

FCC's Acting Chairwoman Rosenworcel to Continue the Agency's Anti-Robocall Work

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Privacy In Focus®

During the March Open Meeting, Federal Communications Commission (FCC) Acting Chairwoman Jessica Rosenworcel announced her first set of anti-robocall actions to kick off efforts to combat unwanted robocalls. The FCC's actions included issuing the largest fine in the agency's history for illegal robocall violations, sending six cease-and-desist letters to foreign and domestic voice providers demanding that they stop facilitating illegal robocalls, launching a Robocall Response Team, and delivering letters to the Federal Trade Commission (FTC), the U.S. Department of Justice (DOJ), and the National Association of State Attorneys General (NAAG) to renew state and federal partnerships to combat the proliferation of illegal robocalls. Collectively, the actions demonstrate that Acting Chairwoman Rosenworcel intends to continue to prioritize the FCC's efforts to aggressively pursue enforcement actions intended to stem the tide of illegal and unwanted robocalls.

FCC Issues \$225 Million Fine – Largest in Agency's History – Against Robocall Telemarketers

In its Forfeiture Order, the FCC fined Texas-based telemarketers \$225 million – the largest fine in the FCC's 87-year history – for transmitting approximately 1 billion robocalls, many of them illegally spoofed, to sell short-term, limited-duration health insurance plans. The robocalls falsely claimed to offer health insurance plans from well-known health insurance companies. John C. Spiller and Jakob A. Mears, who used business names including Rising Eagle and JSquared Telecom (collectively the "Parties"), transmitted the spoofed robocalls across the country during the first four-and-a-half months of 2019.

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The fine against the Parties was for willful and repeated violation of Section 227(e) of the Communications Act, and Section 64.1604 of the Commission's rules, which prohibits spoofing caller ID information with the intent to defraud, cause harm, and wrongfully obtain something of value. The FCC arrived at the \$225 million fine by applying a base forfeiture of \$1,000 to each of the 150,000 verified spoofed robocalls, and then imposing an upward adjustment of \$75,000,000 to reflect the "egregiousness of the harm associated with the illegal spoofed robocalls."

The FCC concluded that the Parties unlawfully spoofed robocalls with the intent to defraud, cause harm, and wrongfully obtain something of value. While acknowledging that "direct evidence of specific intent is rarely available," the FCC concluded that the Parties were "active participants in the robocalls." In reaching its conclusion that the Parties intended to defraud call recipients, the FCC noted that they falsely represented that the called party was receiving an offer to purchase health insurance from well-known health insurance companies. The FCC noted that "referring to name-brand companies can be critical to inducing consumers to respond to the robocall and listen to a sales pitch."

The FCC also concluded that the Parties intended to harm consumers, health insurance companies, and subscribers of spoofed numbers, and to also harm numbering resources and voice service providers. With respect to consumers, the FCC noted that that harm was intended based on violations of the Telephone Consumer Protection Act (TCPA), to include placing calls without prior express consent and failing to include the required identification disclosures for prerecorded voice message calls. For example, the FCC emphasized that the Parties knew they were potentially calling numbers on the National Do Not Call Registry since they "intentionally disabled [their] ability to identify numbers listed on the registry."

With respect to the brand name health care companies referenced in the calls, the FCC concluded that it was "substantially certain that mentioning the names of the insurance companies when [the Parties] had no connection to them would cause significant reputational harm to the companies." The FCC noted that the Parties "invoked the names of well-known brands to entice consumers to listen to sales pitches," and that one of the insurance companies "later became the subject of litigation."

In the instance of harm to subscribers of spoofed numbers, the FCC concluded that it was "substantially certain that [the Parties'] unauthorized use of spoofed numbers as part of a massive robocalling campaign would result in unwanted attention to those numbers." As an example, the agency noted that the Parties spoofed numbers belonging to one legitimate company 9,861,464 times, and that the "resulting call-backs from angry consumers overwhelmed Genworth's telephone network, making it unusable for some employees."

Finally, the FCC found "ample evidence" that the Parties intended to harm the providers that delivered the spoofed robocalls to consumers. The "unprecedented scale" of the Parties' spoofed robocalling scheme, the FCC concluded, "made it even more certain that its actions would have a deleterious impact on providers." The Commission concluded that the Parties were "presumptively aware of the costs to providers associated with high volume, short duration calls," and they were therefore "substantially certain that transmitting a large volume of spoofed robocalls into the national telephone network would burden providers."

FCC Sends Six Cease-and-Desist Letters to Domestic and International Voice Providers

On the same day, the FCC also delivered cease-and-desist letters to six domestic and international voice providers that the agency said had “consistently violated FCC guidelines on the use of autodialed and prerecorded voice message calls.” Each of the letters instructed the recipients to “investigate and, if necessary, cease transmitting such traffic immediately and take steps to prevent your network from continuing to be a source of apparent illegal robocalls.” An Appendix accompanying each of the letters included instances of “multiple illegal robocall campaigns,” from various originating sources, that ranged from COVID-19 robocalls to tech support scams.

Consistent with similar letters jointly issued to gateway providers by the FTC and FCC in 2020, as well as the Commission’s newly established bad-actor safe harbor, each of the letters authorized downstream voice service providers to block each of the recipients’ voice traffic if they did not “take steps to effectively mitigate illegal traffic within 48 hours,” or if they failed to inform the FCC and the Industry Traceback Group by March 31, 2021 of the steps they had taken to “implement effective measures” to prevent customers from using their networks to make illegal calls. Each of the letters concluded by noting that failure to act within the deadline could result in the Commission **“issuing a notice to all U.S.-based voice service providers that they may block ALL call traffic transmitting from your network, permanently.”** (emphasis in original). Acting Chairwoman Rosenworcel has stated that “[t]hese missives won’t be the last,” and that the FCC intends to “redouble our efforts to issue Cease and Desist letters to get providers to keep these junk calls off of our networks.”

FCC Launches Robocall Response Team

Acting Chairwoman Rosenworcel also announced the launch of a “Robocall Response Team,” a group of 51 FCC staff members across six bureaus and offices tasked with coordinating and implementing the agency’s anti-robocall efforts. The Robocall Response Team will bring together FCC efforts to “enforce the law against providers of illegal robocalls, develop new policies to authenticate calls and trace back illegal robocalls, and educate providers and other stakeholders about what they can do to help.” Acting Chairwoman Rosenworcel has detailed that the Robocall Response Team will “meet regularly, with input directly from my office.” She stated further that its “first order of business” would be a “top to bottom review of [the FCC’s] policies, laws, and practices, to identify gaps we need to close.”

FCC Sends ‘Partnership’ Letters to Federal and State Enforcers

Finally, the FCC delivered separate letters to the FTC, DOJ, and NAAG seeking to “renew partnerships to combat robocalls.” The FCC explained that the letters highlighted a “renewed interest” in coordination between the FCC and other federal and state entities and demonstrated the Acting Chairwoman’s “commitment to fight robocall scams by leveraging the knowledge, skills, and jurisdictional reach of cooperating organizations to share critical investigative information and collaborate on cases.”

Starting in late 2019, the FTC, the DOJ, and the FCC have each pursued separate enforcement and regulatory initiatives designed to address so-called gateway providers transiting illegal robocalls. Throughout 2020, federal and state enforcement authorities increasingly targeted certain voice providers that allegedly facilitated illegal robocalls. Early last year, the agencies also worked together in what the FCC called a "coordinated effort." In her recent outreach, Acting Chairwoman Rosenworcel emphasized the need for a "whole-of-government approach," and stated that she was seeking to "leverage the knowledge, skills, and jurisdictional reach we each have to address this problem."

The Road Ahead in 2021

With the announcement of its latest Anti-Robocall Agenda, the FCC has sent a clear signal that it will remain extremely focused on illegal robocall enforcement and will continue to address the illegal robocall problem through various approaches. Given the increased operational tempo at the FCC and other enforcement agencies, particularly the FTC and state Attorneys General, it is clear that enforcement actions against illegal robocallers and their facilitators will continue to increase.

Wiley has a deep and experienced bench of lawyers who handle robocalling and robotexting issues for clients. Our experts handle federal and state policy issues; compliance with federal and state requirements; complex TCPA issues, including political and charitable outreach; and TCPA enforcement actions and investigations.

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