

2019 Will Be a Pivotal Year for Robocalls

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Illegal robocalls remain a high-profile issue for industry, regulators, and elected officials. Such calls have consistently topped the list of consumer complaints at both the Federal Trade Commission (FTC) and the Federal Communications Commission (FCC) for several years running. As industry moves aggressively to deploy caller ID authentication technologies (commonly referred to as SHAKEN/STIR), legislators at the federal and state levels are also advancing a broad range of legislative approaches to address the problem. With the 2020 election cycle already underway, robocalls are proving to be a bipartisan, and potent, issue. Given this confluence of factors, 2019 is shaping up to be a pivotal moment in the years-long battle against illegal robocalls targeting consumers.

Distinguishing Between Legal Versus Illegal Robocalls – Why it Matters

As robocalls remain under intense scrutiny, it is crucial for policymakers and stakeholders to distinguish between legal and illegal robocalls. Unfortunately, the two categories are often conflated by stakeholders and the media, resulting in a distorted picture of the actual problem. Legal robocalls are permitted under the Telephone Consumer Protection Act (TCPA) and can include calls regarding school closings, prescription reminders, or public safety emergencies. Illegal robocalls involve fraudulent activities, such as calls purporting to be from the IRS threatening arrest, tech support scams, and phishing schemes.

Questionable Data on Robocalls is Informing Public Policy

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Given the important distinction between legal and illegal robocalls, it is imperative for all stakeholders to accurately gauge the problem through analysis of factually correct data. Unfortunately, current data regarding robocalling trends and the effectiveness of industry abatement efforts are flawed. In fact, the FCC cautioned earlier this year that “reports about and data related to robocalls, without detailed analysis, can blur the lines between legal robocalls, both welcome and unwelcome, and illegal robocalls.”

Absent consistent reporting and understanding of these distinct categories of robocalls, continuing misrepresentation of such data may be misinforming policy actions by government stakeholders. As just one example, the widely reported YouMail Robocall Index stated that 5.2 billion robocalls were made in March 2019. Closer examination of the data, however, reveals that fewer than half of these calls were “scams” (i.e., illegal), while more than half (approximately 2.8 billion) were entirely legal robocalls, such as legal telemarketing calls and important payment reminders. Nevertheless, multiple media reports focused on the 5.2 billion statistic, including stories in *The New York Times* and *The Washington Post*, and elected officials and regulators often point to the broader statistic as a basis for government intervention.

Robocalls Are a Highly Bipartisan Issue – and State and Federal Legislators Are Acting

Despite current political partisanship – and with the 2020 election cycle already underway – robocalls are a highly bipartisan, potent issue in state and federal legislatures. At the federal level, six separate bills (and a discussion draft) have been introduced in the House this year. State legislatures are also moving aggressively to address the robocall issue through various measures, some of which have been passed into law.

Federal Legislation Is Moving in Both Chambers of Congress

The leading bill in the House, H.R. 946, the “Stopping Bad Robocalls Act,” was introduced by House Energy and Commerce Committee Chairman Frank Pallone (D-NJ) on February 4, 2019. Among other things, the bill would update the TCPA’s autodialer definition, and would mandate the deployment of SHAKEN/STIR call authentication technologies by a date to be determined by the FCC. Other bills, such as H.R. 2355, the “ROBO Calls and Texts Act,” and H.R. 2298, the “ROBOCOP Act,” would mandate the deployment of call authentication technologies by voice providers. The “ROBOCOP Act” would also require companies to offer free robocall blocking services to all their voice customers, and would create a private right of action for consumers against telecom companies that fail to authenticate calls and/or provide free call blocking tools to consumers.

The principal bill in the Senate – the TRACED Act (S. 151) – passed out of the Senate Commerce Committee on a unanimous, bipartisan basis, and is targeted for passage through unanimous consent. Among other things, the bill requires the FCC to establish rules regarding the blocking of unauthenticated calls, and to consider rules related to the provisioning of phone numbers under the North American Numbering Plan. The bill also establishes a framework that could mandate the implementation of SHAKEN/STIR standards by voice providers within 18 months of passage. The TRACED Act enjoys strong support in the Senate and is targeted for passage by early summer. Depending on the outcome of the various bills in the House, it is possible that Congress could send some form of robocall legislation to the President’s desk later this summer.

State Governments Also Are Considering and Passing Robocall Legislation

Concurrent with these federal efforts, several states also are moving aggressively with their own disparate measures to address robocalls. California, Hawaii, and Kansas have each introduced legislation this year addressing robocall and/or TCPA-related issues, and New York has introduced two separate bills. While the state bills generally address the illegal robocall problem, several seek to achieve this goal through increased regulatory obligations on voice providers. For example, two bills in the New York legislature (Senate Bill S3297A, and A675A) and Hawaii's bill (HB 797) would mandate call blocking by voice providers. The New York Senate bill would also require voice providers to offer free call blocking tools to customers. Notably, the bill's preamble references the "47.8 billion robocalls" purportedly made in 2018, without acknowledging that approximately half were legal.

A bill in the California legislature (SB 208) would also mandate deployment of call authentication technology by carriers by July 1, 2020. In addition to these bills being highly problematic for voice providers, the proliferation of state activity on illegal robocall issues should also be of concern to the FCC. Passage of these bills into law could introduce significant tension into efforts by the FCC to implement cohesive and uniform federal policies with respect to the deployment of call authentication technologies and mitigation of illegal robocalls.

The FCC Is Maintaining Pressure on Industry and Appears Willing to Act

Finally, the FCC remains intensely focused on the robocall issue. FCC Chairman Ajit Pai has repeatedly identified robocalls as his top consumer issue and continues to pressure industry stakeholders to deploy the SHAKEN/STIR call-authentication standards. In November, 2018, Chairman Pai sent 14 letters to facilities-based voice providers and "demanded" the adoption of the SHAKEN/STIR standards, and called for them to be launched "no later than" 2019. Earlier this year, he reaffirmed this stance while noting that if it appeared industry would not meet the deadline, "the FCC will have to consider regulatory intervention." Industry will be under intense scrutiny with respect to its deployment of the SHAKEN/STIR standards in the coming year, and the FCC under Chairman Pai appears more than willing to impose federal regulatory obligations on voice providers should suitable progress fail to be made.

The Challenge Ahead in 2019

Illegal robocalls will remain a high-profile issue in 2019. Facilities-based voice providers will be under the microscope from federal and state officials as they deploy call authentication technologies into their networks that many in government hope will stem the tide of illegal robocalls. Absent a major change in the current robocall narrative, however, lawmakers and regulators at the federal and state levels have already shown their willingness and ability to move forward with legislative and regulatory approaches to resolve this issue.

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