

Legal and Regulatory Considerations for Robocalling Activities

Individuals and/or companies engaged in any aspect of telemarketing or robocalling activities are subject to a host of highly detailed and complex federal and state laws and regulations governing such activities. Federal regulation of these activities is generally overseen by both the Federal Communications Commission (FCC) and the Federal Trade Commission (FTC). Each of these agencies maintain and enforce detailed rules on telemarketing and robocalling activities.

Parties engaged in these activities could also be subject to increasing federal enforcement actions by the FCC, the FTC, as well as the Department of Justice (DOJ). ***Federal and state enforcement authorities have held voice providers accountable for illegal robocalling and telemarketing activities enable through their networks in some circumstances, including when they originate, or otherwise have “assisted and facilitated” in the generation of, such calls.*** Federal enforcement actions have ranged from citations and fines to business shutdowns and – in some instances – imprisonment.

The following summary is provided as a general overview of relevant laws and associated enforcement actions. This information does *not* constitute legal advice, is not exhaustive and does not include state-specific rules. Individuals and/or companies engaged in any aspect of robocalling activities, therefore are strongly advised to consult with an attorney who is well versed in the many complexities and nuances associated with these laws and regulations.

Authority for Network-Blocking of Bad-Actor Voice Providers

- Authorizes Network-Blocking of Bad-Actor Voice Providers
- Examples of Threatened Network Blocking of Bad-Actor Voice Providers

Telephone Consumer Protection Act (TCPA)

- Overview of TCPA
- Key TCPA Requirements
- Examples of FCC Enforcement Actions Under TCPA

Truth in Caller ID Act

- Overview of Truth in Caller ID Act
- Key Truth in Caller ID Requirements
- Examples of FCC Enforcement Actions Under Truth in Caller ID Act

The Telemarketing Sales Rule (TSR)

- Overview of TSR
- Key TSR Requirements
- Examples of FTC Enforcement Actions Under TSR

Wire Fraud Statute

- Overview of Wire Fraud Statute

- Examples of DOJ *Criminal* Enforcement Actions Under the Wire Fraud Statute
- Examples of DOJ *Civil* Enforcement Actions Under the Wire Fraud Statute
- Examples of FCC *Civil* Enforcement Actions Under the Wire Fraud Statute

State AG Guidance to Voice Service Providers, Including VoIP Providers

Authority for Network-Blocking of Bad-Actor Voice Providers

Relevant Citations: 47 CFR § 64.1200(k)(4)

Regulated and Enforced by: FCC, Downstream Voice Providers

In July 2020, the [FCC clarified](#) that voice service providers may block calls from certain bad-actor upstream voice service providers and established a safe harbor from liability for such blocking. The FCC concluded that the safe harbor would incentivize upstream voice service providers to better police their networks by raising the cost of passing along bad traffic. A voice service provider may block calls from an upstream voice service provider that, when notified that it is carrying bad traffic by the FCC, fails to effectively mitigate such traffic or fails to implement effective measures to prevent new and renewing customers from using its network to originate illegal calls. The notification from the FCC will be based on information obtained through traceback, likely in coordination with the Industry Traceback Group as the official Registered Traceback Consortium.

Examples of Threatened Network Blocking of Bad-Actor Voice Providers

- [April 3, 2020, Letter from FCC and FTC, to Connexum](#). The joint letters advised the company that, if after 48 hours of receipt of the letter, the company continued to route or transmit harmful robocall traffic, the FCC would authorize other U.S. voice providers to block all calls from Connexum. The company was also advised that the FCC would “take any other steps as needed to prevent further transmission of unlawful calls from Connexum, and [would] evaluate whether further action is appropriate in connection with your activity.”
- [May 20, 2020, Letter from FCC and FTC, to PTGi International Carriers Services, Inc.](#) The joint letters advised the company that, if after 48 hours of receipt of the letter, the company continued to route or transmit harmful robocall traffic, the FCC would authorize other U.S. voice providers to block all calls from PTGi. The company was also advised that the FCC would “take any other steps as needed to prevent further transmission of unlawful calls from PTGi, and [would] evaluate whether further action is appropriate in connection with your activity.”

Telephone Consumer Protection Act of 1991 (TCPA)

Relevant Citations: 47 USC § 227; 47 CFR § 64.1200

Regulated and Enforced by: FCC, Private Lawsuits

In an effort to address a growing number of telephone marketing calls, Congress enacted the Telephone Consumer Protection Act (TCPA) in 1991. The TCPA restricts the use of automatic telephone dialing systems (*i.e.*, “autodialers”) and artificial or prerecorded voice messages in the making of telephone calls. In 1992, the FCC adopted rules to implement the TCPA, including the requirement that entities making telephone solicitations institute procedures for maintaining company-specific do-not-call lists.

In 2003, the FCC revised its TCPA rules to establish, in coordination with the Federal Trade Commission (FTC), a [national Do-Not-Call registry](#). The national registry is nationwide in scope,

covers all telemarketers (with the exception of certain nonprofit organizations), and applies to both interstate and intrastate calls. The registry went into effect on October 1, 2003, and is administered by the FTC. The FCC's website includes [additional information and guidance](#) on its regulation and enforcement of the TCPA.

Key TCPA Requirements

- **47 USC 227(b); 47 CFR § 64.1200(a). Restrictions on Use of Automated Telephone Equipment.**
 - Without prior express consent or in the case of an emergency, no person or entity may initiate a telephone call using an autodialer or an artificial or prerecorded voice:
 - To any emergency telephone line, including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency. *See* 47 USC § 227(1)(A)(i); 47 CFR § 64.1200(a)(1)(i).
 - To any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call. *See* 47 USC § 227(1)(A)(iii); 47 CFR § 64.1200(a)(1)(iii).
 - Without prior express *written* consent, no person or entity may initiate a telephone call to any residential line using an artificial or prerecorded voice to deliver a message, unless the call meets one of five conditions (*e.g.*, is made for emergency purposes, is not made for commercial purposes). *See* 47 CFR § 64.1200(a)(3).
 - No person or entity may disconnect an unanswered telemarketing call prior to at least 15 seconds or four (4) rings. *See* 47 CFR § 64.1200(a)(6).
- **47 CFR § 64.1200(b). Prerecorded Message Requirements.** All artificial or prerecorded voice telephone messages must:
 - At the beginning of the message, state clearly the identity of the business, individual, or other entity that is responsible for initiating the call. If a business is responsible for initiating the call, the name under which the entity is registered to conduct business with the State Corporation Commission (or comparable regulatory authority) must be stated. *See* 47 CFR § 64.1200(b)(1).
 - During or after the message, state clearly the telephone number (other than that of the autodialer or prerecorded message player that placed the call) of such business, other entity, or individual. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges. *See* 47 CFR § 64.1200(b)(2).
 - If they include or introduce an advertisement or constitute telemarketing to a residential or cellular line, provide an automated, interactive opt-out mechanism. When the message is left on an answering machine or a voice mail service, it must include a toll free number that enables the called person to call back and connect directly to the automated, interacted opt-out mechanism. *See* 47 CFR § 64.1200(b)(3).

- **47 CFR § 64.1200(c). Further Restrictions on Telephone Solicitations.** No person or entity may initiate a telephone solicitation to:
 - Any residential telephone subscriber before the hour of 8 a.m. or after 9 p.m. (local time at the called party's location). *See* 47 CFR § 64.1200(c)(1).
 - A residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the Federal Government, unless certain conditions are met. *See* 47 CFR § 64.1200(c)(2).

Examples of FCC Enforcement Actions Under TCPA

- [*Kenneth Moser dba Marketing Support Systems*](#). The FCC's Enforcement Bureau issued a [citation](#) to Kenneth Moser after concluding that he sent more than 11,000 prerecorded voice messages to wireless phones, without consent, in violation of the TCPA. The Enforcement Bureau found that Moser also violated the TCPA's requirement that prerecorded messages include the phone number and identity of the entity responsible for initiating the call. The citation accompanied a [Notice of Apparent Liability](#) proposing a \$10 million fine against Moser for actions related to the calls.
- [*Call-Em-All, LLC*](#). The FCC's Enforcement Bureau issued a [citation](#) to Call-Em-All, LLC for violating the TCPA's rules that prohibit making calls to cell phones using autodialers or artificial or prerecorded messages absent an emergency purpose or prior express consent. The citation noted that if the company failed to comply with the TCPA, it could be liable for significant penalties, including fines of up to \$16,000 per call.
- [*Yakim Jordan a/k/a Manasseh Jordan, et. al.*](#) The FCC's Enforcement Bureau issued a [citation](#) to Yakim Jordan (a/k/a Manasseh Jordan and Manasseh Jordan Ministries) for violating the TCPA's rules that prohibit making calls to cell phones using autodialers or artificial or prerecorded messages absent an emergency purpose or prior express consent.

Truth in Caller ID Act of 2009

Relevant Citations: 47 USC § 227(e); 47 CFR §§ 64.1600, 64.1604

Regulated and Enforced by: FCC

In order to address the growing problem of caller ID spoofing done for fraudulent or harmful purposes, Congress enacted the Truth in Caller ID Act in 2009. The Act makes it "unlawful for any person within the United States, in connection with any telecommunications service or IP-enabled voice service, to cause any caller identification service to knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value."

Under the Truth in Caller ID Act, FCC rules prohibit anyone from transmitting misleading or inaccurate caller ID information with the intent to defraud, cause harm or wrongfully obtain anything of value. Anyone who is illegally spoofing can face penalties of up to \$10,000 for each violation. Although there are legitimate, legal uses for spoofing, the FCC has aggressively

enforced the Truth in Caller ID Act on many occasions. In fact, the FCC's largest fine in its history was based on violations of the Truth in Caller ID Act. The FCC's website includes [additional information and guidance](#) on its regulation and enforcement of the Truth in Caller ID Act.

Examples of Truth in Caller ID Requirements.

- **47 CFR § 64.1604(a). Prohibition on Transmission of Inaccurate or Misleading Caller ID Information.** No person or entity in the United States, nor any person or entity outside the United States if the recipient is within the United States, may with the intent to defraud, cause harm, or wrongfully obtain anything of value, knowingly cause, directly, or indirectly, any caller identification service to transmit or display misleading or inaccurate caller identification information in connection with any voice service or text messaging service.
- **47 CFR § 64.1601(a). Caller ID Required.** Any person or entity that engages in telemarketing must transmit caller identification information.

Sampling of FCC Enforcement Actions Under the Truth in Caller ID Act

- [John C. Spiller; Jakob A. Mears; Rising Eagle Capital Group, LLC, et al.](#) The FCC [proposed a \\$225 million fine](#) against Texas-based health insurance telemarketers for allegedly making approximately 1 billion illegally spoofed robocalls in apparent violation of the Truth in Caller ID Act. This is the largest proposed fine in the FCC's 86-year history. Rising Eagle allegedly made approximately 1 billion spoofed robocalls across the country during the first four-and-a-half months of 2019 on behalf of clients that sell short-term, limited-duration health insurance plans. Mr. Spiller admitted that he knowingly called consumers on the FTC's Do Not Call list as he believed that it was more profitable to target these consumers. He also admitted that he made millions of calls per day, and that he was using spoofed numbers.
- [Adrian Abramovich, Marketing Strategy Leaders, Inc. et. al.](#) The FCC [fined Adrian Abramovich \\$120 million](#) for malicious spoofing that was part of a massive robocalling operation aimed at selling timeshares and other travel packages. The caller ID spoofing operation made almost 100 million spoofed robocalls over three months, in violation of the Truth in Caller ID Act.
- [Philip Roesel, dba Wilmington Insurance Quotes, et. al.](#) The FCC fined telemarketer Philip Roesel and his companies more than \$82 million for illegal caller ID spoofing. Using spoofed caller ID information, Roesel made more than 21 million robocalls to market health insurance, and to generate leads for such sales, in violation of the Truth in Caller ID Act.

The Telemarketing Sales Rule (TSR)

Relevant Citations: 15 U.S.C. §§ 6101-6108; 15 U.S.C. §§ 6151-6155; 16 CFR § 310

Regulated and Enforced by: FTC

The FTC's Telemarketing Sales Rule (TSR) has been in effect since December 31, 1995. The underlying statutory authority for the TSR is the Telemarketing and Consumer Fraud and Abuse

Prevention Act (TCFPA), which gave the FTC and state attorneys general law enforcement tools to combat telemarketing fraud.

Companies violating the TSR could be subject to fines of up to \$11,000 per violation. The FTC defines telemarketing as any “plan, program, or campaign . . . to induce the purchase of goods or services or a charitable contribution” involving more than one interstate telephone call. With some important exceptions, any businesses or individuals that take part in “telemarketing” must comply with the TSR. This is true whether, as “telemarketers,” they initiate or receive phone calls to or from consumers, or as “sellers,” they provide, offer to provide, or arrange to provide goods or services to consumers in exchange for payment.

The FTC also has focused on Voice over Internet Protocol (VoIP) providers. Specifically, the FTC has sent [letters](#) to VoIP service providers warning them that “assisting and facilitating” illegal telemarketing or robocalls could constitute a violation of the TSR and noting that the FTC successfully sued a VoIP service provider for TSR violations.

The do not call provisions of the TSR cover any plan, program or campaign to sell goods or services through interstate phone calls. This includes calls by telemarketers who solicit consumers, often on behalf of third-party sellers. It also includes sellers who provide, offer to provide, or arrange to provide goods or services to consumers in return for some type of payment as part of a telemarketing transaction.

The TSR requires telemarketers to make specific disclosures of material information; prohibits misrepresentations; sets limits on the times telemarketers may call consumers; prohibits calls to a consumer who has asked not to be called again; and sets payment restrictions for the sale of certain goods and services.

The FTC’s website includes [additional information and guidance](#) on its regulation and enforcement of the TSR.

Examples of TSR Regulations.

- **16 CFR § 310.3. Deceptive Telemarketing Acts or Practices.** Sellers and telemarketers are prohibited from:
 - Failing to disclose the total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer. 16 CFR § 310.3(a)(1)(i).
 - Failing to disclose all material costs or conditions to receive or redeem a prize that is the subject of the prize promotion. 16 CFR § 310.3(a)(1)(v).
- **16 CFR § 310.4. Abusive Telemarketing Acts or Practices.** Sellers and Telemarketers are prohibited from:
 - Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number. 16 CFR § 310.4(b)(1)(i).

- Initiating any outbound telephone call to a person when that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered or made on behalf of the charitable organization for which a charitable contribution is being solicited. 16 CFR § 310.4(b)(1)(iii)(A).
- Abandoning any outbound telephone call. An outbound telephone call is “abandoned” under this section if a person answers it and the telemarketer does not connect the call to a sales representative within two (2) seconds of the person's completed greeting. 16 CFR § 310.4(b)(1)(iv).

Sampling of FTC Enforcement Actions Under the TSR

- [FTC v. Educare Centre Services; Globex Telecom, Inc.](#) The FTC and Ohio Attorney General [entered into a \\$2.1 million settlement](#) with VoIP service provider Globex and its associates, settling allegations that Globex provided a company called Educare with the means to deliver illegal robocalls pitching bogus credit card interest rate reduction services to consumers. The FTC and Ohio Attorney General argued that Globex assisted and facilitated Educare’s underlying scheme, in violation of the TSR and Ohio law. The settlement was the FTC’s first consumer protection case against a VoIP provider.
- [FTC v. James Christiano](#). In June 2018, the FTC [filed a complaint](#) seeking to stop two related operations and their principals who facilitated billions of illegal robocalls to consumers nationwide, pitching everything from auto warranties to home security systems and supposed debt-relief services. According to the complaint, James “Jamie” Christiano and the companies he controls operated “TelWeb,” a computer-based telephone dialing platform that can be used to blast out a large volume of telephone calls—especially robocalls—in a short time. The FTC alleged that, through TelWeb, Jones’s operation bombarded consumers with more than one billion illegal robocalls annually. The FTC charges were [settled with a \\$1.35 million judgment](#).
- [FTC vs. Aaron Michael Jones](#). The FTC’s [complaint](#) charged nine individuals and 10 corporate entities with operating robocalling enterprises allegedly controlled by Mike Jones. According to the FTC’s complaint, between at least March 2009 and May 2016, the defendants made or helped to make billions of robocalls, many of which sold extended auto warranties, search engine optimization services, and home security systems, or generated leads for companies selling those goods and services. Many of those calls were to numbers on the FTC’s DNC Registry. A court [approved a \\$2.7 million penalty](#) against Jones.
- [FTC v. Pointbreak Media, LLC](#). In May 2018, the FTC [alleged](#) that this Florida-based scheme deceived small business owners by falsely claiming to represent Google, falsely threatening businesses with removal from Google search results, falsely claiming that they could associate keywords with these businesses, and falsely promising first-place or first-page placement in Google search results. The defendants ultimately [had to pay over \\$3.3 million](#).

The Wire Fraud Statute

Relevant Citations: 18 USC §§ 1343, 1349; 47 U.S.C § 503(b)(1)(D)

Enforced by: DOJ and FCC

Under [Section 1343](#) of Title 18, Crimes and Criminal Procedure of the U.S. Code, there are two elements to a wire fraud violation: (1) a scheme to defraud, and (2) the use of an interstate wire or radio communication to further the scheme. The statute addresses fraudulent conduct that may also come within the reach of other federal criminal and/or civil statutes and includes both civil and criminal provisions. In the criminal context, crimes are punishable by imprisonment for not more than 20 years; for not more than 30 years, if the victim is a financial institution or the offense is committed in the context of major disaster or emergency. The DOJ's [Criminal Resource Manual](#) details the [elements of wire fraud](#).

Section 503(b)(1)(D) of the Communications Act also allows the FCC to pursue a forfeiture penalty against any person who has violated the federal wire fraud statute.

Examples of DOJ *Criminal* Enforcement Actions Under the Wire Fraud Statute.

- [United States v. Andrew Smith, et. al.](#) The DOJ [secured convictions](#) against two individuals who were [sentenced to 25 and 20 years in prison](#) for their roles in a \$10 million telemarketing scheme that defrauded primarily elderly victims in the United States from call centers in Costa Rica. Andrew Smith and Christopher Lee Griffin were convicted of one count of conspiracy to commit wire fraud, eight counts of wire fraud, one count of conspiracy to commit money laundering and seven counts of international money laundering. The court also ordered Smith to pay \$10,222,838.76 in restitution to be paid jointly and severally with his co-conspirators and forfeit \$406,324.96. Griffin was ordered to pay \$9,612,590.39 in restitution to be paid jointly and severally with his co-conspirators and forfeit \$182,439.
- [United States v. HGlobal, Sunny M. Joshi, et. al.](#) The DOJ secured convictions against twenty-one members of a massive India-based fraud and money laundering conspiracy that defrauded thousands of U.S. residents of hundreds of millions of dollars. Among the many charges were conspiracy to commit wire fraud, and the criminals were eventually [sentenced to terms of imprisonment up to 20 years](#). The original [indictment](#) charged a total of 61 individuals and entities for their alleged involvement in the scheme.

Examples of DOJ *Civil* Enforcement Actions Against VoIP Providers Under the Wire Fraud Statute.

- [United States v. Nicholas Palumbo, TollFreeDeals, et. al.](#) The DOJ alleged that VoIP provider TollFreeDeals was warned numerous times that it was carrying fraudulent robocalls and yet continued to do so. Numerous foreign-based criminal organizations were alleged to have used the defendants' VoIP carrier services to pass fraudulent government- and business-imposter fraud robocalls to American victims. The [complaint](#) specifically charged the defendants with wire fraud, and alleged that the company served as a "gateway carrier," making it the entry point for foreign-initiated calls into the U.S. telecommunications system. In securing [a preliminary injunction](#), the court agreed with DOJ "that 'multiple individual victims in the United States suffered

significant fraud losses,' and that '[e]very day that the defendants' actions in this vein continue, the public is at risk of harm in the form of additional high-dollar fraud losses.'"

- [United States v. Jon Kahem, Global Voicecom, Inc., et. al.](#) In a similar [complaint](#) against a different VoIP provider, the DOJ eventually secured a consent decree that [permanently barred the defendants](#) from, among other things, using the U.S. telephone system to: deliver prerecorded messages through automatic means, carry calls to the United States from foreign locations, and provide calling and toll-free services for calls originating in the United States. In addition, the defendants were permanently barred from serving as employees, agents, or consultants to any person or entity engaged in these activities.

Examples of FCC Civil Enforcement Actions Under the Wire Fraud Statute.

- [Adrian Abramovich, Marketing Strategy Leaders, Inc. et. al.](#) In addition, to [fining Adrian Abramovich \\$120 million](#) for malicious spoofing that was part of a massive robocalling operation, the FCC also determined that he violated the wire fraud statute. In determining the total fine, the FCC took into account that Abramovich's violation of the wire fraud statute demonstrated the "egregiousness of [his] violations, the consumers he harmed, and the scale and scope of his illegal activities."

State AG Guidance to Voice Service Providers, Including VoIP Providers

In August of 2019, 51 attorneys general and 12 telecommunications providers agreed to certain principles to fight illegal robocalls. The purpose of this effort was to help protect phone users from illegal robocalls and to make it easier for attorneys general to investigate and prosecute violators.

The principles address the robocall problem in two main ways: prevention and enforcement. For voice service providers, including VoIP providers, the principles recommend that such companies:

- Monitor their networks for robocall traffic;
- Know who their customers are so bad actors can be identified and investigated;
- Investigate and take action against suspicious callers – including notifying law enforcement and state attorneys general;
- Work with law enforcement, including state attorneys general, to trace the origins of illegal robocalls; and
- Require telephone companies with which they contract to cooperate in traceback investigations.

A copy of the principles can be accessed [here](#).