

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,) Application No. C-3728/
on its own motion, seeking to) PI-125
investigate consumer complaints)
concerning the receipt of) ORDER ISSUING FINDINGS AND
certain pre-recorded telephone) CLOSING DOCKET
messages in Nebraska.)
)
) Entered: June 5, 2007

BY THE COMMISSION:

O P I N I O N A N D F I N D I N G S

On December 5, 2006, the Commission opened this investigation on its own motion to investigate certain consumer complaints concerning the receipt of pre-recorded telephone messages. Jurisdiction over this subject matter is proper pursuant to the Automatic Dialing-Announcing Devices Act (Act)¹ and rules and regulations promulgated by the Nebraska Public Service Commission (Commission).² Notice of this docket appeared in the Daily Record, Omaha, on December 6, 2006.

The Commission received several consumer complaints reporting the receipt of certain pre-recorded messages purporting to be messages from candidates seeking office in the last election on November 7, 2006. According to the consumer complaints, several calls containing a pre-recorded message, called "robo calls," were received by consumers, in some instances several times a day, on November 7, 2006, and the days prior to the election. The calls reported included no identifying or contact information on the person or organization making the call.

A review of Commission records show no automatic dialing-announcing device registrations or permits with scripts corresponding with the messages received by the consumer complainants were filed with the Commission pursuant to statute and Commission rules and regulations.

In the course of the investigation, the Commission received information concerning three telephone numbers that were captured on caller Identification (ID) by one consumer complainant when they received pre-recorded automatic dialer calls at issue. All three captured numbers were different and were 800 prefix numbers. Subsequent investigation revealed that the numbers were registered to three different carriers.

¹ See Neb. Rev. Stat. § 86-236 et seq.

² 291 Neb. Admin. Code, Ch. 11.

On December 8, 2006, the Commission issued three subpoenas to the carrier's that were listed as issuing the captured 800 telephone numbers. Based on the response received to one of the subpoenas, a fourth subpoena was issued to another carrier on January 3, 2007.

The information received pursuant to the subpoenas showed that the three numbers captured were very likely not the numbers used by the automatic dialing-announcing device to place the calls. One number traced came back to a phone forwarding voicemail service that is not set up to make outgoing calls. Further, the number had been disconnected and the account closed for over six months prior to the election in November of 2006. Another number was assigned to a private 800 number share program that allows individuals with a pin number to place long distance calls to a shared number. Once again, that number is not set up to make outgoing calls, it just allows incoming calls to access the shared program and input pin numbers. The final number investigated was traced to a business line outside the State of Nebraska. Verification by the carrier showed that the calls did not originate from the business assigned the number.

One carrier assisted the Commission by searching for calls terminating during the time windows that the robo calls were received. The carrier traced back the calls received and terminated at the customer number with the caller ID in an attempt to isolate and trace the actual number that placed the auto dialer calls. The carrier was unable to isolate any number, making it unlikely the call originated or terminated on its network.

All three carriers surmise that some sort of caller ID manipulating technology was employed to enable the actual line used by the automatic dialing-announcing device to not display on the caller ID screen, but instead an inaccurate and incorrect number. The phrase caller ID "spoofing" has been coined to describe the manipulation technology that sends false number information to caller ID systems. We find that some sort of caller ID spoofing technology is the most likely explanation for the discrepancies in the numbers captured by the consumer complainants.

While the Commission was unable to identify the actual party or parties responsible for placing the robo calls, it is clear that no script for such messages was filed with the Commission. We therefore conclude that most likely these calls were placed in violation of the Automatic Dialing-Announcing Device Act and Commission Rules and Regulations. However, the

use of caller ID spoofing technology makes it practically impossible to trace the originating numbers from which the robo calls were placed or find those responsible for connecting and sending the auto dialer calls. The use of such technology effectively allows individuals or groups to circumvent the laws of the State of Nebraska with impunity. The Commission therefore finds that in light of the our findings, all investigative avenues available at this time have been explored and further investigation into this matter at this time would most likely prove to be unproductive.

The Commission further notes, that the misuse of caller ID spoofing technology has not gone unnoticed on a national level. Legislation was introduced in both the U.S. House of Representatives and the U.S. Senate during the 110th Congressional Session prohibiting the use of any device that transmits misleading or inaccurate caller ID information. Both the House and Senate version of the legislation contain very narrow exceptions for certain cases, but almost completely ban the use of such technology. Both bills are currently in Committee.

The Commission finds that legislation similar to the legislation currently pending in the U.S. Congress would be beneficial to the State of Nebraska. To that end, the Commission urges the Nebraska Congressional delegation to support the legislation prohibiting the use of caller ID spoofing technology currently pending in the U.S. Congress, or similar bills that may be introduced at a later date. Further, the Commission supports possible legislation of a similar nature at the state level.

The Commission finds that the investigation in Docket No. C-3728/PI-125 should be closed.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the public investigation in the above-captioned docket, be and is hereby, closed.

MADE AND ENTERED at Lincoln, Nebraska, this 5th day of June, 2007.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director