

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of )
)
Best Insurance Contracts, Inc., and )
Philip Roesel, dba Wilmington Insurance Quotes )
File No.: EB-TCD-16-00023195
NAL/Acct. No.: 201732170007
FRNs: 0026727396 (Best Insurance
Contracts, Inc.); 0026727446 (Roesel,
dba Wilmington Insurance Quotes)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 3, 2017

Released: August 4, 2017

By the Commission: Chairman Pai and Commissioner Clyburn issuing separate statements; Commissioner O’Rielly approving in part and concurring in part.

I. INTRODUCTION

1. This Notice of Apparently Liability for Forfeiture (NAL) finds Best Insurance Contracts, Inc. (BIC), and Philip Roesel, doing business as Wilmington Insurance Quotes, apparently liable for perpetrating spoofed robocall campaigns involving more than 21 million robocalls during a three-month period from late 2016 through early 2017. Accurate caller ID information allows consumers to make informed decisions about which calls to accept, ignore, or block, and whether the party on the other end of the phone line is reputable and deserving of their trust. Accurate Caller ID also allows the phone companies and law enforcement to detect and combat unlawful calls, such as unlawful robocalls.

2. The Truth in Caller ID Act of 2009 and the Federal Communication Commission’s (Commission or FCC) rules (Rules) prohibit any individual from falsifying or misrepresenting his or her phone number with the intent to defraud, cause harm, or wrongfully obtain anything of value. This prohibited practice is better known as “spoofing.” Spoofing can cause significant harm when used to facilitate illegal robocalls, which are the number one consumer complaint received by the Commission. With the proliferation of low cost and advanced technology, the combination of spoofing and illegal robocalls has become more pervasive, making illegal robocalling campaigns more deceptive, disruptive, and challenging to prevent. The Enforcement Bureau (Bureau) has investigated Roesel’s alleged scheme involving apparently spoofed robocalls appearing to originate from unassigned telephone numbers.

3. Today, the Commission issues this NAL<sup>1</sup> and proposes a penalty of \$82,106,000 against Roesel for apparently causing the display of misleading or inaccurate caller ID information with the intent to cause harm or wrongfully obtain anything of value. The evidence shows that Philip Roesel, himself or through BIC, apparently made 21,582,771 spoofed robocalls over a three-month period from late 2016 through early 2017. Philip Roesel, along with insurance agents working for or under his direction, generated leads and sales by apparently falsifying caller ID information to illegally robocall hundreds of thousands of consumers per day. Philip Roesel profited from his own insurance sales and from commissions on sales that his agents made by using spoofed robocalls to generate leads and sales. The spoofed numbers were an integral part of Philip Roesel’s scheme to mislead consumers and evade

<sup>1</sup> The Commission also contemporaneously released a Citation and Order notifying Philip Roesel and BIC that he/it violated the Telephone Consumer Protection Act (TCPA) by making more than 21 million illegal robocalls to emergency lines, wireless phones, and residential phones. Best Insurance Contracts, Inc., and Philip Roesel, dba Wilmington Insurance Quotes, Citation and Order, DA 17-662 (EB Aug. 4, 2017) (Roesel Citation).

detection. We therefore find that BIC and Philip Roesel apparently violated the Truth in Caller ID Act of 2009, as codified in Section 227(e) of the Communications Act of 1934, as amended (Communications Act or Act),<sup>2</sup> and Section 64.1604 of the Rules.<sup>3</sup>

## II. BACKGROUND

### A. The Truth in Caller ID Act of 2009

4. For many years, the Commission has recognized and emphasized the importance of requiring telemarketers to transmit accurate caller ID information. Even before the Truth in Caller ID Act, the Commission noted that “Caller ID allows consumers to screen out unwanted calls and to identify companies that they wish to ask not to call again.”<sup>4</sup> The Commission further stated that “[k]nowing the identity of the caller is also helpful to consumers who feel frightened or threatened by hang-up or ‘dead air’ calls.”<sup>5</sup> The Truth in Caller ID Act of 2009 prohibits “caus[ing] any caller identification service,” in connection with any telecommunications service or Internet Protocol-enabled service, to “knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value.”<sup>6</sup> Congress observed that consumers place substantial value in accurate and reliable caller ID information to assist them in deciding whether to answer a phone call and, ultimately, whether to trust the caller on the other end of the line. Congress further noted that consumers’ widespread expectation is that any information that appears on caller ID represents the true originating number of the person or entity making the call.<sup>7</sup>

5. In the years leading up to the Truth in Caller ID Act’s passage, consumers, telephone carriers, the Commission, and other law enforcement authorities alike observed the proliferation of intentional and malicious falsification of caller ID information as part of criminal frauds, scams, and other harmful activities posing threats to American consumers, including the invasion of their privacy and the potential dire financial consequences resulting from related frauds or scams. Congress was especially concerned by instances where criminals used spoofed caller ID information for the purposes of defrauding consumers or wrongfully obtaining something of value from the called consumers. For example, Congress was aware that fraudsters could spoof the caller ID information of recognizable businesses and thus “cause people to blame innocent businesses instead of the real source for the calls.”<sup>8</sup> Such scams and frauds were precisely the types of activities that Congress wanted to thwart when it adopted the Truth in Caller ID Act.<sup>9</sup>

### B. FCC Investigation into Philip Roesel’s Spoofed Robocalls

6. In recent years, there has been an uptick in robocalls being used within the health insurance industry to generate health insurance leads and sales.<sup>10</sup>

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<sup>2</sup> 47 U.S.C. § 227(e).

<sup>3</sup> 47 CFR § 64.1604.

<sup>4</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014, 14122, para. 179 (2003).

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

<sup>6</sup> 47 U.S.C. § 227(e).

<sup>7</sup> See 156 Cong. Rec. H2522, H2524 (2010) (“Now, if you see a caller ID and you see it has a phone number, most people think that it’s ironclad that that’s the actual phone number that’s calling them when in truth it’s not.”).

<sup>8</sup> *Id.* at H2525.

<sup>9</sup> See 156 Cong. Rec. H2522, H2523 (2010) (“Caller ID spoofing has emerged as a useful tool for identifying thieves and other scam artists.”).

<sup>10</sup> See Michele Andrews, ‘You’ve Got Mail’: E-mails and Robocalls Hit Home in Promoting Medicaid Enrollment, Kaiser Health News (May 26, 2017), available at <http://khn.org/news/youve-got-mail-emails-and-robocalls-hit>

7. In December 2016, Spōk, Inc. (Spōk) submitted an informal complaint with the Bureau about a significant robocalling event that was disrupting its emergency medical paging service.<sup>11</sup> Spōk, headquartered in Springfield, Virginia, provides paging services for hospitals, emergency rooms, and physicians. Paging services are essential in hospitals and emergency rooms across the country, with an estimated 85 percent of hospitals relying on this technology to ensure that emergency room doctors, nurses, EMTs, and other first responders receive immediate alerts.<sup>12</sup> Because paging technology is not equipped to handle voice calls, a large-scale robocalling campaign will disrupt—and potentially disable—the network. Service outages, slowdowns, or other problems caused by robocalls flooding a paging network are a serious risk to public safety because they interfere with critical hospital and emergency room communications.

8. According to Spōk, the robocalling event adversely affected 5,000 to 10,000 of its service subscribers.<sup>13</sup> The robocalling event harmed Spōk’s customers by disrupting those customers’ pager numbers, which are used by doctors, hospitals and emergency first responders. One of Spōk’s subscribers is Palmetto Health, which operates seven hospitals serving Columbia, Greenville, and Sumter, South Carolina. Palmetto Health is the largest health resource in the South Carolina Midlands region.<sup>14</sup> Palmetto Health experienced intermittent pager disruptions as a result of the massive influx of unauthorized robocalls to Spōk’s network.<sup>15</sup> In its informal complaint with the Bureau, Spōk stated that the robocalls consisted of a prerecorded advertising message for health insurance policies.

9. From the information provided by Spōk, the Commission traced the disruptive calls to Philip Roesel.<sup>16</sup> Philip Roesel does business under two different names. First, Philip Roesel sells insurance plans (including medical insurance and life insurance) under the unregistered name “Wilmington Insurance Quotes” and its accompanying website, [wilmingtoninsurancequotes.com](http://wilmingtoninsurancequotes.com) (WIQ).<sup>17</sup> The WIQ domain name is registered to Philip Roesel in his personal name and at his [REDACTED] address; the website features a prominent photograph of Philip Roesel along with his name, personal e-

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home-in-promoting-medicaid-enrollment/; see also Bridgette Small, *Phony Calls about Health Insurance*, February 18, 2016, Federal Trade Commission Website, available at <https://www.consumer.ftc.gov/blog/phony-calls-about-health-insurance>.

<sup>11</sup> See E-mail from Dexter Lee, Corporate Technical Operations Director, Spōk, Inc., to Kristi Thompson, Deputy Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Dec. 14, 2016, 16:59 ET) (on file in File No. EB-TCD-16-00023195).

<sup>12</sup> See *Hospitals turning a ‘pager’ on data hardware*, The Boston Globe (Feb. 2, 2016), <https://www.bostonglobe.com/business/2016/02/01/beep-this-accessory-busy-doctors-finally-gets-upgrade/gRcjTy7w3RuTJiqaeKTsEN/story.html>.

<sup>13</sup> See E-mail from Dexter Lee, Corporate Technical Operations Director, Spōk, Inc., to Kristi Thompson, Deputy Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (June 20, 2017, 10:16 ET) (on file in File No. EB-TCD-16-00023195); see also Declaration of Kimbarly H. Taylor, May 22, 2017 (on file in File No. EB-TCD-16-00023195).

<sup>14</sup> See Palmetto Health Website, “About Palmetto Health,” <https://www.palmettohealth.org/patients-guests/about-palmetto-health>.

<sup>15</sup> As soon as Spōk identified the apparently unlawful spoofed robocalls hitting its network, it immediately alerted its carriers (AT&T and Verizon) and Bureau staff. After receiving Spōk’s reports about the unauthorized nature of the robocalls, and at Spōk’s request, AT&T and Verizon were able to take steps to mitigate and reduce the number of illegal robocalls before they reached Spōk’s subscribers.

<sup>16</sup> Spōk has alerted Bureau staff to multiple large-scale robocalling events since 2015. Bureau staff has traced these events to various robocallers. In this case, the robocalls that hit Spōk’s network in mid-December 2016 originated with Philip Roesel and BIC.

<sup>17</sup> See LinkedIn page for Philip Roesel, <https://www.linkedin.com/in/philiproesel/> (last visited July 5, 2017) (on file in File No. EB-TCD-16-00023195).

mail address, his [REDACTED] address, his personal cell phone,<sup>18</sup> and a toll-free phone number. Second, Philip Roesel does business under the name “Best Insurance Contracts, Inc.” Roesel describes himself as the “CEO and founder” of BIC, which is incorporated in North Carolina.<sup>19</sup> BIC’s website, bestinsurancecontracts.com, is registered to Philip Roesel in his personal name and at his [REDACTED] home address. The BIC company website prominently displays Philip Roesel’s name, direct email address, his personal cell phone number,<sup>20</sup> and the same toll-free phone number featured on the WIQ website. According to the BIC website, the company offers consumers health insurance coverage (focusing on Medicare Supplements and Medicare Advantage Plans for the senior citizen market),<sup>21</sup> and provides tools to health insurance agents to generate health insurance leads and sales.<sup>22</sup>

10. The evidence indicates that Philip Roesel apparently acts directly, and under the BIC and WIQ names, to make the spoofed robocalls at issue in this NAL. The evidence shows that Roesel, through his own name and through BIC, generated insurance sales leads by making unsolicited robocalls to consumers, in which he advertised the insurance products he sold, and/or generated leads on consumers potentially interested in purchasing insurance products. Roesel made robocalls to consumers via a third-party robocall platform provider, [REDACTED].<sup>23</sup> All of Roesel’s robocalls were made using a [REDACTED] account that Roesel registered under his first name (“Phil”), his personal email address [REDACTED], and an IP address that corresponded to Roesel’s address at [REDACTED].<sup>24</sup> On January 24, 2017, Bureau staff subpoenaed [REDACTED] to obtain Roesel’s call records for the three-month period from October 23, 2016, to January 23, 2017.<sup>25</sup> [REDACTED] responded on March 10, 2017, providing the records of calls made by Roesel during the requested three-month period.<sup>26</sup> According to subpoena responses, Philip Roesel (directly or through BIC) made 21,582,771 calls during this time period,<sup>27</sup> averaging over 200,000 calls a day.

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<sup>18</sup> The subscriber phone records for the number [REDACTED] show that in 2015, the phone number was registered to Philip Roesel’s wife, Elizabeth Roesel, at their address in [REDACTED]. Subsequently, the phone number was ported to a new carrier under the name of Wilmington Insurance Quotes. Wilmington Insurance Quotes appears to be Philip Roesel doing business as Wilmington Insurance Quotes; the name is not registered as a company name in any state.

<sup>19</sup> The North Carolina Secretary of State lists Philip Roesel as the Best Insurance Contracts registered agent and the company’s principal office shares the same address as one of Philip Roesel’s current personal addresses. See Best Insurance Contracts, Inc. Corporate Filing, North Carolina Secretary of State Website, available at <https://www.sosnc.gov/Search/profcorp/12410762> (last visited June 14, 2017). According to the Best Insurance Contracts website, Philip Roesel is the company’s CEO and founder. See Best Insurance Contracts Website, available at <https://bestinsurancecontracts.com/wp/> (last visited July 31, 2017).

<sup>20</sup> See *supra* note 18.

<sup>21</sup> Best Insurance Contracts Website, <https://bestinsurancecontracts.com/wp/> (last visited July 31, 2017).

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

<sup>23</sup> See Letter from William E. Raney, Copilevitz & Canter, Counsel for [REDACTED], to Richard A. Hindman, Division Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Mar. 10, 2017) (on file on File No. EB-TCD-16-00023195) ([REDACTED] Response).

<sup>24</sup> See E-mail from [REDACTED], [REDACTED], to Daniel Stepanich, Honors Attorney, Telecommunications Consumers Division, FCC Enforcement Bureau (Jan. 18, 2017, 18:08 ET) (on file on File No. EB-TCD-16-00023195).

<sup>25</sup> See Letter from Richard A. Hindman, Division Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to [REDACTED], [REDACTED] (Jan. 24, 2017) (on file in File No. EB-TCD-16-00023195).

<sup>26</sup> See [REDACTED] Response.

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

11. Bureau staff analyzed a sample of 82,106 spoofed robocalls Roesel made using four specific numbers.<sup>28</sup> The evidence shows that the telephone numbers used were unassigned (i.e., not assigned to a carrier or a subscriber) during the relevant time frame. Accordingly, all the calls made by Roesel that displayed one of these four numbers in the called parties' caller IDs were not assigned to Roesel and were therefore spoofed. Bureau staff also examined robocall complaints by consumers filing on [www.donotcall.gov](http://www.donotcall.gov) between late October 2016 and January 2017, and compared them to the records of calls that Roesel made during the same period. Bureau staff matched 44 complaints to the call records of robocalls made by Roesel.

12. Based on the evidence collected during the investigation, the Bureau cited BIC and Philip Roesel dba Wilmington Insurance Quotes for making illegal robocalls in violation of the Telephone Consumer Protection Act (TCPA).<sup>29</sup> Those violations are separate from, and in addition to, the apparent spoofing violations set forth in this NAL.

### III. DISCUSSION

13. We find that Philip Roesel (directly or through BIC) apparently violated Section 227(e) of the Act and Section 64.1604 of the Rules by knowingly causing the display of misleading or inaccurate caller ID information, or "spoofing," with unlawful intent, for the purpose of aiding an illegal robocalling campaign. Section 227(e) of the Act and Section 64.1604 of the Rules prohibit any person within the United States, in connection with any telecommunications service or Internet Protocol-enabled voice service, to knowingly cause, directly or indirectly, any caller ID service to transmit or display misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value.<sup>30</sup>

#### A. Roesel Apparently Knowingly Caused the Display of Inaccurate Caller ID Information

14. The evidence shows that Philip Roesel (directly or through BIC) apparently knowingly caused the display of inaccurate caller ID information. As discussed above, Philip Roesel used a third-party calling platform (██████) to make telemarketing robocalls to consumers. According to ██████, Philip Roesel/BIC controlled the caller ID inputs and selected what number would appear as the caller ID for each call.<sup>31</sup> Bureau staff analyzed a representative sample of four numbers that either (1) Philip Roesel or his agents, or (2) BIC used as the spoofed caller ID number. Philip Roesel/BIC used those four numbers to make at least 82,106 robocalls. These numbers were unassigned during the relevant time frame; thus, by inserting these four unassigned numbers into the caller ID of his robocalls, Philip Roesel knowingly displayed, or caused to be displayed, misleading or inaccurate caller ID information. Philip Roesel knowingly chose to have the calls appear to be originating from unassigned telephone numbers that he selected, rather than from his own telephone number. Accordingly, we find that Philip Roesel/BIC apparently caused the display of inaccurate or misleading caller ID information.

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<sup>28</sup> Such robocalls constitute "any telecommunications service or Internet Protocol-enabled voice service" for the purposes of Section 227 of the Act.

<sup>29</sup> See Roesel Citation.

<sup>30</sup> 47 U.S.C. § 227(e); 47 CFR § 64.1604(a). The Commission used slightly different language in section 64.1604(a) to make clear, consistent with the intent of Congress, that "the person or entity 'knowingly' causing [the] transmission or display of inaccurate or misleading caller identification must be the same person or entity that is acting with intent to defraud, cause harm, or wrongfully obtain anything of value." *Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, Report and Order, 26 FCC Rcd 9114, 9120-21, paras. 17-20 (2011) (Truth in Caller ID Order).

<sup>31</sup> See ██████ Response at 2.

**B. Roesel's Falsification of Caller ID Was Done With the Apparent Intent to Cause Harm or Wrongfully Obtain Anything of Value**

15. Section 227(e) of the Act and Section 64.1604 of the Rules prohibit, "in connection with any telecommunications service or IP-enabled voice service," knowingly displaying misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value.<sup>32</sup> In this instance, Roesel knowingly spoofed caller ID information with the apparent intent to perpetuate an illegal robocalling campaign that was harmful to both consumers and businesses.

16. *Intent to Cause Harm.* It is unlawful to display misleading or inaccurate caller ID information when the caller's purpose or intent for doing so is to cause harm. The Commission has held that the element of "harm" in the Truth in Caller ID Act is broad and "encompasses financial, physical, and emotional harm."<sup>33</sup> Both Congress and the Commission have long recognized that the placement of illegal robocalls causes consumers significant harm, including that such calls are a nuisance and invasion of privacy.<sup>34</sup> Similarly, courts have routinely agreed that robocalls are an invasion of privacy, an injury in fact sufficient for Article III jurisdiction.<sup>35</sup> In addition to the harms caused by illegal robocalls generally, Roesel's spoofing campaign poses additional harms. In this case, Philip Roesel and BIC apparently intended to spoof millions of calls to perpetrate an illegal robocalling campaign.<sup>36</sup> The Commission has taken enforcement action against spoofing done in conjunction with extensive robocalling activity.<sup>37</sup> We find that spoofing, when done in conjunction with an illegal robocalling campaign (itself a harmful practice), indicates an intent to cause harm.<sup>38</sup> Moreover, in this case and as described below, there is additional evidence of Philip Roesel's/BIC's unlawful intent.

17. The evidence shows that Philip Roesel intended to exploit some of the most vulnerable members of society through his health insurance robocalling campaign. As part of its investigation, the Bureau collected evidence from a person with first-hand experience working for Philip Roesel, and who also received at least one of Philip Roesel's illegal robocalls.<sup>39</sup> [REDACTED] The employee told the Bureau that Philip Roesel and his associated agents<sup>40</sup> made robocalls to generate leads and sales for health

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<sup>32</sup> 47 U.S.C. § 227(e); 47 CFR § 64.1604.

<sup>33</sup> Truth in Caller ID Order, 26 FCC Rcd at 9122, para. 22.

<sup>34</sup> See Pub. L. No. 102-243 (1991); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 7 FCC Rcd 8752 (1992); see also *supra* para. 5.

<sup>35</sup> See, e.g., *Frisby v. Schultz*, 487 U.S. 474, 484 (1988) (recognizing that preserving the sanctity of the home is an important value); *Mims v. Arrow Financial Services, LLC*, 565 U.S. 368, 372 (2012) (finding that robocalls are an invasion of privacy); *LaVigne v. First Community Bancshares, Inc.*, 2016 WL 6305992 at \*4 (D.N.M. Oct. 9, 2016) (finding that the invasion of privacy is a concrete harm); *Krakauer v. Dish Network LLC*, 168 F.Supp.3d 843, 845 (M.D.N.C. 2016) (holding that violations of the TCPA are concrete injuries because unwanted telemarketing calls are "a disruptive and annoying invasion of privacy").

<sup>36</sup> See Roesel Citation.

<sup>37</sup> See *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Notice of Apparent Liability for Forfeiture, FCC 17-80 (June 22, 2017) (*Abramovich NAL*).

<sup>38</sup> The Bureau also released a Citation and Order notifying Philip Roesel and BIC that he/it violated the TCPA by making illegal robocalls to emergency lines, wireless phones, and residential phones. See Roesel Citation.

<sup>39</sup> See Declaration of Lisa Landers, May 25, 2017 (on file on File No. EB-TCD-16-00023195). The evidence confirms the employee's association with Philip Roesel and his company, Best Insurance Contracts. See [REDACTED] Response.

<sup>40</sup> Some of Philip Roesel's associated agents are listed on the Best Insurance Contracts website. See Best Insurance Contracts Website, <https://bestinsurancecontracts.com/wp/> (last visited July 31, 2017).

and life insurance products.<sup>41</sup> Further, the employee told investigators that Philip Roesel made money from his own sales and commissions from his associated agents' sales.<sup>42</sup> The employee noted that Philip Roesel was involved in a large robocalling enterprise and that he was well aware that his robocall activities were illegal.<sup>43</sup> Not only did Philip Roesel openly admit to the illegality of his operation, he told his staff that making illegal robocalls was a minor violation akin to driving above the speed limit.<sup>44</sup> Philip Roesel's employee told the Bureau that the robocalls were targeted toward vulnerable segments of society, including economically disadvantaged and less sophisticated consumers.<sup>45</sup> Philip Roesel's employee stated the following:

- Philip Roesel and his staff repeatedly “joked” and “laughed” about their robocalls being “illegal.”
- Philip Roesel would make 50,000 illegal robocalls in just a few hours. The robocalls were continuously made throughout the business day.
- Philip Roesel has been making illegal robocalls for “years.”
- Philip Roesel “makes a lot of money” from his illegal robocalls.
- Philip Roesel instructed the former employee to hang up on consumers if “they asked too many questions.”
- Philip Roesel told the employee that the goal was to market to economically disadvantaged and unsophisticated consumers, stating that “the dumber and more broke, the better.”<sup>46</sup>

18. Philip Roesel's/BIC's spoofed robocall campaigns caused significant consumer harms. His entire marketing approach targeted the elderly, the infirm, and low-income families. The BIC company website states that “[o]ur focus is Medicare Supplements and Medicare Advantage Plans, but we also carry popular Senior products such as life, final expense, and annuities, and cost-effective dental, health, auto, homeowners, and business insurance when requested.”<sup>47</sup> Moreover, when Bureau staff reached out to recipients of the robocalls, staff discovered that most of the victims they spoke to appeared to be elderly consumers. Senior citizens in the United States are particularly vulnerable to telephone-based frauds, and report higher averages of unwanted text and phone messages than other age groups.<sup>48</sup> As the American Association of Retired Persons (AARP) recently noted, the top 10 robocall scams affecting elderly consumers in 2016 included “calls specifically aimed at seniors to pitch antiaging products, cemetery plots, health insurance and Medicare scams.”<sup>49</sup> As the whistleblower stated to Bureau staff, Philip Roesel deliberately aimed his robocalling campaigns at unsophisticated consumers and consumers in precarious financial situations (“the dumber and more broke, the better”) as well as

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<sup>41</sup> See Declaration of Kimbarly H. Taylor, May 25, 2017 (on file in File No. EB-TCD-16-00023195) (Taylor May 25th Declaration).

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

<sup>43</sup> *Id.*

<sup>44</sup> Declaration of Kristi Thompson, June 30, 2017 (on file in File No. EB-TCD-16-00023195).

<sup>45</sup> See Taylor May 25th Declaration.

<sup>46</sup> *Id.*

<sup>47</sup> See Best Insurance Contracts Website, <https://bestinsurancecontracts.com/wp/> (last visited July 31, 2017).

<sup>48</sup> See Press Release, Truecaller, 27M Americans Lost an Average of \$274 in Phone Scams Last Year, According to New Report from Truecaller (Jan. 25, 2016), <http://www.webwire.com/ViewPressRel.asp?aId=201897>.

<sup>49</sup> See Sid Kircheimer, *2016's Surprising Top Robocall Scams*, AARP Blog (Aug. 5, 2016), <http://blog.aarp.org/2016/08/05/2016s-surprising-top-robocall-scams>.

inattentive or unquestioning consumers (directing staff to hang up on consumers with “too many questions”). One recipient of Philip Roesel’s sales pitch told Bureau staff that she received calls after submitting job applications online; the consumer stated that although she was very concerned about obtaining health insurance, she ended the call when the agent demanded her credit card information while she was asking about coverage options.<sup>50</sup>

19. As is typical with large-scale robocalling operations, Roesel’s/BIC’s robocalling campaigns generated significant consumer outrage at having received the spoofed unsolicited robocalls in the first place. Several consumers filed complaints on donotcall.gov which have the hallmarks of the Roesel/BIC operation, including noting the specific spoofed numbers that BIC and Philip Roesel frequently used. Additionally, online postings reflect that consumers that received similar calls, from the same set of spoofed numbers, during the period (mid- to late-2016) covered by this NAL. The postings about these calls reflect significant consumer anger:

- “[I]n the last 6 months or so, I have been receiving an increased number of phone calls and I intend to start listening to each one of them and start reporting each one of them. I am afraid to answer my phone any more. Just like when I used to have an answering machine. It has been so nice for the past however many years knowing that when I get a call, it truly is someone I wish to speak to. And now that has all disappeared. So disappointing!”<sup>51</sup>
- “Called my cell, twice. Left no message. I don’t need to talk to a scammer. I didn’t give them my cell. People I know I give my cell number. I don’t know this person.”<sup>52</sup>
- “[P]lease stop these people[.]”<sup>53</sup>
- “[C]alled me[,] didn’t answer because I figured they were some punk [\*\*\*] marks [telemarketers], and I was right.”<sup>54</sup>
- “I activated my cell phone two days ago, and no one knew, but somehow the telemarketer found me. Unbelievable!”<sup>55</sup>
- “Telemarketers have NOTHING BETTER TO DO THAN ANNOY YOU with a plethora of useless non working phone calls! I was resting[,] got woken up by someone with no life! We have lives[,] I wish someone would figure out who these people are and block their access [to] phone services!”<sup>56</sup>

20. Moreover, in light of the whistleblower evidence stating that Philip Roesel knew he was engaged in an illegal practice (and even joked about it), he apparently spoofed the caller ID to avoid detection, evade law enforcement, and deprive consumers of their legal rights under the TCPA. For example, without accurate caller ID information, consumers were unable to point investigators at the FCC, the Federal Trade Commission (FTC), and states’ attorneys general to the culprit because they could not identify the person or originating phone number responsible for the harms they suffered. This

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<sup>50</sup> Declaration of Daniel Stepanicich, July 13, 2017 (on file in File No. EB-TCD-16-00023195). The consumer suspected that Philip Roesel obtained information from the job applications the consumer submitted to third parties online. *Id.*

<sup>51</sup> Complaint #74852141 (Consumer Sentinel, July 26, 2016).

<sup>52</sup> Complaint by “Private,” December 16, 2016, <http://800notes.com/Phone.aspx/1-713-211-8439>.

<sup>53</sup> Complaint #746757964 (Consumer Sentinel, Sept. 20, 2016).

<sup>54</sup> Complaint by “Blue,” January 16, 2017, <http://800notes.com/Phone.aspx/1-803-211-9887>.

<sup>55</sup> Complaint by “LD,” November 22, 2016, <http://800notes.com/Phone.aspx/1-281-211-8439>.

<sup>56</sup> Complaint by “Anonymous,” November 17, 2016, <http://whocalledchecker.net/phone-number/1-252-211-8439>.

spoofing thereby allowed BIC and Philip Roesel to avoid or delay triggering “red flags” that might otherwise result in investigation and enforcement. Further, it deprived consumers of their ability to alert the Better Business Bureau (BBB), which could have flagged Philip Roesel and BIC as bad actors, as well as consumer protection sites on the Internet that allow consumers to identify and warn other consumers about abusive business practices. In addition, Roesel’s/BIC’s use of multiple spoofed numbers made it more difficult for consumers to use call blocking services to block the robocalls.<sup>57</sup> In short, Roesel/BIC harmed consumers by depriving them of valuable consumer protection rights afforded them by Congress through the TCPA and the laws of the various states.

21. The Roesel/BIC robocalling operations also caused significant disruption to Spōk’s paging network. This disruption caused harmful effects not only for the network that was adversely affected, but for every consumer who needed the acute medical services provided by Spōk’s subscribers. For example, the December 2016 Roesel/BIC robocalling campaign adversely affected the pagers used by Palmetto Health medical staff in Columbia, South Carolina.<sup>58</sup> Spōk’s medical pagers are vital communications tools used by doctors, EMTs, and other first responders to ensure they are available at a moment’s notice. Roesel/BIC caused service disruptions that harmed the effectiveness of emergency services that consumers rely on in life-and-death situations. Telecommunications services used by emergency personnel receive greater protections in the Communications Act precisely because the stakes are so high.

22. As we stated in *Abramovich*,<sup>59</sup> “[e]xtensive illegal robocalling can overwhelm a network’s capacity, and spoofing makes it harder for carriers to detect those calls and take remedial action.”<sup>60</sup> Spoofed robocalls, like those found in this case, harm telecommunications carriers by “(1) burdening the carriers’ networks with illegal calls, and (2) enraging consumer recipients of the illegal robocalls—whose complaints add to the workload of customer service agents, decrease the perceived value of the service, and increase carrier costs.”<sup>61</sup> The more difficult it is to detect the origin of the calls, the longer these harms persist and the more damage they exact.

23. Finally, the repeated use by Roesel/BIC of unassigned numbers as the caller ID for millions of illegal robocalls effectively rendered those specific numbers unsuitable for assignment to any legitimate subscriber. For example, one unassigned number used by Roesel, 843-211-9757, is flagged as untrustworthy by caller identification service Showcaller. Based on user feedback, Showcaller reports that the “Spam Activity Level” for the number is “High,” and the number is flagged as one associated with telemarketing calls.<sup>62</sup> Any carrier that allocates this phone number to a subscriber in the future risks saddling the subscribing consumer with a toxic phone number. Moreover, as additional whitelist/blacklist-based call blocking tools appear in the market for consumer use, consumers who obtain toxic numbers may find themselves unable to contact other end users who have blocked the number to cut off an illegal robocaller.<sup>63</sup> Such misuse of unassigned numbers in this way causes harm by (1) constricting the supply of quality phone numbers available for assignment; and (2) causing blocking apps to over-block in an effort to give users relief from unwanted calls.

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<sup>57</sup> See, e.g., NoMoRobo Website, <https://www.nomorobo.com/> (last visited June 20, 2017).

<sup>58</sup> Fortunately, in this case, the mitigating efforts by Spōk and its carriers minimized the disruption to Spōk’s individual subscribers. Had those efforts not been successful or timely, the harm to hospitals like Palmetto Health could have been significantly worse.

<sup>59</sup> *Abramovich NAL* at para. 19.

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

<sup>61</sup> *Id.*

<sup>62</sup> See Showcaller Website, <https://www.show-caller.com/us/+18432119757> (last visited June 29, 2017).

<sup>63</sup> See Complaint #77600034 (Consumer Sentinel Oct. 19, 2016) (“I don’t answer callers when caller ID says ‘unknown’ they are almost always scam and Internet research verified this as a scam number.”).

24. *Intent to Wrongfully Obtain Anything of Value.* The Truth in Caller ID Act and our Rules prohibit knowingly displaying misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value.<sup>64</sup> Although the term “anything of value” is not defined in the statute nor elucidated by the legislative history, we have little question that Roesel/BIC were spoofing the numbers to obtain something of value. As discussed below, the spoofed numbers were a key element of the large-scale, for-profit robocall telemarketing campaign designed to generate sales for BIC and Roesel and help Roesel/BIC evade law enforcement (and potential monetary penalties) and private civil lawsuits.

25. At a minimum, we find the phrase “anything of value” to encompass tangible and intangible benefits, including money. We find, too, that “anything of value” includes intangible assets. For example, the Second Circuit, in a case involving criminal embezzlement, stated that the words ‘thing of value’ “are found in so many criminal statutes throughout the United States that they have in a sense become words of art. . . . [T]he phrase is generally construed to cover intangibles as well as tangibles.”<sup>65</sup> In fact, the majority of federal circuits have held that Congress intended an “expansive reading” of the phrase to include more than just money, goods, or services, in various statutes where the phrase appears.<sup>66</sup> We believe that Congress was aware of these decisions when it used the phrase “anything of value” in Section 227 of the Act.<sup>67</sup> Moreover, it is reasonable to conclude that the interpretation of the phrase “anything of value” should be at least as expansive in a civil context as it is when a defendant is subject to criminal penalties. In any event, it appears that Roesel was using spoofed telephone numbers to obtain significant monetary benefits.

26. As a preliminary matter, Roesel/BIC was seeking to profit (i.e., gain something of value) by making unlawful, and thus wrongful, spoofed robocalls. The fact that Philip Roesel and BIC intended to make insurance sales derived from unlawful conduct demonstrates that Roesel/BIC intended to wrongfully obtain something of value by means of the spoofed calls. As discussed above, the evidence also shows that one of Philip Roesel’s businesses involved selling marketing leads to other insurance agents—the BIC website offers marketing leads at a cost of \$6 per consumer phone number.<sup>68</sup> BIC and Philip Roesel intended to profit from his apparent illegal activity and, thus, intended to obtain “anything of value.”

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<sup>64</sup> 47 U.S.C. § 227(e); 47 CFR § 64.1604.

<sup>65</sup> *U.S. v. Girard*, 601 F.2d 69, 71 (2nd Cir. 1979).

<sup>66</sup> *See, e.g., U.S. v. Nilsen*, 967 F.2d 539, 542-43 (11th Cir. 1992) (“Congress’ frequent use of ‘thing of value’ in various criminal statutes has evolved the phrase into a term of art which the courts generally construe to envelope both tangibles and intangibles. This broad interpretation is based upon a recognition that monetary worth is not the sole measure of value.”); *U.S. v. Picquet*, 963 F.2d 54, 55 (5th Cir. 1992) (holding that sales taxes constitute “a thing of value” for the purposes of 18 U.S.C. 1029(a)(2)’s prohibition of using unauthorized access devices to obtain “anything of value”); *U.S. v. Draves*, 103 F.3d 1328 (7th Cir. 1997) (agreeing with and applying 5th Circuit’s expansive interpretation of phrase “anything of value” in *Picquet*); *U.S. v. Schwartz*, 785 F.2d 673, 680 (9th Cir. 1986) (noting broad range of intangibles that have been found to be “things of value” by prior courts); *U.S. v. Singleton*, 144 F.3d 1343, 1349-50 (10th Cir. 1998), *rev’d on other grounds*, 165 F.3d 1297 (10th Cir. 1999) (agreeing with *Picquet*); *see also U.S. v. Sheker*, 618 F.2d 607, 609-10 (9th Cir. 1980) (holding that “value” includes anything recognized or appreciated by others); *U.S. v. Williams*, 705 F.2d 603, 622-23 (2nd Cir. 1983) (holding that the district court properly construed the meaning of the term “anything of value” to “focus on the value that the defendants subjectively attached to the items received”).

<sup>67</sup> *See e.g., Jerman v. Carlisle*, 599 U.S. 573, 589-90 (2010) (“We have often observed that when ‘judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its . . . judicial interpretations as well.’”) (citations omitted).

<sup>68</sup> *See Best Insurance Contracts Website*, <https://bestinsurancecontracts.com/wp/health-leads-20-per-lead/> (offering “health leads” at \$6 per phone number of \$18 per direct mail contact).

27. In addition, the evidence shows that Philip Roesel knew his robocall campaigns were illegal. It appears that BIC and Roesel falsified the caller ID information of the calls specifically to avoid detection, evade law enforcement, and deprive consumers of their legal rights under the TCPA. Avoidance of culpability is a benefit that qualifies as a “[thing] of value.” In this case, avoidance of culpability has a specific, ascertainable dollar value—namely, up to \$19,246 per unlawful call in a forfeiture action brought by the FCC, and up to \$40,654 in civil penalties for each violation of the Telemarketing Sales Rule in a lawsuit brought by the FTC.<sup>69</sup> Moreover, by spoofing and preventing consumers from discovering the true origin of the calls, Roesel and BIC evaded consumer litigation actions in which they could have been subject to pay damages of up to \$1,500 for every illegal robocall.<sup>70</sup> Roesel and BIC obtained these valuable shields “wrongfully.” The predatory nature of the marketing campaign, the lack of any legitimate purpose for using unassigned phone numbers in the caller ID, and the fact that every one of the apparently unlawfully falsified caller IDs was attached to an unlawful robocall are evidence of the “wrongful” nature of Roesel’s appropriation.

28. Based on the forgoing, we find that in just three months, Roesel/BIC made nearly 22 million apparently illegal spoofed robocalls, disrupting and exploiting consumers.<sup>71</sup> This is disruptive and an invasion of privacy, and exactly the type of harmful activity that Congress sought to prevent with Truth in Caller ID Act. Based on the fact that every call that we investigated in the representative sample was apparently unlawfully spoofed, we conclude that Roesel/BIC made 21,582,771 spoofed telemarketing robocalls with the intent to cause harm or wrongfully obtain anything of value—each call an apparent violation of the Truth in Caller ID Act and our Rules.

### C. Proposed Forfeiture

29. Section 227(e) of the Act and the Section 1.80 of the Rules authorize the Commission to impose a forfeiture against any person that engages in unlawful spoofing.<sup>72</sup> Specifically, the Act and Rules authorize a forfeiture of up to \$11,052 for each spoofing violation, or three times that amount for each day of a continuing violation, up to a statutory maximum of \$1,105,241 for any single act or failure to act.<sup>73</sup> The Truth in Caller ID Act empowers the Commission “to proceed expeditiously to stop and . . . assess a forfeiture penalty against, any person or entity engaged in prohibited caller ID spoofing without first issuing a citation” against the violator.<sup>74</sup>

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<sup>69</sup> See “Complying with the Telemarketing Sales Rule,” FTC, <https://www.ftc.gov/tips-advice/business-center/guidance/complying-telemarketing-sales-rule#penalties>.

<sup>70</sup> 47 U.S.C. § 227.

<sup>71</sup> See Roesel Citation.

<sup>72</sup> 47 U.S.C. § 227(e)(5); 47 CFR § 1.80(b)(4). The Truth in Caller ID Act and the Rules contain a two-year statute of limitations on proposing forfeitures for unlawful spoofing. 47 U.S.C. § 227(e)(5)(A)(iv); 47 CFR § 1.80(c)(3). Unlike forfeitures assessed under Section 503(b) of the Act, “the Truth in Caller ID Act does not require ‘willful’ or ‘repeated’ violations to justify imposition of a penalty.” Truth in Caller ID Order, 26 FCC Rcd at 9133, para. 48. Thus, the Bureau is not required to demonstrate the “conscious and deliberate commission or omission of any act” or that such act happened more than once or for more than one day to propose a forfeiture for apparently unlawful spoofing. See 47 U.S.C. §§ 312(f)(1)-(2) (defining “willful” and “repeated” under the Act). We nevertheless find that Philip Roesel/BIC willfully and repeatedly spoofed caller ID information with the intent to harm.

<sup>73</sup> See 47 U.S.C. § 227(e)(5)(A); 47 CFR § 1.80(b)(4). In the alternative and in lieu of the Act’s general criminal penalty provisions in Section 501 of the Act, the Truth In Caller ID Act also provides for criminal fines up to \$10,000 for each violation, or three times that amount for each day of a continuing violation. 47 U.S.C. § 227(e)(5)(B). See *Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 16-1453, (Dec. 30, 2016).

<sup>74</sup> Truth in Caller ID Order, 26 FCC Rcd at 9132-33, para. 47. Under Section 503(b)(5) of the Act, a person who does not hold a license, permit, certificate, or other authorization issued by the Commission, or is not an applicant for the same, may not be issued a Notice of Apparent Liability for Forfeiture unless: (1) that person is first sent a citation of the violation charged, (2) is given an opportunity for a personal interview with an official of the

(continued....)

## D. Truth in Caller ID Violations

### 1. Base Forfeiture for Truth in Caller ID Violations

30. The Act and Section 1.80 of the Rules set a maximum forfeiture amount for spoofing apparent violations under the Truth in Caller ID Act.<sup>75</sup> Because *Abramovich* involved analogous apparent spoofing violations under the Truth in Caller ID Act, we use it as guidance in proposing an appropriate forfeiture in this case.

31. In *Abramovich*, we proposed a forfeiture designed to deter other large scale spoofing operations and notify bad actors that the Commission takes spoofing violations seriously.<sup>76</sup> When it adopted the spoofing rules, the Commission said that it would “seek substantial penalties” against violators. In *Abramovich*, we applied a base forfeiture in the amount of \$1,000 per unlawful spoofed call.<sup>77</sup> We then multiplied the base by the number of spoofed calls that the Bureau verified (80,000).<sup>78</sup> Finally, we took into account the statutory factors required under Section 503 of the Act and found an upward adjustment was warranted.<sup>79</sup>

### 2. Number of Violations

32. We find that Roesel/BIC committed multiple apparent violations of the Truth in Caller ID Act for which we are authorized to impose a forfeiture. In this regard, BIC and Philip Roesel together made 21,582,771 calls from October 23, 2016, to January 23, 2017.<sup>80</sup> The Bureau verified that 82,106 of the 21,582,771 calls were, in fact, spoofed. In addition, the Bureau verified that each of the 82,106 spoofed calls were made either personally by Philip Roesel, or Philip Roesel working through BIC. As described in detail above, Roesel/BIC spoofed the caller ID information of each of these 82,106 calls with an apparent intent to cause harm or wrongfully obtain anything of value. Accordingly, we find each call an apparent violation of the Truth in Caller ID Act.

### 3. Calculation of Proposed Forfeiture

33. In determining the proposed forfeiture in this case, we apply a \$1,000 base forfeiture to each of the 82,106 spoofed calls verified by the Bureau<sup>81</sup> during the October 23, 2016 to January 23, 2017

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Commission, and (3) subsequently engages in conduct of the type described in such citation. 47 U.S.C. § 503(b)(5). By contrast, the Truth In Caller ID Act only requires that the Commission provide the notice required under Section 503(b)(3) of the Act (notice and opportunity for a hearing before the Commission or an administrative law judge) or Section 503(b)(4) of the Act (Notice of Apparent Liability for Forfeiture) before assessing a forfeiture for unlawful spoofing. 47 U.S.C. § 227(e)(5)(A). Here, we provide the required notice under Section 503(b)(4) of the Act through this Notice of Apparent Liability for Forfeiture.

<sup>75</sup> See 47 U.S.C. § 227(e) (setting a statutory maximum at \$10,000 per violation); 47 CFR § 1.80 (adopting the statutory maximum with the required inflation adjustment); *Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 16-1453, (Dec. 30, 2016).

<sup>76</sup> *Abramovich* NAL at paras. 24-26.

<sup>77</sup> In *Abramovich*, the Commission recognized that Section 1.80 of the Commission’s rules sets forth base forfeiture amounts for a wide variety of apparent violations. *Id.* at para. 22. The Commission also observed that the base forfeitures in Section 1.80 range from \$1,000 (failure to provide station identification, for example) to the statutory maximum (misrepresentation/lack of candor). *Id.* at para. 25. Because there were no directly analogous violations covered within the existing range of base forfeitures to those apparent spoofing violations found in *Abramovich*, the Commission found that establishing the base forfeiture amount of \$1,000 was reasonable as applied to the specific facts in that case. *Id.*

<sup>78</sup> *Abramovich* NAL at para. 25.

<sup>79</sup> *Id.* at para. 26.

<sup>80</sup> See [REDACTED] Response.

period for a total proposed base forfeiture of \$82,106,000.<sup>82</sup> In contrast to our recent finding in *Abramovich*, however, in this case we find that the application of the facts to the statutory factors in Section 503<sup>83</sup> do not warrant an upward adjustment to the base forfeiture. Roesel/BIC did not engage in the kind of fraudulent activities that were at the heart of Adrian Abramovich’s apparently unlawful robocalling campaign. Specifically, the record does not contain evidence that Roesel/BIC made misrepresentations to consumers (with the exception, of course, of the caller ID information itself). Philip Roesel was not misrepresenting the product he was selling, nor was he modifying the telephone numbers to falsely appear to be originating from the same area code and prefix as the called party (neighbor spoofing). In addition, the instant action appears to be the first time that Philip Roesel or BIC has run afoul of the TCPA. While not as egregious as the apparent spoofing in *Abramovich*, it appears that Philip Roesel is highly culpable; the records show that the calls were made both by Philip Roesel in his personal capacity as well as in the name of BIC. Moreover, the sheer volume of calls—21,582,771 calls in a three-month period—are egregious in number. On balance, we find that neither an upward adjustment nor a further downward adjustment<sup>84</sup> to the proposed base forfeiture of \$82,106,000 is necessary to punish misconduct and deter future wrongdoing.

#### 4. Philip Roesel Personally Liable for Proposed Forfeiture

34. Consistent with prior NALs, the proposed penalty here applies to Philip Roesel personally, whether acting in his own name, the dba name “Wilmington Insurance Quotes,” or through BIC.<sup>85</sup> We find that Philip Roesel may be held personally liable under the principles of piercing the

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<sup>81</sup> See *Abramovich NAL* at para. 25. Even though we limit the total number of violations here to the 82,106 spoofed calls verified, we reserve the right in the future, especially with large scale spoofing violations, to use the total number of calls made where there is a high likelihood of violations based on the use of a representative sampling of calls.

<sup>82</sup> See Reviewed Call Detail Records (on file in File No. EB-TCD-16-00023195) (containing the call records, including the dates and times the calls were made). For purposes of this NAL, we take action only with respect to those violations occurring within the three-month period identified above. See *id.*; *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14899-900, paras. 21-23 (2015) (stating that the notice requirements of Section 503 are satisfied when the Notice of Apparent Liability identifies the conduct resulting in the violations and provides “(1) specific cite references to the record (i.e., specific citations to files and documents provided by the violator that identified relevant dates sufficient to allow the violator to lodge its defense) or, (2) citations to the records containing dates and other relevant information”). *Id.* at 14899, para. 22 (“We interpret Section 503 as requiring sufficient notice to provide the violator with the information he or she needs to mount a defense to the violations charged in a Notice of Apparent Liability.”).

<sup>83</sup> 47 U.S.C. § 503(b)(2)(E) (“[I]n determining the amount of such a forfeiture penalty, the Commission or its designee shall take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”).

<sup>84</sup> We note that by selecting a base forfeiture in the amount of \$1,000 per apparently unlawful call, we are already significantly lowering the potential penalty—which may reach up to a statutory maximum of \$11,052 per call. As we explained in *Abramovich*, “we recognize that in cases involving massive spoofing campaigns, there is a risk that the fine will far exceed any person or company’s ability to pay,” but nevertheless “we calculate the proposed forfeiture to account for the egregiousness of the harm caused by this massive spoofing activity and to serve as both a punishment and a deterrent to future wrongdoing.” *Abramovich NAL* at paras. 24-25.

<sup>85</sup> See *Scott Malcolm, DSM Supply, LLC, Somaticare, LLC*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 2476, 2483-84, paras. 16-19 (2014); *Scott Malcolm, DSM Supply, LLC, Somaticare, LLC*, Forfeiture Order, 31 FCC Rcd 1652, 1653, para. 5 (2016); see also *Patrick Keane a/k/a/ The Street Map Co.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 13757, 13762, para. 13 (2012); *Patrick Keane a/k/a The Street Map Co.*, Forfeiture Order, 28 FCC Rcd 6688, 6690, para. 6 (2013); *Tim Gibbons/United Emp. Benefits Grp.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 11432, 11438-39, para. 15 (2012); *Tim Gibbons/United Emp. Benefits Grp.*, Forfeiture Order, 28 FCC Rcd 6679, 6681, para. 8 (2013).

corporate veil. As the FCC has found in similar cases, personal liability is appropriate (and the Commission will pierce the corporate veil) where the individual, like Philip Roesel, is an officer of a closely held corporation and directly participates in, oversees, authorizes or otherwise directs the commission of the wrongful act. For example, in a recent case involving violations of the TCPA's prohibitions against unsolicited faxes, the Commission found that personal liability attached to the individual who served as his company's sole member and sole corporate officer.<sup>86</sup>

35. Similar to the facts of that case, in this case, the evidence shows that the "Best Insurance Contracts" entity merely functions as an instrumentality of Philip Roesel, and Philip Roesel cannot be allowed to circumvent personal liability simply by forming a corporate entity to hide behind.<sup>87</sup> There are a number of significant factors that illustrate why the corporate veil should be pierced in this case. Philip Roesel failed to maintain separate identities between BIC and himself.

36. According to the North Carolina Secretary of State, BIC was incorporated in September 2016.<sup>88</sup> In BIC's incorporation document, Philip Roesel is stated as the company's sole incorporator, the sole shareholder, and the sole registered agent.<sup>89</sup> BIC's mailing address, registered office, and principal office are each listed as [REDACTED], which—according to North Carolina property records—is a single family residence owned by Philip Roesel and members of his immediate family.<sup>90</sup> The BIC website lists Philip Roesel as the Founder and CEO of BIC;<sup>91</sup> but the company's website domain name, "bestinsurancecontracts.com," is registered to Philip Roesel personally, rather than Best Insurance Contracts, Inc.<sup>92</sup> As set forth in this NAL, BIC has been used for an illegal or wrongful purpose – making spoofed robocalls. Similarly, Philip Roesel uses BIC's telephone number for his personal insurance operation/dba name WIQ, and prominently features this phone number on the WIQ website. The robocalling operation used a third-party robocall platform provider called [REDACTED]. As noted previously, Philip Roesel set up the [REDACTED] account under which he conducted all of his robocalls in his own personal name and email address. As part of its investigation, the Bureau obtained billing records for the robocalls that Roesel made via the [REDACTED] platform. Those billing records show that Philip Roesel sometimes paid [REDACTED] with financial accounts in the name of BIC, while at other times the robocalling services were paid for using Philip Roesel's own financial accounts—indicating that he commingled his

<sup>86</sup> See *Scott Malcolm, DSM Supply, LLC, Somaticare, LLC*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 2476, 2483-84, paras. 16-19 (2014); *Scott Malcolm, DSM Supply, LLC, Somaticare, LLC*, Forfeiture Order, 31 FCC Rcd 1652, 1653, para. 5 (2016).

<sup>87</sup> See *Texas v. Am. Blastfax*, 164 F. Supp. 2d 892, 897-98 (W.D. Texas 2001) ("[I]f the officer directly participated in or authorized the statutory violation, even though acting on behalf of the corporation, he may be personally liable" for violations of the TCPA); see also *United States v. Pollution Servs. of Oswego, Inc.*, 763 F.2d 133, 134-35 (2d Cir. 1985) ("In light of the clear congressional intent to hold 'person[s]' liable for violations [of the Rivers and Harbors Appropriations Act], we see no reason to shield from civil liability those corporate officers who are personally involved in or directly responsible for statutorily proscribed activity."). Like in *Oswego*, the TCPA embodies the congressional intent to hold "persons" liable for violations. See 47 U.S.C. § 227(b)(1); see also 47 U.S.C. § 153(39) (defining a "person" to include individuals as well as corporate entities). In other contexts, courts have found the responsible corporate officer of a company to be personally liable for unlawful acts where the corporate officer was in a position of responsibility *vis-à-vis* the illegal conduct, had the power to prevent others from engaging in such conduct or to promptly correct the violation, and failed to take action. See e.g. *United States v. Hodges X-Ray, Inc.*, 759 F.2d 557, 560-62 (6th Cir. 1985).

<sup>88</sup> See Best Insurance Contracts, Inc. Corporate Filing, North Carolina Secretary of State Website, <https://www.sosnc.gov/Search/profcorp/12410762> (last visited June 14, 2017).

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> See Best Insurance Contracts Website, <https://bestinsurancecontracts.com/wp/> (last visited July 31, 2017).

<sup>92</sup> See GoDaddy.com WHOIS results, [www.bestinsurancecontracts.com](http://www.bestinsurancecontracts.com) (June 27, 2017) (on file in EB-TCD-16-00023195).

personal expenditures with those of BIC.<sup>93</sup> All of these factors strongly suggest that the corporate veil should be pierced and that Philip Roesel is personally liable for the apparently unlawful conduct.

#### IV. CONCLUSION

37. Based on the foregoing, we find that Best Insurance Contracts, Inc. and Philip Roesel dba Wilmington Insurance Quotes, apparently willfully and repeatedly violated Section 227(e) of the Act and Section 64.1604 of the Rules. We have further determined that Philip Roesel, dba Wilmington Insurance Quotes, personally and together with Best Insurance Contracts, Inc. are jointly and severally apparently liable for a forfeiture in the amount \$82,106,000.

#### V. ORDERING CLAUSES

38. **IT IS ORDERED** that, pursuant to Sections 227(e)(5)(A)(i) and 503(b) of the Act<sup>94</sup> and Sections 1.80 of the Rules,<sup>95</sup> Best Insurance Contracts, Inc., and Philip Roesel, doing business as Wilmington Insurance Quotes, are hereby **NOTIFIED** of their **APPARENT JOINT AND SEVERAL LIABILITY FOR A FORFEITURE** in the amount of eighty-two million, one hundred and six thousand dollars (\$82,106,000) for willful and repeated violations of Section 227(e) of the Act,<sup>96</sup> Section 64.1604 of the Rules,<sup>97</sup> and the *Rules and Regulations Implementing the Truth In Caller ID Act of 2009*.<sup>98</sup>

39. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,<sup>99</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Best Insurance Contracts, Inc., or Philip Roesel, doing business as Wilmington Insurance Quotes, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraphs 42-43, below.

40. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Best Insurance Contracts, Inc., or Philip Roesel, doing business as Wilmington Insurance Quotes, shall send electronic notification of payment to Lisa Williford at Lisa.Williford@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>100</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure

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<sup>93</sup> See [REDACTED] Response.

<sup>94</sup> 47 U.S.C. §§ 227(e)(5)(A)(i), 503(b).

<sup>95</sup> 47 CFR § 1.80.

<sup>96</sup> 47 U.S.C. § 227(e).

<sup>97</sup> 47 CFR § 64.1604.

<sup>98</sup> Truth in Caller ID Order.

<sup>99</sup> 47 CFR § 1.80.

<sup>100</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.

- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

41. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.<sup>101</sup> Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

42. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.<sup>102</sup> The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Telecommunications Consumers Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Kristi Thompson, Deputy Division Chief, Telecommunications Consumers Division, at Kristi.Thompson@fcc.gov, and Kimbarly Taylor, Attorney Advisor, Telecommunications Consumers Division, at Kimbarly.Taylor@fcc.gov.

43. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; and (3) any other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation.

44. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture, together with the Reviewed Call Detail Records, shall be sent by first class mail and certified mail, return receipt requested, to Best Insurance Contracts, Inc., and Philip Roesel, dba Wilmington Insurance Quotes, at [REDACTED].

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>101</sup> See 47 CFR § 1.1914.

<sup>102</sup> 47 CFR §§ 1.16, 1.80(f)(3).

**STATEMENT OF  
CHAIRMAN AJIT PAI**

Re: *Best Insurance Contracts, Inc., and Philip Roesel, dba Wilmington Insurance Quotes*, File No.: EB-TCD-16-00023195.

In one scene of the 1973 classic, *The Sting*,<sup>103</sup> villain Doyle Lonnegan gets fleeced at poker by Paul Newman's character, Henry Gondorff. The villain then asks Newman's sidekick, Johnny Hooker, played by Robert Redford, what the secret is. Johnny simply replies: "He cheats."<sup>104</sup>

And so it seems to be with the subjects of today's *Notice of Apparent Liability*, Philip Roesel and his company, Best Insurance Contracts, Inc.

Today, we find them apparently liable for violating the Truth in Caller ID Act. Over a three-month period from late 2016 through early 2017, Mr. Roesel was responsible for more than 200,000 robocalls a day—21.5 million altogether.

Like many for whom illegal robocalls are a business model, he sought to hide his tracks: He knowingly used unassigned phone numbers to display inaccurate caller ID information so that he could avoid detection and evade law enforcement.

Bad stuff, as far as it goes. Perhaps worse is the gall he evidently paired with his gumption. The record shows that he instructed his employees which consumers to pick on: "the dumber and more broke the better." He was even quoted as repeatedly bragging and "joking" to co-workers that his actions were minor legal violations, akin to driving above the speed limit.

But today, the whole operation hits a big speed bump. We find Mr. Roesel and his company apparently liable for \$82,106,000. And we send another message to illegal robocallers who don't follow the advice of FBI Agent Polk in *The Sting* to "try not to live up to our expectations": We will do everything in our power to put you out of business.

I want to extend my thanks for their work on this item to Vilma Anderson, Tamara Baxter, Michael Carowitz, Lisa Gelb, Susan German, Rosemary Harold, Jermaine Haynes, Rick Hindman, Matthew Hoke, Lisa Landers, Coly Marierose, Ann Morgan, Phil Priesman, Nakasha Ramsey, Terrell Richardson, Mary Romano, Stacy Ruffin-Smith, Mika Savir, Michael Scurato, Daniel Stepanicich, Kimbarly Taylor, Kristi Thompson, Bridgette Washington, and Lisa Williford of the Enforcement Bureau; Kurt Schroeder, Mark Stone, and Kristi Thornton of the Consumer and Governmental Affairs Bureau; and Terry Cavanaugh, Neil Dellar, Billy Layton, and Rick Mallen in the Office of General Counsel.

Because of your efforts, we are putting an end to Mr. Roesel's apparent sting.

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<sup>103</sup> *The Sting* (Universal Pictures 1973).

<sup>104</sup> See <https://www.youtube.com/watch?v=LixYFIjT7wM>.

**STATEMENT OF  
COMMISSIONER MIGNON L. CLYBURN**

Re: *Best Insurance Contracts, Inc., and Philip Roesel, dba Wilmington Insurance Quotes*, File No.:  
EB-TCD-16-00023195.

Have you ever taken your kids (or maybe a niece or nephew) to play Whac-A-Mole down at the local arcade? I pose this question for two reasons: One, because it is hard to believe this game has been around for 40 years and two, when it comes to stopping illegal robocalls, the execution is very similar: as soon as you stop one, another pops right back up.

In June, this agency levied its largest fine in history when we adopted a \$120 million Notice of Apparent Liability (NAL) against an individual who made nearly 100 million spoofed robocalls. Today, we issue an NAL for \$82.1 million against Best Insurance Contracts, Inc. (BIC) and Philip Roesel who apparently made more than 21 million spoofed robocalls over a three-month period.

While the circumstances in each differ slightly, at the crux of both allegations are an intent to cause harm and/or wrongfully obtain anything of value with misleading or inaccurate caller ID information. As the NAL directly notes, “harm” should be broadly interpreted to encompass “financial, physical and emotional” impairment.

The consumer harm from the flood of robocalls is very significant and real. The disruption to emergency medical paging service used by the staff of Palmetto Health in my second hometown of Columbia, South Carolina adversely harmed their emergency communications between doctors, EMTs, and other first responders and could have risked lives.

Just as alarming as it is heartless, by whistleblower accounts, is how this robocall scheme directly and systematically targeted three of the most vulnerable populations: the elderly, the infirmed and poor people. In fact, Mr. Roesel is reported to have told one of his former employees, “the dumber and more broke, the better.” This attributed, unconscionable statement is among the many reasons I support today’s action and the significant financial penalty associated with it.

My thanks as always, to the staff of the Enforcement Bureau for your continuing efforts to stop illegal robocalls for good and for sending out a strong signal that these types of practices should be whacked.