any substantial results anytime soon; additional actions must be taken to protect consumers. In a recent press release, the FTC announced a large crackdown on robocalls, including the implementation of 94 actions that will target businesses nationwide that are responsible for over one billion robocalls, the majority of which pitch credit card rate reduction services, money-making opportunities, and medical alert systems to consumers.<sup>13</sup> The crackdown initiative, called "Operation Call it Quits," aims to better educate consumers about illegal robocalls, to promote solutions that will block robocalls and to prevent callers from using fake caller IDs.<sup>14</sup> In addition to the FTC crackdown, 25 federal, state, and local agencies have brought over 87 enforcement actions as part of the "Call it Quits" initiative.<sup>15</sup>

With the help of the TRACED Act and federal crackdowns like "Call it Quits", we can hope for the presence of robocalls to decrease within the next few years. According to YouMail, a robocall blocking and tracking firm, scam and telemarketing robocalls have decreased by nearly 17 percent between June and July of 2019.<sup>16</sup> The FTC continues to stress the importance of educating consumers and businesses on the harmful effects of robocalls, and how to prevent them. As the TRACED Act takes effect and federal crackdown programs grow, consumers can expect a steady decline of robocall activity and a stronger sense of personal privacy and protection.

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<sup>12</sup> *Id.*

<sup>13</sup> Press Release, FED. TRADE COMM'N, FTC, Law Enforcement Partners Announce New Crackdown on Illegal Robocalls (June 25, 2019), <https://www.ftc.gov/news-events/press-releases/2019/06/ftc-law-enforcement-partners-announce-new-crackdown-illegal>.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Octavio Blanco, *Finally, Some Good News About Robocalls*, CONSUMER REPORTS (July 12, 2019) <https://www.consumerreports.org/robocalls/good-news-about-robocalls/>.

This article will address the elements of the new TRACED Act, as well as the projected impact the Act will have in the continuing fight to protect consumers against illegal robocalls. Part I will introduce the subject of robocalls, including their origin and impact on consumers and businesses. Part II will briefly discuss the history and creation of the TCPA, its mission, and effectiveness in its regulation of robocalls. Part III will analyze the TRACED Act, its regulations and amendments to the TCPA, and the expected impact it will have on consumers and businesses.

## II. THE HISTORY AND IMPACT OF ROBOCALLS

Consumers have long since struggled to avoid the nuisances created by telemarketing and robocalls, dating back to as early as the 1960's.<sup>17</sup> As more women entered the workplace, fewer women were home to purchase the products of door-to-door salesmen, resulting in an overall decrease in the profits of door-to-door sales.<sup>18</sup> In 1967, Murray Roman, a public-relations consultant, devised a remedy for suffering door-to-door sales and created a telephone sales operation that could reach consumers after normal working hours.<sup>19</sup> Murray's new sales technique was first utilized by Ford Motor Co., which hired 15,000 women to place approximately one million calls to consumers per day on behalf of Ford.<sup>20</sup> Ultimately, twenty million consumers received Ford's sales calls; 40,000 of those called purchased Ford vehicles.<sup>21</sup> As a result, Ford made \$24 million on Murray's new operation.<sup>22</sup> Thus, telemarketing was born.

In 1984, Douglas Samuelson, a telecom analyst, invented a technique known as "predictive dialing" that allowed businesses, politicians and scammers to reach consumers on a broad scale and simultaneously avoid busy or unresponsive phone lines.<sup>23</sup>

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<sup>17</sup> Simon Van-Zuylen-Wood, *How robo-call moguls outwitted the government and completely wrecked the Do Not Call List*, CHICAGO TRIBUNE (Jan. 24, 2018), <https://www.chicagotribune.com/business/ct-biz-robocalls-do-not-call-list-20180124-story.html>.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

Throughout the 1980's and as technology evolved, computer prices became inexpensive and software used to create robocall programs became more easily accessible.<sup>24</sup> As a result, more businesses utilized robocalls as a quicker, cheaper way to reach consumers.<sup>25</sup> Due to the growing number of telemarketers and robocalls, the TCPA was enacted in 1991 in an attempt to shield consumers from the increasing harassment caused by these calls.<sup>26</sup> However, businesses remained persistent and continued to use automated dialing machines, as well as text messages and pre-recorded calls.<sup>27</sup>

### A. *The Impact of Robocalls on Consumers*

The harmful effects of robocalls felt by consumers expands beyond disruptive phone calls during dinner time. Endless studies have now shown that robocalls have negatively impacted consumers' health, privacy and safety. This, in turn, impacts legitimate businesses and the overall economy. According to YouMail, 175 million robocalls are placed *daily* in the US, adding to the distrust and fear Americans experience as the exposure to scams increases with each call made.<sup>28</sup>

For years, entities such as schools, churches, charities, political campaigns and various public opinion surveyors have telephoned consumers for legitimate reasons and in furtherance of their respective purposes.<sup>29</sup> However, because consumers are now reluctant to answer their phones, individuals are increasingly unable to connect with one another, which hinders consumers' daily lives as well as the productivity of various businesses and organizations. For instance, Gail Perry, a North Carolina-based philanthropy consultant who has worked with hospitals, universities, sports teams and various social service organizations explained that "across the board, [robocalls] are having a huge impact on donations."<sup>30</sup> According to Ms. Perry, the decline in donations is due

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<sup>24</sup> Keoghlaw, *The History of Robocalls*, KEOGHLAW.COM (October 12, 2015), <https://www.keoghlaw.com/the-history-of-robocalls/>.

<sup>25</sup> *Id.*

<sup>26</sup> Allison Sakounthong, *The Long Fight Against Robocalls: A History of US Phone Protection*, HIYA.COM (July 13, 2016) <https://hiya.com/blog/2016/07/13/history-phone-protection/>.

<sup>27</sup> *Id.*

<sup>28</sup> Harper, *supra* note 11.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

in part to the reluctance of donors who gave money in the past through telephone reminders to answer their phones.<sup>31</sup>

In addition to the negative impact on charities, robocalls have also led to a drop in response rates to surveys that play a critical role in providing information to social and public policy platforms.<sup>32</sup> Chintan Turakhia, a survey research expert, explained these decreased response rates have made surveying more expensive and difficult to conduct.<sup>33</sup> As surveys are often a main source of communication between consumers, the government and the community at large, robocalls have made it increasingly difficult for necessary parties to connect with each other in order to promote economically healthy consumer life.

Individual consumers who own small business and depend on telephonic communication have also fallen victim to robocalls. For example: Paul Allen, a retired industrial engineer who started his own distillery in Georgia, believes that it's "becoming harder to get people to answer the phone when [he] calls to suggest doing business together. When someone doesn't answer, [he] has to call again, or give up on that business opportunity."<sup>34</sup> By the same token, as a business owner, Mr. Allen must always answer his phone, as it may be a supplier, contractor, government regulator, distributor or a customer.<sup>35</sup> Unfortunately, Mr. Allen's incoming calls are often sales robocalls comprised of a computerized voice "asking him to press 1 to talk to an agent about vacations or insurance or credit cards."<sup>36</sup> Mr. Allen is just one example of what millions of consumers struggle with in their daily personal and professional lives. Because of these incessant robocalls, consumers are robbed of not only hard-earned profits and time, but also the enjoyment of operating their businesses or engaging in consumer markets on a general basis.

### *B. The Impact of Robocalls on Businesses*

As robocalls continue to remain a constant nuisance in consumers' everyday lives, businesses are also feeling the effects of consumer fear and disconnect. Because of robocalls, consumers

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

are increasingly afraid to answer their phones, therefore businesses are unable to communicate with their customers as easily as they once were. Specifically, consumers are now especially reluctant to share their personal information over the phone.<sup>37</sup> According to a recent survey, nearly 8 in 10 people (79%) said they were uncomfortable with providing personal information over the phone to any number.<sup>38</sup> As well, it is no secret that robocalls are frequently used in scam/fraud projects, and have grown increasingly sophisticated in order to trick consumers. Recent surveys show that more than 1 in 4 people (26%) are unsure if they can accurately distinguish between a robocall and a real human being in the beginning of a call.<sup>39</sup> Specifically, older age groups are more likely to be tricked: 33% of those above the age of 55 were not confident in identifying robocalls, whereas only 22% of those between the ages of 18 to 34 were not confident.<sup>40</sup> However, millennials falling within that 18-34 age range are still likely to respond to robocalls, as studies have shown that millennials do not get calls as often as those belonging to older generations.<sup>41</sup> According to a Truecaller report from April 2018, 24% of those surveyed in the report who had lost money to a robocall scam were men aged 18 to 34.<sup>42</sup>

Businesses, as well as their customers, are also becoming increasingly victimized by the application of advancing technology, which strengthens the false legitimacy of robocalls. A common technique now frequently used by robocalls to trick consumers is the use of the question “can you hear me?” during a call.<sup>43</sup> Creative robocall scams have taken to even using the voices of famous celebrities, as well as the President of the United States, to get consumers to believe the call is part of an initiative to raise money for various causes.<sup>44</sup> Further, some companies have used advanced

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<sup>37</sup> Riley Panko, *The Impact of Robocalls on Business Phone Communication*, CLUTCH (July 17, 2019), <https://clutch.co/call-centers/answering-services/resources/impact-robocalls-business-phone-communication>.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Elisabeth Buchwald, *Scam robocallers are getting creative and stole nearly \$1 billion last year*, MARKETWATCH (Aug. 16, 2018 8:26 p.m. ET), <https://www.marketwatch.com/story/scam-robocallers-are-getting-creative-and-even-fooling-tech-savvy-millennials-2018-07-30>.

<sup>42</sup> *Id.*

<sup>43</sup> Panko, *supra* note 37.

<sup>44</sup> Buchwald, *supra* note 41.

technology to make robocalls appear more lifelike by dynamically changing its script based on consumers' responses and vocal tones.<sup>45</sup> As robocalls become more frequent and appear more legitimate with advancing technology, businesses will continue to suffer and remain unable to communicate with consumers as a result of the suffocating presence of robocalls.

To circumvent the obstacles created by robocalls, businesses have had to become creative in their efforts to reassure their customers. For instance, many businesses may now send a written communication confirming a future call, or now avoid telephonic communication altogether. The vast majority of business who are now essentially forced to change their outreach methods to customers have lost substantial amounts of revenue in the war against robocalls, and look to stronger future regulations for help.

### III. THE TELEPHONE CONSUMER PROTECTION ACT (TCPA)

As discussed in Part I of this article, the birth of telemarketing in the 1960's and the emergence of robocalls with the advancing technology of the 1980's spurred a call for action to better protect consumers. The answer came in 1991 with Congress' enactment of the TCPA. Originally, the TCPA imposed restrictions on the use of telecommunications for unsolicited advertising to consumers.<sup>46</sup> Since its beginning, the TCPA has been expanded and amended to offer a broader protection to consumers while still maintaining its primary purpose: "to regulate certain uses of technology that are abusive, invasive, and potentially dangerous."<sup>47</sup>

Though the TCPA paved the way for consumer protection and privacy rights, robocalls continue to remain a chief complaint among consumers.<sup>48</sup> As technology rapidly advances, robocalls become less expensive to make. As robocalls become more widely accessible, the percentage of affected consumers and businesses clearly increases, thus prompting additional robocall regulations to assist the TCPA in the fight against robocalls.

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<sup>45</sup> *Id.*

<sup>46</sup> 47 U.S.C. § 227 (2011).

<sup>47</sup> Spencer Weber Waller et al., *The Telephone Consumer Protection Act of 1991: Adapting Consumer Protection to Changing Technology*, 26 LOY. CONSUMER L. REV. 343, 347 (2014).

<sup>48</sup> FCC to Combat Robocalls, *supra* note 1.

#### IV. THE ELEMENTS AND EXPECTED IMPACT OF THE TRACED ACT

In December 2019, Congress passed the TRACED Act in order to enforce stricter penalties for those who violated the TCPA.<sup>49</sup> In addition to harsher punishments, the Act implements requirements for call authentication frameworks, and will require the FCC to issue various reports on issues caused by robocalls.<sup>50</sup> Additionally, the Act extends the applicable statute of limitations for intentional violations, and establishes working groups to focus on the prosecution of robocallers and the prevention of robocalls placed to hospitals.<sup>51</sup> Through the implementation of the Act's more severe penalties and required actions on the FCC's part, consumers should feel positive the Act's new regulations will result in a drastic decrease in robocalls over time.

##### *A. Penalties and the Statute of Limitations under the TRACED Act*

Under 47 U.S.C. § 227(b) of the TCPA, the only remedy for a violation is a private right of action; persons or entities whom are not FCC licensees or common carriers are not to receive a forfeiture penalty in excess of \$20,489 per violation, and the amount of any forfeiture penalty for any continuing violation should not exceed a total of \$153,669 for any single act.<sup>52</sup> However, the TRACED Act now requires an additional forfeiture penalty, which is not to exceed \$10,000 for intentional violations of the TCPA.<sup>53</sup> Because this penalty shall be imposed on each individual and unlawful violation, the new penalty required under the Act could have substantial repercussions for intentional TCPA

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<sup>49</sup> TRACED Act, *supra* note 6.

<sup>50</sup> Steven Augustino et al., *Summary of the Pallone-Thune TRACED Act*, KELLEY DRYE (January 3, 2020), <https://www.kelleydrye.com/News-Events/Publications/Client-Advisories/Summary-of-the-Pallone-Thune-TRACED-Act>.

<sup>51</sup> Mitchell Brecher et al., *TRACED Act Subjects Robocallers to Increased Penalties, Outlines Regulatory and Reporting Requirements to Deter Violations*, THE NAT'L L. REV. (Wednesday, January 8, 2020), <https://www.natlawreview.com/article/traced-act-subjects-robocallers-to-increased-penalties-outlines-regulatory-and>.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

violators. However, there remains room for concern that \$10,000 is still not enough to deter entities from utilizing robocalls, as the amount of money that can be gained through robocall use often remains far greater than TRACED and the TCPA’s penalties combined.

In addition to the increased penalty for intentional violations of the TCPA, the TRACED Act expands the scope of conduct subject to FCC enforcement actions.<sup>54</sup> First, for intentional violations of the TCPA’s caller ID “spoofing” prohibitions (meaning callers who deliberately misrepresent their ID to consumers so they will be more likely to answer the phone), the FCC may issue a notice of liability that proposes a monetary fine for conduct that occurred within the past four years; under the TCPA, the statute of limitations for caller ID spoofing had been two years.<sup>55</sup> As for TCPA violations that are not intentional, a notice of liability may be issued by the FCC for conduct that occurred within the past year.<sup>56</sup> Second, all violators of the TCPA, including violations that do not have an FCC license, are subject to receiving a notice of liability from the FCC.<sup>57</sup>

### *B. FCC Regulation and Reporting Requirements*

In addition to the above changes and requirements, the TRACED Act requires the FCC to implement new rules, monitor robocall activity and conduct reports in order to deter robocall use and TCPA violations.<sup>58</sup> As well, the FCC will be required to work with other agencies in order to improve consumer protection against robocalls and strengthen enforcement efforts.<sup>59</sup> The SHAKEN/STIR call authentication program is one of many new FCC regulatory actions that requires phone service providers to implement a call authentication framework within its networks.<sup>60</sup> SHAKEN/STIR, acronyms for Signature-based Handling of Asserted Information Using Tokens (SHAKEN) and the Secure Telephone Identity Revisited (STIR), digitally validates phone calls that pass through consumers’ phone networks, and essentially

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<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

allows the phone company of the consumer who is receiving the phone call to verify that the call is coming from the number that is displayed on the Caller ID.<sup>61</sup> With this added protection, SHAKEN/STIR effectively acts as a firewall that screens potentially fraudulent calls, and prevents consumers from being tricked into answering the phone. With the help of the SHAKEN/STIR program, consumers can hopefully begin to trust the legitimacy of caller IDs, and no longer fear the possibility of robocalls and other scams.

Under the TRACED Act, the FCC will also be required to implement a process for the registration of a neutral, third-party group of phone service providers, who will conduct privately-lead efforts to trace back the origin of suspected illegal robocalls.<sup>62</sup> Under the strict timelines set forth by the Act, the FCC must establish this process no later than by March 29, 2020.<sup>63</sup> By requiring phone service providers to participate in these “trace back” initiatives, TCPA violators who are responsible for millions of illegal robocalls each year are more likely to be located and penalized under the TRACED Act’s new regulations. Consumers should remain hopeful the implementation of the “trace back” program will assist in eventually eradicating robocalls, as locating TCPA violators is over half the battle faced by the FCC. As violators are traced, the FCC will be able to move more efficiently and quickly to punish the use of illegal robocalls, and therefore offer stronger protection to consumers.

Consumers have far too frequently fallen victim to what the FCC has deemed to be “one-ring scams.”<sup>64</sup> Essentially, a consumer’s phone will ring only once before stopping; the call also usually appears to be from a number within the United States.<sup>65</sup> Further, creative scammers use international numbers that begin with three-digits so as to trick consumers into thinking the call is

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<sup>61</sup> *Combating Spoofed Robocalls with Caller ID Authentication*, FED. TRADE COMM’N., <https://www.fcc.gov/call-authentication>.

<sup>62</sup> Laura H. Phillips, *TRACED Act Creates New FCC Implementation Timelines*, THE NAT’L L. REV. (Monday, January 6, 2020), <https://www.natlaw-review.com/article/traced-act-creates-new-fcc-implementation-timelines>.

<sup>63</sup> *Id.*

<sup>64</sup> *‘One-Ring’ Phone Scam*, FED. COMM. COMM’N, [hereinafter One-Ring Scams] <https://www.fcc.gov/consumers/guides/one-ring-phone-scam>.

<sup>65</sup> *Id.*

coming from within the US.<sup>66</sup> As well, “one-ring” scammers will often use “spoofing techniques” to fool consumers, as previously discussed in this article. The dangers associated with one-ring scams come when the consumer returns the call, especially if the scammer leaves a voicemail faking a medical or financial emergency.<sup>67</sup> Once a consumer returns the call, they are then at risk of being connected to a number outside the US, and therefore could be charged with international fees.<sup>68</sup> Under the TRACED Act, the FCC will be required to initiate proceedings in order to protect consumers from one-ring scams.<sup>69</sup> Although no such proceedings have yet been announced, consumers’ minds should feel more at ease knowing the FCC is currently working to end one-ring scams permanently.

Perhaps the most specific regulation implemented under the TRACED Act comes in the form of the newly required Hospital Robocall Protection Group: an advisory committee tasked with determining how phone service providers can best protect hospitals from robocalls.<sup>70</sup> Robocalls have long since plagued hospitals, and distracted hospital staff members who are critical to maintaining the public’s health. Robocalls often appear to come from within a hospital, although this isn’t the case, and therefore can cause unnecessary confusion and potentially harmful delays in patient care.<sup>71</sup> To give one concerning example: at Tufts Medical Center in Boston, MA, hospital administrators registered over 4,500 robocalls within a two hour timespan.<sup>72</sup> Among the robocalls were scams using a voice speaking Mandarin and threats of

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<sup>66</sup> *Id.*

<sup>67</sup> Carol Kando-Pineda, *Scammers create fake emergencies to get your money*, FED. TRADE. COMM’N, (July 3, 2018) <https://www.consumer.ftc.gov/blog/2018/07/scammers-create-fake-emergencies-get-your-money>.

<sup>68</sup> One-Ring Scams, *supra* note 64.

<sup>69</sup> TRACED Act Increased Penalties, *supra* note 46.

<sup>70</sup> TRACED Act Timeline, *supra* note 56.

<sup>71</sup> Libby Cathey, *Here’s what you need to know about the new law on robocalls*, ABC NEWS (January 1, 2020), <https://abcnews.go.com/Politics/law-robocalls/story?id=68008423>.

<sup>72</sup> Tony Romm, *Robocalls are overwhelming hospitals and patients, threatening a new kind of health crisis*, THE WASHINGTON POST (June 17, 2019 at 12:21 p.m. MST), <https://www.washingtonpost.com/technology/2019/06/17/robocalls-are-overwhelming-hospitals-patients-threatening-new-kind-health-crisis/>.

deportation.<sup>73</sup> The effect robocalls have on a single consumer's life is an unacceptable nuisance which should not be dismissed lightly. However, when robocalls begin to affect the very health care system consumers rely on, especially in times of crisis, it is imperative that the FCC act with urgency in order to ensure that robocalls can no longer have potentially fatal effects on consumers. Therefore, the FCC's particular focus on strengthening the protection offered to hospitals against robocalls should be highly praised and met with the utmost seriousness on behalf of the FCC and other government regulators.

In addition to the aforementioned upcoming regulations, the TRACED Act requires the FCC to implement various other anti-robocall procedures. For instance, regulations that target unauthenticated calls, strengthen call-blocking and voluntary reporting of violations.<sup>74</sup> As well, the FCC will be required to submit annual reports to Congress regarding robocalls and the status of efforts to combat them.<sup>75</sup> Further, the FCC shall provide evidence of "willful, knowing, and repeated violations with an intent to defraud, cause harm, or wrongfully obtain anything of value" to the attorney general, along with an annual report to Congress regarding the number and type of robocall violations reported to the attorney general.<sup>76</sup>

## V. CONCLUSION

Dating back to the 1960's, consumers have fallen victim to the greed and invasive behavior of entities who utilize robocalls and telemarketing techniques. Although well aware of the growing issues caused by robocalls, government agencies and private regulators have struggled to overcome its negative impact. Businesses, both small and large, as well as general consumers continue to suffer as robocalls advance as rapidly and technology progresses. The TRACED Act, both as an amendment to the TCPA and as a law in its individual capacity, aims to strengthen consumer protection and expands the FCC's authority to penalize and regulate illegal robocalls and TCPA violators. The Act's meticulous regulations and reports illustrate a highly communicative and

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<sup>73</sup> *Id.*

<sup>74</sup> Brecher, *supra* note 51.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

team-oriented approach to reduce the presence of robocalls within the lives of consumers, and is without doubt an essential weapon in the war against robocalls. With hope, consumers can expect the upcoming regulations to deliver impactful and positive results. Though much is yet to be seen, for now it is enough to know that the TRACED Act is a step in the right direction: away from robocalls, and towards consumer protection.<sup>77</sup>

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<sup>77</sup> See *Barr v. Am. Ass’n of Political Consultants*, 140 S.Ct. 2335 (2020). This article was written prior to the SCOTUS decision to uphold a federal regulation that prohibits political robocalls to cell phones and expands the ban to include government debt-collection calls. The Court’s decision will likely strengthen the impact of the TRACED Act, as it supports the overall protection of consumer privacy and broadens the scope to which the Act’s regulations and fines will apply.