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NEWSLETTER

Targeting Voice Providers That Encourage Illegal Robocalls
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Privacy in Focus®

Since the beginning of this year, industry, regulators, and elected officials have made significant strides in their collective efforts to address the tide of illegal robocalls flooding consumer phones. These collective efforts have generally focused on three components: 1) empowering consumers with tools to block or restrict illegal and unwanted robocalls; 2) strengthening caller ID authentication; and 3) increased enforcement against illegal robocallers. A recently emerging – and potentially significant – additional component involves identifying and targeting voice providers that are actively and deliberately engaged in the generation of illegal robocalls.

Expanding the Holistic Approach: Identifying and Targeting Bad Actors

While no single component can independently solve the robocall problem, there is increased focus on identifying and targeting the service providers that are actively facilitating illegal robocall traffic. In a pending rulemaking proceeding at the Federal Communications Commission (FCC), the agency specifically seeks comment on how best to target "those voice service providers that are most likely to facilitate unlawful robocallers." The most meaningful aspect of such an approach is that it effectively stops illegal robocalls at the source. While consumer tools can mitigate some – but not all – of this traffic on the terminating end of a call, removing such traffic at the source stops it from ever originating in the first place.

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Even illegal robocallers themselves agree that such providers should be identified and targeted. In his 2018 Senate testimony, Adrian Abramovich – who was fined $240 million by the FCC for robocall violations – noted that the VoIP providers that actively solicit customers for "short duration calls" are critical to the proliferation of illegal robocalls. He said that companies advertising for such traffic will accept "all the calls you can throw at them," and "never ask" about the caller ID information used by their customers. Abramovich was undoubtedly correct when he stated that such providers are "fueling" illegal robocall traffic, and that it would be a "good idea" to focus on the "five or six companies" responsible.

Facilitators of Illegal Robocall Traffic Are Easier to Find

While the exact number of voice providers responsible for generating such traffic may currently be unknown, the ability to identify them has substantially improved due to the increasing capabilities of industry traceback efforts. In recent years, the time needed to trace back illegal robocalls has been reduced from weeks to days – sometimes even hours. These traceback efforts will be further enhanced as SHAKEN/STIR deployments become more widespread, and the true origin of illegal robocall traffic can be even more rapidly identified.

Industry is actively sharing the results of its traceback investigations with various enforcement agencies, to include the FCC and the Federal Trade Commission (FTC). Indeed, in a recent Senate hearing this year, FTC Chairman Joseph Simons acknowledged that his agency was aware of specific voice providers that are in the business of facilitating illegal robocalls (this link).

For its part, while the FCC has not yet taken enforcement action against voice providers facilitating illegal robocalls, it has expressed a willingness to publicly identify those that have not supported industry traceback efforts. In November 2017, the FCC's Enforcement Bureau and Chief Information Officer issued letters to eight voice providers that were not supportive of industry traceback efforts. Notably, four of those letters sought information from voice providers pursuant to the Section 403 of the Communications Act, which provides the FCC with the authority to pursue an inquiry on its own motion. To Abramovich's point about company advertising, the Section 403 letters sought information about the "marketing materials" used by the companies to advertise their services to wholesale and retail customers.

Remediation Measures for Illegal Robocallers

The docket in the FCC's current rulemaking proceeding includes various stakeholder proposals for frameworks to address the activities of voice providers facilitating illegal robocall traffic. Some of these proposals are more regulatory in nature, while others propose a more industry-centric approach. For example, one approach would establish a registration and best practices framework analogous to the one established by the FCC in its Rural Call Completion proceeding. Whereas the Rural Call Completion framework is designed to ensure the termination of calls, the framework proposed in the robocall proceeding focuses on ensuring the integrity of calls on the origination end.

Another proposed framework is less prescriptive in nature. It would have the FCC publicly identify "particularly egregious providers that facilitate illegal robocalls," such as those that repeatedly appear in industry tracebacks but decline to identify the source of their traffic. Once the provider is publicly identified by the FCC,

additional administrative processes would be triggered that would "culminate in the provider's eligibility for blocking by other providers." The approaches may vary, but there is growing consensus that identifying and targeting such providers could advance meaningful reductions in illegal robocall traffic.

The Need to Proceed Cautiously

While the value in identifying and acting against providers facilitating illegal robocall traffic could be significant, any established framework should be cautiously implemented. Due to the interconnected nature of the telephony network, and the scale of many voice providers, no service provider can ensure that *none* of its customers will engage in illegal conduct. Even providers that aggressively monitor and remove illegal traffic from their networks will nevertheless unknowingly be the source of such traffic. Given these realities, the implementation of any such framework should be carefully structured to ensure that only the most egregious of providers are subject to its implications.

Conclusion

Adrian Abramovich's testimony acknowledged the existence of a seemingly small universe of voice providers that are knowingly facilitating substantial volumes of illegal robocall traffic. Identifying and targeting such providers could be an additional tool that industry and government stakeholders can deploy in their battle against illegal robocalls.

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