IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

United Resource Systems, Inc.,

Plaintiff,

v.

Alan Wilson, in his official capacity as Attorney General of South Carolina,

Defendant.

CA No. 3:21-cv-00364-JFA

ORDER

I. INTRODUCTION

This matter is before the Court on pending cross-motions for summary judgment from both Defendant Attorney General Alan Wilson ("Wilson"), in his official capacity, (ECF No. 33) and Plaintiff United Resource Systems, Inc. ("United") (ECF No. 36). Plaintiff brings this suit seeking a declaration that S.C. Code Ann. § 37-21-50 (the "Anti-Spoofing Statute") is in conflict with, and thus preempted by the federal Truth in Caller ID Act" of 2009 (TCIA).[1] (ECF No.11). Additionally, Plaintiff contends that the Anti-Spoofing Statute is unconstitutional both on its face and as applied to Plaintiff. (ECF No. 11). Plaintiff seeks a permanent injunction preventing the enforcement of the provision.[2]

[1] 47 U.S.C. § 227(e).

[2] Plaintiff seeks redress through 42 U.S.C. § 1983 because the Civil Rights Act provides recourse to individuals who are being deprived of rights secured by federal law when violated by a state actor. Defendant, in his official capacity as Attorney General for South Carolina, is clothed with the power to enforce S.C. Code Ann. § 37-21-50. Thus, Plaintiff is seeking the appropriate remedy of an injunction through which the Anti-Spoofing Statute might be declared void.

Id. Defendant avers that the relevant sections of South Carolina Telephone Privacy Protection Act, S.C. Code Ann. §§ 37-21-10–100 ("SCTPPA") are not preempted by federal law and are otherwise constitutional. (ECF No. 33). Additionally, Defendant asserts that Plaintiff lacks standing to bring the suit and thus summary judgment should be granted. *Id.* The parties' cross-motions for summary judgment have been fully briefed and this Court heard oral arguments on the motions and took the matter under advisement. (ECF No. 44). Thus, this matter is ripe for review.

II. BACKGROUND

"Spoofing" involves deceiving a call recipient by misrepresenting an originating telephone number on the recipient's caller identification system ("caller ID") in order to mislead the recipient about who is calling. (ECF No. 36-1 at ¶¶ 4–9). This misrepresentation may be through number alteration that the recipient's caller ID receives or through blocking the caller's number so that the recipient is unable to determine who may be calling. (ECF Nos. 36-1 & 36-2). Both parties acknowledge that spoofing has both legitimate and illegitimate applications. (ECF Nos. 33 & 36).

In slight contrast to the manner of spoofing addressed above, Plaintiff calls customers utilizing "trunk lines" it lawfully purchases from its telecommunications provider. (*See* ECF Nos. 11 at ¶¶ 23-25 & 36-2 at ¶¶ 3-6).[3] Trunk lines are bundles of telephone numbers available for simultaneous use through one system of delivery. (*See* ECF No. 36-2 at ¶ 8). Plaintiff uses trunk lines with South Carolina area codes to make

[3] Plaintiff is a provider of debt collection services and is based out of Colorado. *See* United Resource Systems, *About Us*, https://www.uniteability.com/aboutus.php (last visited July 7, 2022).

interstate calls from Colorado to individuals with South Carolina area code phone numbers. (ECF Nos. 11 at ¶¶ 6, 25 & 36-2 at ¶¶ 4, 8). Employing the trunk lines, which use valid working telephone numbers assigned to Plaintiff, they select South Carolina area codes as the numbers that will populate on caller ID systems when calling recipients with South Carolina area code numbers. (ECF No. 36-2 at ¶¶ 5-6). Importantly, these South Carolina area code numbers are not the numbers from which the calls are initiated. *Id.* at ¶ 13.

In 2011, the Telephone Consumer Protection Act of 1991 (TCPA)[4] was amended by the TCIA. Notably, the TCIA provides

> [i]t shall be unlawful for any person within the United States, in connection with any telecommunications service or [Internet protocol]-enabled voice service, to cause any caller identification service to knowingly transmit misleading or inaccurate caller identification with the intent to defraud, cause harm, or wrongfully obtain anything of value.

47 U.S.C. § 227(e)(1). TCIA violators are subject to civil and criminal liability. *See Id*. at § 227(e)(5). Jointly, the TCIA and TCPA provide a private right of action, grant enforcement powers in both federal and state governments, grant intervenor rights to the Federal Communications Commission (FCC), and vest district courts with exclusive jurisdiction over claims alleging 47 U.S.C. § 227(e)(1) violations. *Id.* at § 227(e)(6), (g)(1)–(3).

The Anti-Spoofing Statute is contained within the SCTPPA and became effective when signed into law on May 18, 2018. In relevant part, the Anti-Spoofing Statute provides

> (A) [n]otwithstanding another provision of law, a person may not with the intent to defraud, harass, cause harm or wrongfully obtain anything of value, including, but not limited to, financial resources or personal identifying

[4] 47 U.S.C. § 227.

> information as defined in Section 16-13-510, make, place, or initiate a call or text message or engage in conduct that results in the display of misleading, false or inaccurate caller identification information on the receiving party's telephone or otherwise circumvent caller identification technology that allows the receiving party to identify from what phone number, location, or organization the call or text message has originated from or misrepresent the origin and nature of the call or text message. A person may not, with the intent described in this subsection:
>
> (1) display a South Carolina area code on the recipient's caller identification system unless the person making, placing, or initiating the call or text message maintains a physical presence in the State; or
>
> (2) display the receiving party's telephone number on the contacted party's caller identification system.

S.C. Code Ann. § 37-21-50 (2018). Those found to have violated the Anti-Spoofing Statute are subject to potential civil liability, where the call recipient can recover statutory damages between $1,000 and $5,000 for each violation. *Id.* at § 37-21-80(A) – (C).

III. PROCEDURAL HISTORY

Plaintiff filed the present action against Wilson in his official capacity as Attorney General of South Carolina, seeking a declaration that the "Anti-Spoofing Statute is preempted by federal law and is unconstitutional. (ECF No. 11). The amended complaint suggests that Plaintiff has engaged in actions which arguably violate the Anti-Spoofing Statute. *Id.* Plaintiff initiated this action after a putative civil class action was filed against it in South Carolina state court. *See id.* at ¶ 25. Defendant is not a party to that underlying state court action but does have the authority to independently investigate and enforce violations of the SCTPPA. *See* S.C. Code Ann. § 37-21-90. An enforcement action from Defendant is independent and supplemental to the private right of action. *Id.*

Defendant moves for summary judgment alleging Plaintiff lacks standing because they do not meet the required preeminent harm threshold. (ECF No. 33).[5]

Plaintiff brings this motion seeking a declaration that the Anti-Spoofing Statue is conflict preempted or is unconstitutional. (ECF No. 36). Specifically, Plaintiff contends that the Anti-Spoofing Statute is: (1) preempted by the TCIA; (2) in violation of the Commerce Clause; and (3) in violation of the First Amendment. *Id.*

Both motions have been fully briefed and the Court received oral argument on June 28, 2022. (ECF No. 39).

IV. LEGAL STANDARD

A. Summary Judgment

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party has the burden of proving that summary judgment is appropriate. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In considering a motion for summary judgment, "[a]ny reasonable inferences are to be drawn in favor of the nonmoving party." *S.C. Coastal Conservation League v. Pruitt*, 318 F. Supp. 3d 959, 962 (D.S.C. 2018). However, to defeat summary judgment, the nonmoving party must identify an error of law or a genuine issue of disputed fact. *Id.* A party opposing a properly supported motion for summary judgment must set forth specific facts showing that there is

[5] Previously, the Court denied Defendant's motion to dismiss the amended complaint for lack of jurisdiction based on substantially similar arguments. (ECF No. 23).

a genuine issue for trial. *Id.* at 963 (citing *Bouchat v. Balt. Ravens Football Club, Inc.*, 346 F. 3d 514, 522 (4th Cir. 2003)) (internal quotations omitted).

A party asserting that a fact is genuinely disputed must support the assertion by "citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations, (including those made for purposes of the motion only), admissions, interrogatory answers or other materials." Fed. R. Civ. P. 56(c)(1)(A). A litigant "cannot create a genuine issue of material fact through mere speculation or the building of one inference upon another." *Beale v. Hardy*, 769 F.2d 213, 214 (4th Cir. 1985). Therefore, "[m]ere unsupported speculation … is not enough to defeat a summary judgment motion." *Ennis v. Nat'l Ass'n of Bus. & Educ. Radio, Inc.*, 53 F.3d 55, 62 (4th Cir. 1995).

"[W]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, disposition by summary judgment is appropriate." *Teamsters Joint Council No. 83 v. Centra, Inc.*, 947 F.2d 115, 119 (4th Cir. 1996). "Summary judgment is proper only when it is clear that there is no dispute concerning either the facts of the controversy or the inferences to be drawn from those facts." *Pulliam Inv. Co. v. Cameo Props.*, 810 F.2d 1282, 1286 (4th Cir. 1987). The Court must determine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 251-52 (1986).

Pursuant to the cross-motions for summary judgment, there is no genuine dispute of material fact. The Court is only considering questions of law in this instance, which include

statutory construction. Additionally, constitutional questions should be avoided if there are independent "ground[s] upon which the case may be disposed." *Ashwander v. TVA*, 297 U.S. 288, 347 (1936).

B. Standing

Subject matter jurisdiction in the federal courts is limited to the adjudication of actual "cases" and "controversies" under Article III of the United States Constitution. *See* U.S. Const. art. III, § 2; *Deakins v. Monaghan*, 484 U.S. 193, 199 (1988) ("Article III of the Constitution limits federal courts to the adjudication of actual, ongoing controversies between litigants."); *Bryant v. Cheney*, 924 F.2d 525, 529 (4th Cir. 1991). Article III standing is comprised of three elements: (1) an injury in fact; (2) a causal connection between the injury and the conduct complained of; and (3) the injury must likely be redressed by a favorable decision. *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 561 (1992).

The Supreme Court has recognized a specialized form of standing for plaintiffs who are facing a potential injury through the imminent enforcement of an allegedly unconstitutional law but have yet to suffer actual injury in fact. *See Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 298 (1979) (Holding that plaintiffs who challenge a statute before an injury actually occurs "must demonstrate a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement. But one does not have to await the consummation of threatened injury to obtain preventive relief. If the injury is certainly impending, that is enough.") (cleaned up).

V. DISCUSSION

Defendant's motion for summary judgment largely rests on the notion that Plaintiff does not have standing to challenge the enforcement of the Anti-Spoofing Statute. (ECF No. 33). Meanwhile, at issue in Plaintiff's motion are: (1) whether the TCIA preempts the Anti-Spoofing Statute; (2) whether the Anti-Spoofing Statute violates the Commerce Clause; and (3) whether the Anti-Spoofing Statue violates the First Amendment. (ECF No. 36).

A. Standing

Defendant avers that Plaintiff does not possess Article III standing to challenge the Anti-Spoofing Statute because Plaintiff has not acted with the required "intent to defraud, harass, cause harm or wrongfully obtain anything of value." S.C. Code Ann. § 37-21-50. Therefore, Plaintiff does not have a legitimate concern over prosecution such that Plaintiff can establish pre-enforcement standing. (ECF No. 33).

For a party to have standing in the pre-enforcement context, a plaintiff must show that it has an intention to engage in a course of conduct arguably affected by a constitutional interest and proscribed by the challenged law. *Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 298 (1979). Accordingly, to show standing, "there must be a non-speculative claim of future injury, usually in the form of a credible threat that the challenged law will be enforced against the putative plaintiffs." *Abbot v. Pastides*, 900 F.3d 160, 168 (4th Cir. 2018).

Defendant contends that Plaintiff faces no possible prosecution because the calls they make are "to collect on legitimate outstanding debts" and therefore lack the necessary

intent. (ECF No. 33 at 3). Further, that Plaintiff's trunk line calling practices are exempted under the "established business relationship" provision in the Anti-Spoofing Statute. *Id.*; S.C. Code Ann. § 37-21-20 (2), (6).

Plaintiff states Defendant previously advanced the same argument when moving to dismiss the complaint for lack of jurisdiction. (ECF Nos. 15 & 36). However, although Defendant stated there was no risk of prosecution under the Anti-Spoofing Statute, Defendant would not "expressly disavow any intention to enforce the Anti-Spoofing Statute against Plaintiff." (ECF Nos. 23 at 8 & 36 at 5-6). Additionally, there is a purported class of consumers alleging Plaintiff did act with the intent equating to a violation of the Anti-Spoofing Statute. (*See* ECF No. 15-2 at ¶3).

In that case, the named plaintiff alleges that United repeatedly and unlawfully displayed an 843-area code (the same as the plaintiff) despite not maintaining a presence in South Carolina. *Id.* That plaintiff contends that United did intend to defraud the plaintiff as to the origin of the call and harassed the plaintiff by repeatedly calling seeking to "wrongfully obtain" value. *Id.* at ¶¶ 21-22.

In the instant action, Plaintiff argues that a calling party's subjective intent is not the decisive factor when determining whether the State or a private party may bring a suit for an alleged violation of the Anti-Spoofing Statute. (ECF No. 36). The Anti-Spoofing Statute allows for a civil action, not a criminal action, and only requires that a party bringing suit for an alleged violation prove the prohibited action by a preponderance of the evidence. *See* S.C. Code § 37-21-90. Additionally, neither the Anti-Spoofing Statute, nor the SCTPPA, designate what qualifies as "intent to harass." This is in contrast with the Fair

Debt Collection Practices Act[6], which also includes a prohibition on the intent to harass; however, courts have had ample time to interpret what constitutes harassment in that context.[7]

In this instance, the intent to harass is not so transparent. It may include the purpose of the call, the frequency of the calls, the time at which a call is made, and the manner in which the phone call is conducted. Regardless, a caller's stated subjective intent while using a spoofing mechanism (i.e., whether the purpose of the call is for a legitimate debt collection) is not dispositive on the issue.

Furthermore, an enforcement action from the Attorney General is independent from and can be supplemental to the private citizen right of action. *See* S.C. Code Ann. § 37-21-10–100. Plaintiff contends that a dismissal without prejudice under Defendant's theory that Plaintiff lacks standing would leave the Plaintiff without the ability to bring a lawsuit contesting the Anti-Spoofing Statute. (ECF Nos. 36 & 38). That argument rests on the notion that the Attorney General's office could bring a lawsuit at its leisure, while Plaintiff

[6] *See* 15 U.S.C. § 1692, *et seq.*

[7] *See Brown v. Credit Mgmt., LP*, 131 F.Supp.3d 1332, 1340 (N.D. Ga. 2015) ("[I]ntent to (annoy, abuse, or harass) may be inferred by evidence that the debt collector continued to call the debtor after the debtor had asked not to be called and had repeatedly refused to pay the alleged debt, or during a time of day which the debtor had informed the debt collector was inconvenient); *Bingham v. Collection Bureau, Inc.*, 505 F.Supp. 864, 873 (D. N.D. 1981) (finding harassment where a debtor hung up on the debt collector "after both parties were identified to each other" and the debt collector immediately called the debtor again); and *Kuhn v. Account Control Tech., Inc.*, 865 F.Supp. 1443, 1543 (D. Nev. 1994) (finding that the defendant harassed the plaintiff in violation of § 1692(d) when the collector defendant recalled the debtor plaintiff at the plaintiff's place of employment two times within a five minute period after the plaintiff had previously hung up on the defendant's representative).

would be barred from a pre-enforcement suit per 11th Amendment Sovereign Immunity. *Id.*

The second part of the standing argument requires the Court to consider statutory construction. Plaintiff argues that they do have a legitimate concern of liability based on their interpretation of the Anti-Spoofing Statute. (ECF No. 36). That argument hinges on the question of what "or" means in the context of the statute. Plaintiff's interpretation suggests that the "with the intent to defraud, harass, cause harm or wrongfully obtain anything of value…" language in the statute only modifies the phrase "make, place, or initiate a call or text message or engage in conduct that results in the display of misleading, false or inaccurate caller identification information on the receiving party's telephone", but not the phrase "otherwise circumvent caller identification technology that allows the receiving party to identity from what phone number, location, or organization the call … has originated." S.C. Code Ann. § 37-21-50. Because the verbs are not parallel, the intent modifier would only apply to the action resulting in the display of "misleading, false or inaccurate caller identification" and not to conduct "otherwise circumventing caller identification technology…" *Id.* In the first instance, the caller is purposely providing incorrect information; however, in the second instance, the caller may only be preventing the transfer of complete information, such as blocking a phone number from appearing on a recipient's caller ID.

Plaintiff contends this interpretation is applicable because the South Carolina legislature intended for the Anti-Spoofing Statute to be as expansive as possible. (ECF No. 36); *See* S.C. Code § 37-21-100 ("Nothing in this chapter must be construed to limit any

remedies, causes of action, or penalties available to a person or governmental agency under another federal or state law.") Additionally, this interpretation would make Plaintiff a possible target of liability through its trunk line operating method.

Defendant counters that the statute should be interpreted to apply the intent element to all proscribed conduct. (ECF No. 37). They reference, "where a statute is 'susceptible to two interpretations, one of which would render the statute unconstitutional, the courts are required to interpret the statute so as to avoid its unconstitutionality.'" *API v. Cooper*, 681 F. Supp. 2d 635, 650 (E.D.N.C. 2010) (citing *Planned Parenthood of Blue Ridge v. Camblos*, 155 F.3d 352, 383 (4th Cir. 1998)). Defendant concedes that if Plaintiff's interpretation is correct then the statute would prohibit caller ID blocking; however, they posit Plaintiff also agrees the statute has at least two interpretations that may be applicable. Thus, Defendant argues that their interpretation must be correct because it is the one in which the statute would be considered constitutional and is the most natural reading of the legislation.

Based on the rules of statutory interpretation explained in *API*, this Court will interpret the statute as Defendant proposes. That interpretation allows for the most natural reading and the stated intent applies to all the conduct mentioned in the text such that the statute remains facially constitutional. However, this is not dispositive of Plaintiff's claims for summary judgment.

Plaintiff still retains standing due to the threat of potential enforcement of the statute, the state court litigation based on the statute at issue, along with the Anti-Spoofing Statute's use of the word harassment enlarging the intent from the federal statute.

Furthermore, Plaintiff retains standing under a conflict preemption argument or through violation of the Commerce Clause because the Anti-Spoofing Statute impermissibly regulates entirely out-of-state telephone communications where Plaintiff could face liability through public or private action. Thus, Plaintiff has standing to seek declaratory judgment.

B. The Anti-Spoofing Statute is Preempted by the TCIA

Plaintiff brings forth the issue of whether it is entitled to summary judgment due to conflict preemption arising between the TCIA and the Anti-Spoofing statute. (ECF No. 36). The Supremacy Clause mandates that laws passed by the United States "shall be the supreme Law of the Land; … any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. State law is displaced by the federal law when (1) Congress intends expressly to do so; or (2) Congress intends implicitly to do so through a pervasive federal regulatory scheme, or the state law conflicts with the federal law or its purposes. *English v. Gen. Elec. Co.*, 496 U.S. 72, 78-79 (1990). Congress may preempt a state law through federal legislation, either through express language in a statute or implicitly through field preemption or conflict preemption. *City of Charleston v. A Fisherman's Best, Inc.*, 310 F.3d 155, 169 (4th Cir. 2002). Conflict preemption exists where compliance with both state and federal law is impossible, or where the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 377 (2015).

First, we must begin from the presumption that federal statutes do not supersede States' historic police powers, unless Congress clearly and manifestly intended to do so.

Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 231 (1947). The presumption applies with more force when Congress is legislating in a field traditionally occupied by state law. *Id.* Although interstate telecommunications is a field with a significant federal presence, the Anti-Spoofing Statute is more aptly considered in the consumer protection field and thus typically reserved to the states. *See Nixon v. Miss. Mun. League*, 541 U.S. 125, 131 (2004); *Castro v. Collecto, Inc.*, 634 F.3d 779, 784-85 (5th Cir. 2011)

In this instance, Congress did not expressly state its intent for the TCIA to preempt state law. Therefore, the TCIA does not expressly preempt the Anti-Spoofing Statute. However, Congress did exempt TCIA from TCPA's savings clause, "[n]otwithstanding any other provision of this section (§ 227), subsection (f) shall not apply to this subsection (§227(e)) or to the regulations under (§ 227(e))." 47 U.S.C. § 227(e)(9). Section 227(f) "Effect on State Law", contains TCPA's savings clause, where that portion states:

> [n]othing in (§ 227) or in the regulations prescribed under (§ 227) shall preempt any State law that imposes more restrictive intrastate requirements or regulations on, or which prohibits —
>
> (A) the use of telephone facsimile machines or other electronic devices to send unsolicited advertisements;
>
> (B) the use of automatic telephone dialing systems;
>
> (C) the use of artificial or prerecorded voice messages; or
>
> (D) the making of telephone solicitations.

47 U.S.C. § 227(f)(1). This part of the TCPA refers to general telemarketing practices. Although the aforementioned section of the statute states that "nothing… in the regulations prescribed shall preempt state law that imposes more restrictive intrastate requirements or

regulations…", the section does display a framework from which telemarketers might be provided a more uniform regulatory scheme. *See id.* The FCC theorized as such, under the rationale that telemarketers would not be subject to inconsistent regulations. *See* 18 F.C.C.R. 14014, 14064 (2003).

Thus, because the express preemption argument is inconclusive, the Court must conduct a preemption analysis through the scope of conflict preemption. Conflict preemption is the inference of preemption "if there is an actual conflict between state and federal law." *Altria Grp., Inc. v. Good*, 555 U.S. 70, 76-77 (2008). When a state law is an obstacle or impediment to the objectives a federal law seeks to accomplish, or when federal laws explicitly allow for an activity that is prohibited by the state law, then conflict preemption is the proper lens from which the analysis should be conducted. *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n.*, 461 U.S. 190, 204 (1983).

Defendant suggests that the Anti-Spoofing Statute purely regulates intrastate phone calls and is therefore in no way conflict preempted by the TCIA because it does not hamper the federal legislation's objectives. (ECF Nos. 33 & 37). In response and in contrast to Defendant's motion for summary judgment, Plaintiff alleges that the Anti-Spoofing Statute is broader in intent than the TCIA. (ECF Nos. 36 & 38). Plaintiff asserts that the TCIA intends to allow for companies to continue non-harmful spoofing practices. More specifically, "Congress elected to regulate what can be displayed on a telephone call recipient's caller ID, restricting a caller's ability to change the caller ID information when a call is made with certain intent." (ECF No. 36 at 13). They allege that the Anti-Spoofing Statute expands the intent element such that it now conflicts with the TCIA. *Id.* Based on

these competing assertions, the Court must uncover Congress' intent when passing the TCIA.

When considering legislative intent, the Court must first look to the text of the statute. *U.S. v. Sheek*, 990 F.2d 150, 152 (4th Cir. 1993). The court should not look beyond the language unless there is ambiguity or unless the statute as literally read would contravene ambiguously expressed legislative intent gleaned from the statute's legislative history. *Id.* at 152-53. Looking at the plain text of the statute, and given the analysis from the previously discussed unclear purpose and effect of TCIA's exemption from the TCPA's savings clause, the legislative history informs the inquiry. *Id.*

In a 2009 Senate report, Senator Rockefeller noted a few legitimate reasons that a caller might have when spoofing a recipient. *See* S. Rep. 111-96 (2009). [8] Thus, the federal statute largely addressed those who used spoofing with the intention to cause harm through fraud or criminal mischief. *Id.* Additionally, both chambers of Congress drafted a version of a bill that addressed spoofing. Notably, the draft originating out of the House of Representatives (H.R. 1258 (2009)) included language that made spoofing unlawful when done with the "intent to defraud or *deceive"* (emphasis added). Meanwhile, the Senate version contained the language prohibiting "the intent to defraud, cause harm, or wrongfully obtain anything of value." (S.30 2009). The Senate version passed the House

[8] Those legitimate reasons include for domestic-violence victims or for consumers who want to leave a return call number that is different from which they made the initial call.

without amendment and eventually became law, while the Senate did not pass the House version. *See* Pub. L. 111-331.

House members who passed the Senate version expressed their desire to protect non-harmful spoofing. *See* 156 Cong. Rec. H8378-01 (2010).[9] The FCC opined that Congress was intentional in its efforts to keep those beneficial measures that spoofing may provide and carefully balanced "the drawbacks of malicious caller ID spoofing against the benefits provided by legitimate caller ID spoofing." *See* 26 F.C.C.R. 9114, 9130 (2011). Congress could have increased TCIA's prohibited conduct by adopting the House's version of the drafted legislation or by changing the language of the proposed bill. However, because Congress did expressly provide for some of the limitations on spoofing and not on others, the legislation protects some forms of spoofing from more broad state regulations. *Continental Casualty Co. v. U.S.*, 314 U.S. 527, 533 (1942).[10]

The precise inquiry the Court must delve into is whether the Anti-Spoofing Statute upsets the regulatory choices that Congress made when it passed the TCIA. Plaintiff maintains that the Anti-Spoofing Statute usurps regulatory authority from the federal government and in contravention of the TCIA by regulating interstate telephone commerce. First, Plaintiff argues that the TCIA prohibits caller ID manipulation "with the intent to

[9] Representative Stearns stated: "We drafted … carefully to ensure that we only prohibit [spoofing] intending to do harm … [T]his bill protects those legitimate spoofing practices." Representative Engel went on to say: "[W]e don't want some legitimate reasons to use this technology to be outlawed. So it is only outlawed when the intent is to defraud, cause harm, or wrongfully obtain anything of value."

[10] "[A] legislative affirmative description (of certain powers) implies denial of the non-described powers." *Id.*

defraud, cause harm or wrongfully obtain anything of value…" 47 U.S.C. § 227(e)(1). Meanwhile, the Anti-Spoofing Statute repeats the same prohibition in addition to caller ID manipulation "with the intent to harass." S.C. Code Ann. § 37-51-50(a). Plaintiff suggests that the intent to harass only violates the TCIA when the caller who is spoofing does so with "the intent to defraud, cause harm or wrongfully obtain anything of value." Thus, the Anti-Spoofing Statute is in conflict with, and preempted by, the TCIA.

Defendant contests this notion, arguing that Congress expressly reserved the power of the states to regulate solicitation calls through each state's respective legislative measures. Defendant is entrenched in the notion that the legislation only applies to solicitation calls and not all general calls. Plaintiff counters that the Anti-Spoofing statute is not limited to solicitation calls. Plaintiff's interpretation suggests that the statute prohibits all callers from the listed actions in the text.

Second, Plaintiff points to the fact that the act inherently treats callers from states outside of South Carolina differently from those calling with a presence in the state. The TCIA is explicit in its language that the states retain additional oversight over governing "*only intrastate services* and *do not result* in the imposition of inconsistent rights, duties or obligations on the *provision of interstate services*." 47 U.S.C. § 227(f)(1) (emphasis added). The Anti-Spoofing Statute both explicitly and implicitly restricts interstate calls, because only calls that are made by those who do not maintain a presence in South Carolina are prohibited by the statute. One can only be in violation of South Carolina's Anti-Spoofing Statute if the caller uses a South Carolina area code without maintaining a

permanent presence in the state. Thus, the Anti-Spoofing Statute is inherently in conflict with the TCIA and cannot be reconciled with the federal statute.

Finally, Plaintiff argues that the Anti-Spoofing Statute impermissibly expands the intent element with the inclusion of the "intent to harass" portion of the legislation. In this assertion they highlight the uncertainty regarding what constitutes harassment when attempting to collect on legitimately owed debts. Plaintiff points out that there is no guidance on the number or frequency of calls from which a party similarly situated as Plaintiff would be warned on what constitutes the prohibited behavior.

Defendant counters that the Anti-Spoofing statute is cognizant of the legitimate reasons for spoofing. That argument also includes the notion that Congress made clear its intent to prevent calls made with the intent to harass, where the initiator of the call or the communication does not reveal the caller's identity. *See* 47 U.S.C. § 223(a)(1)(C). Further, Defendant contends that the statute is not concerned about where the call is initiated from, only that it impacts South Carolina callers. Thus, Defendant suggests that Plaintiff's argument—that the call inherently oversteps into the prohibited range of regulating interstate calls—is erroneous.

Defendant's argument misses the mark. First, the Anti-Spoofing Statute inherently impacts interstate communications that are explicitly addressed in the TCIA. The only way in which someone can violate the Anti-Spoofing Statute is by using a spoofing technique while making a call with a South Carolina area code number without maintaining a presence in the state. If a legitimate debt collector calls someone from a state outside of South Carolina using a misleading phone number, where a South Carolina area code

appears on the recipient's caller ID, then they could be deemed in violation of the Anti-Spoofing statute based on the subjective determination of whether the caller did so with "the intent to harass."

Second, it is impossible to determine where a call recipient is located in the current digital age. Phone numbers can now be transferred when the telephone number user moves from one state to another without necessitating a new area code. (*See* ECF No. 36-1 at ¶ 27). For example, a cell phone user with an Atlanta, Georgia, area code phone number can keep that same number if she moves to Columbia, SC. That cell phone user would no longer be in Georgia, yet she would still retain the same number. Thus, if Plaintiff called that user, they would be calling from Colorado using a trunk line with a Georgia area code to a Georgia number even though the recipient now resides in South Carolina. The legislation would no longer only impact intrastate telecommunications as Defendant suggests. Thus, this scenario involves interstate regulation that the TCIA specifically prohibits.

Additionally, the same premise would still be applicable if someone with a Columbia, South Carolina, area code was to move to Atlanta, Georgia. In either scenario, the legitimate debt collector is unable to determine whether they are calling someone in South Carolina. Therefore, the Anti-Spoofing Statute conflicts with the TCIA by impermissibly regulating interstate communications.

C. The Anti-Spoofing Statute is in Violation of the Commerce Clause

In addition to being conflict preempted by federal law, the Anti-Spoofing Statute is also in violation of the Commerce Clause. The Commerce Clause gives an affirmative grant of power to Congress "[t]o regulate Commerce … among the several States." U.S.

Const. art. I, § 8, cl. 3. This same notion also implies a negative aspect, or a dormant Commerce Clause, which limits the power of a state to impermissibly discriminate against interstate commerce. *Dep't of Rev. of K.Y. v. Davis*, 553 U.S. 328, 337-36 (2008).

There are three tests under which a dormant Commerce Clause analysis might be conducted. The first is if a statute facially discriminates toward interstate commerce. "When a state statute clearly discriminates against interstate commerce, it will be struck down unless the discrimination is demonstrably justified by a valid factor unrelated to economic protectionism. Indeed, when the state statute amounts to simple economic protectionism, a virtually *per se* rule of invalidity has applied." *Wyoming v. Oklahoma*, 502 U.S. 437, 454-55 (1992). Second, the undue burden or *Pike* balancing test, requires the Court to determine whether, "the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits." *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

Finally, the Supreme Court has held that "extraterritorial legislation…" where "a state law that has the 'practical effect' of regulating commerce occurring wholly outside that State's borders is invalid under the Commerce Clause." *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 332 (1989). This precludes the application of state statutes to commerce that takes place wholly outside of the State's borders, whether or not the commerce has effects within the state. *Id.* at 336. Additionally, "a statute that directly controls commerce wholly outside the boundaries of a State exceeds the inherent limits of the enacting State's

authority and is invalid regardless of whether the statute's extraterritorial reach was intended by the legislature." *Id.*[11]

Plaintiff avers that the Anti-Spoofing Statute has the impermissible impact of regulating commerce that occurs wholly outside of South Carolina. As mentioned in the prior analysis, based on technological advancements it is impossible to determine where phone calls are made to and from today. Due to the FCC's imposition of mobile number portability and the rise in call forwarding to different centers, it is impossible for a user or provider of caller ID spoofing services to know whether the recipient of the call is in South Carolina. (*See* ECF No. 36-1 at ¶¶ 27, 29).

Defendant contends that because Plaintiff uses trunk lines with South Carolina area codes to contact recipients with South Carolina area code phone numbers they are violating entirely intrastate communications. They offer a potential solution that Plaintiff could alleviate any potential liability by simply ceasing the practice of using South Carolina area codes when using the trunk lines to contact those with South Carolina area code numbers. However, the represented area code number is not the basis for location, but rather the geographic locations of the caller and recipient.

Plaintiff places all calls from Colorado, where they are then directed to all fifty states including South Carolina. Further, even if Plaintiff ceased using trunk lines for numbers

[11] Although there is some disagreement amongst the circuit courts regarding this third part of the dormant Commerce Clause test, the Fourth Circuit Court of Appeals has held, "another class of nondiscriminatory local regulations is invalidated without a balancing of local benefit against out-of-state burden, and that is where states actually attempt to regulate activities in other states." *Carolina Trucks & Equip., Inc. v. Volvo Trucks of N. Am., Inc.,* 492 F.3d 484, 489 (4th Cir. 2007).

with South Carolina area codes, they could still be in danger of violating the statute because a recipient may have moved to South Carolina yet kept a mobile phone number with an area code from a different state. The only way in which Plaintiff could completely ensure compliance would be to abandon the use of trunk lines completely. Therefore, despite any intention from the legislature, the Anti-Spoofing Statute effectively prohibits any manipulation of caller ID information on interstate calls. Accordingly, the Anti-Spoofing statute is in violation of the Commerce Clause via prohibited extraterritorial legislation because it may regulate commerce located entirely out of state.

VI. DECLARATORY JUDGMENT

Plaintiff asserts that the Anti-Spoofing Statute is invalid for the reasons explained. "[A]ny court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration." 28 U.S.C. § 2201(a). In order to obtain declaratory relief, there must be an actual controversy. *See Evers v. Dwyer*, 358 U.S. 202, 203 (1958).

Plaintiff argues in its motion for summary judgment that the Anti-Spoofing Statute conflicts with, and is preempted by, the TCIA, because it directly and indirectly regulates interstate commerce in contravention of the TCIA's text and stated objectives. (ECF No. 36); *See* 47 U.S.C. § 227(e). Additionally, and alternatively, that the Anti-Spoofing Statute should be declared void because it is unconstitutional based on the Commerce Clause and improperly infringing on the freedom of speech protections enumerated in the First Amendment and applied through the Fifth and Fourteenth Amendments. (ECF No. 36). Defendant has the power to enforce the Anti-Spoofing Statute; however, they claim that it

is a valid exercise of the State's authority. (ECF Nos. 33 & 37) Furthermore, that the there is no actual controversy because Defendant has not elected to enforce the statutory penalties at this time because Plaintiff has not acted with the requisite intent along with the prohibited conduct mentioned in the statute. *Id.*

As explained in the arguments above, Plaintiff is entitled to a declaratory judgment enjoining Defendant from enforcing the Anti-Spoofing Statute and the law should be declared as invalid. There is an actual controversy because Plaintiff is currently involved in litigation related to private enforcement of the statute. Thus, Defendant is enjoined from enforcing the Anti-Spoofing Statute.

VII. CONCLUSION

Based on the foregoing analysis, the Court finds that Plaintiff does have Constitutional standing to bring suit and that Defendant's motion for summary judgment (ECF No. 33) is denied. Furthermore, the Court finds that Plaintiff's motion for summary judgment (ECF No. 36) is granted because the Anti-Spoofing Statute is conflict preempted by the TCIA.[12] Even if the statute were not invalid due to conflict preemption, Plaintiff's motion would be granted because the Anti-Spoofing Statute is in violation of the Commerce Clause due to extraterritorial legislation.[13]

IT IS SO ORDERED.

Joseph F. Anderson, Jr.

July 13, 2022
Columbia, South Carolina

Joseph F. Anderson, Jr.
United States District Judge

[12] The Court commends the South Carolina General Assembly for attempting to create a statute that would benefit the citizens of the state from copious spamming phone call schemes; however, the Statute in question is too broad in its efforts. This Court is bound by its oath to faithfully apply the law (here, preemption and Commerce Clause law) as announced by the United States Supreme Court, regardless of the otherwise good intentions.

[13] The Court finds it unnecessary to address Plaintiff's First Amendment claim.