

ALERT

FCC's "Spring Cleaning" Initiative Signals More Robocall Enforcement Activity Ahead

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Over the last two years, federal and state agencies have significantly ramped up enforcement activities against companies and voice service providers allegedly responsible for the generation of illegal robocalls. That trend is continuing, and in a recent press release, the Federal Communications Commission (FCC or Commission) previewed that it is closely coordinating with other federal agencies on a forthcoming "series of robocall actions" that the agency is referring to as its "Spring Cleaning." While the exact timing and scope of this Spring Cleaning initiative remains uncertain, the Commission's pronouncement suggests that the FCC has no plans to slow its robocall enforcement efforts; instead, we can expect increased and coordinated federal enforcement in the coming months.

While Specific Details About the Initiative are Unknown, Clues Are Available

It is long-standing practice that the FCC does not disclose the parties of pending enforcement matters unless and until the Commission decides to act. Consistent with this practice, the specific details about the FCC's Spring Cleaning Initiative are still unknown; however, the agency's press release does offer some notable details.

First, the FCC is coordinating with other enforcement agencies as part of this effort. The press release states that the FCC plans to "coordinate closely with other federal agencies" on the issuance of these robocall actions. The FCC and the Federal Trade Commission (FTC) recently announced they signed a renewed Memorandum of Understanding between public authorities who are members of the Unsolicited Communications Enforcement Network. The MOU aims to

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promote cross-border collaboration to combat unsolicited communications, including email and text spam, scams, and illegal telemarketing. The FCC and state Attorneys General also took a coordinated approach in 2022, with a joint enforcement action targeting the parties behind billions of auto warranty robocalls. And more recently, the FCC touted its Memoranda of Understanding with 49 state Attorneys General, which established information sharing structures to aid investigations of illegal robocall campaigns.

Second, the press release previews that the Spring Cleaning initiative will focus on "active scams particularly widespread during the spring season," such as the federal tax filing deadline. Indeed, the cease-and-desist letter accompanying the press release pertained to a VoIP provider (Veriwave Telco) that was originating an allegedly illegal robocall campaign pertaining to a nonexistent tax program. Although the FCC's Enforcement Bureau Chief, Loyaan Egal, acknowledged assistance from the Internal Revenue Service in the letter, his statement in the press release indicated that the FCC's Spring Cleaning initiative will address "different illegal robocall campaigns that are harming consumers." This suggests that the campaigns targeted by the FCC and other federal agencies could be broader in scope.

Third, we can expect this enforcement activity may occur in the near future. On the same day its Spring Cleaning initiative was announced, the FCC also released the Tentative Agenda for its April 25 Open Meeting. Among the items listed on the Tentative Agenda are seven unidentified actions from the FCC's Enforcement Bureau. The FCC does not identify the targets of its enforcement actions until the Open Meeting itself, and it is entirely possible that only some (or even none) of the seven actions relate to robocalls. However, the timing of the document releases is notable, and companies should monitor announcements about the upcoming Open Meeting closely.

Recent Federal and State Enforcement Actions Are Focused on Collecting on Previously Issued Fines

In addition to the FCC's Spring Cleaning initiative, there has been a noticeable increase in the last two months involving federal and state enforcement actions seeking to collect fines from illegal robocallers. Perhaps most notable is a recent U.S. Department of Justice (DOJ) collection action against Scott Rhodes, whom the FCC previously fined for causing thousands of unlawful and maliciously spoofed robocalls to consumers across the nation.

In late March of this year, the DOJ announced that a federal court in Montana entered a \$9.9 million penalty against Rhodes. The court also imposed an injunction against Rhodes prohibiting any future violations of the Truth in Caller ID Act and the Telephone Consumer Protection Act. In the DOJ press release, FCC Chairwoman Rosenworcel applauded the DOJ's action, stating that the Commission "will continue to relentlessly pursue these unwanted robocalls and build on our multi-faceted collaborative approach with law enforcement agencies at home" and abroad. This is the first instance in which the DOJ successfully pursued enforcement of a forfeiture order against an illegal robocaller. In its most recent TRACED Act Report to Congress, released late last year, the FCC identified nine forfeiture orders that have been referred to the DOJ.

Similarly, on March 28, the Indiana Attorney General, along with seven other Attorneys General, filed separate motions against John Caldwell Spiller II, after he violated permanent robocall and telemarketing bans issued by a Texas federal court in March 2023. Like Rhodes, Spiller was previously fined \$225 million by the FCC for illegal robocalls. According to the recent state Attorneys General Motion to Show Cause, subsequent to the March 2023 court order, Spiller set up at least three new businesses through which he engaged in telemarketing and facilitated robocalls. In the accompanying Motion to Modify the Stipulated Order, the state Attorneys General are asking the court to ban Spiller from engaging in all telephone-related services, to require him to dissolve his existing telephone service companies, and to order him to pay \$122,339,320.

Finally, and more recently, New York State Attorney General Letitia James announced that she has reached an agreement on proposed relief from two conspiracy theorists who launched a robocall campaign designed to prevent Black New Yorkers from voting by mail ahead of the 2020 election. In March 2023, a federal judge ruled in Attorney General James' favor and found Jacob Wohl and Jack Burkman liable for targeting Black voters and transmitting false and threatening messages intended to discourage voting. Wohl and Burkman were also previously fined \$5.1 million by the FCC for similar robocalls. Under the agreement with the New York Attorney General, Wohl and Burkman will pay up to \$1.25 million for their wrongdoing.

Companies Should Break Out the Brooms for Their Own Spring Cleaning

As illustrated above, federal and state agencies continue to pursue aggressive enforcement efforts against suspected illegal robocallers and voice service providers. The FCC is also leveraging all its available tools to ensure voice providers remain compliant with their significant regulatory obligations in the robocall space. These actions include adopting updated Robocall Mitigation Database (RMD) filing obligations for all voice providers, issuing dozens of cease-and-desist letters, and even removing voice providers from the RMD. To ensure continuing compliance in this space, all voice providers would be well served to conduct their own "spring cleaning" efforts in the weeks and months ahead.

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Wiley has a deep and experienced robocalling bench, and our experts handle federal and state policy issues, compliance with federal and state requirements, enforcement matters, and complex TCPA issues. For more information on any of these issues, please contact one of the authors listed on this alert.