Senate Bill Requires Disclosure of Offshore Customer Service Location

Sen. Charles Schumer (D-N.Y.) introduced a bill that would require customer service agents located outside of the United States and working on behalf of entities conducting business in the United States to reveal their physical location to U.S.-based customers at the beginning of any electronic communication initiated or received by them.

The Notification of Origin of Telecommunications and Internet Consumer Exchange (NOTICE) Act (S.1536), introduced on September 9, 2011, and co-sponsored by Sens. Bob Casey (D-Penn.) and Claudia McCaskill (D-Mo.), states that a "business entity that either initiates or receives a customer service communication shall require that each of its employees or agents participating in the communication disclose their physical location at the beginning of each customer service communication so initiated or received." The bill defines "business entity" to include any entity established to make a profit by "purposefully availing itself of the privilege of conducting commerce [as defined by the Consumer Product Safety Act] in the United States," and "customer service communication" is broadly defined to encompass telephone calls and other electronic communications between a consumer and a business entity "in furtherance of commerce."

The bill contains several exemptions, the key one being that the Act would not apply to any customer service communication if all of the business entity's employees or agents involved in the communication are physically located in the United States. In other words, the bill is directed squarely at U.S. businesses that have offshored their customer contact/call centers (whether the offshoring was facilitated through an outsourcing, captive or other arrangement).

The bill would also place enforcement responsibility in the hands of the Federal Trade Commission, as a business entity's failure to comply with the bill's requirements is deemed to violate the Federal Trade Commission Act regarding unfair or deceptive acts or practices. Any failure to comply would allow the FTC to issue a cease and desist order that, if violated, could subject the business entity to civil penalties (up to $10,000 per violation) and injunctions. As a self-policing mechanism, the bill would require that a business entity engaging in customer service communication certify to the FTC (on an annual basis) whether it has complied with the requirements in the Act.

This bill is a reintroduction of the NOTICE Act of 2010, which Schumer sponsored, along with Sens. Kirstin Gillibrand (D-N.Y.), Russ Feingold (D-Wis.) and Barbara Boxer (D-Calif.), but which never became law. In a statement last year, Schumer also proposed legislation that would not only require employees of offshore call centers to disclose their location, but would have imposed a 25-cent per-call tax on all customer service calls transferred outside of the U.S. The per-call tax was not a part of either the 2010 or 2011 version of the NOTICE Act.

This legislation is not the only legal challenge being aimed at companies that offshore their customer contact/call center functions. As we reported in a previous alert, last month a consumer class action lawsuit was filed against

Bank of America challenging the financial industry's practice of transferring customer service calls to offshore call centers staffed with foreign nationals, alleging that doing so put the privacy of customers' financial information at risk – not from hackers and thieves, but from surveillance by the U.S. government.

If you have any questions or wish to discuss the information in this alert, please contact Steve Semerdjian at ssemerdjian@loeb.com or 212.407.4218.

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