

ALERT

FTC and DOJ File Complaint Against “Web of VoIP Service Providers” for Allegedly Making Illegal Robocalls Using Ringless Voicemails

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On February 16, the Department of Justice (DOJ), on behalf of the Federal Trade Commission (FTC), filed a complaint against multiple entities and individuals, including outbound calling service provider Stratics Networks Inc. (Stratics) for allegedly providing outbound calling services that enabled certain individuals and entities to route millions of ringless voicemail (RVM) robocalls in violation of the Telemarketing Sales Rule (TSR). The DOJ also filed a Proposed Court Order proposing to settle claims against one of the defendants, Kasm, Inc. (Kasm) and the company’s owner, which would require Kasm to pay a \$7,500 judgement if approved (the original \$3.38 million fine was partially suspended due to Kasm’s inability to pay). This action by the DOJ and FTC is notable, as it represents the first enforcement action brought by the DOJ and the FTC against alleged illegal robocallers since January 2020, and April 2022, respectively. The enforcement action also signifies a developing trend, whereby agencies are targeting providers for alleged illegal robocalls initiated by their platform customers.

The FTC Alleges That Stratics Provided Substantial Assistance Through its RVM and SIP Termination Services. According to the FTC’s complaint, defendants Atlas Marketing Partners, Atlas Investment Ventures, Tek Ventures also d/b/a Provident Solutions, Eric Petersen, Todd DiRoberto, Kasm, and Kenan Azzeh allegedly used Stratics’ RVM and Session Initiation Protocol (SIP) termination services to deliver millions of robocalls to consumers between 2013-2021. Specifically, the FTC argues that these defendants used Stratics’ services to deliver prerecorded or artificial voice messages to

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consumers without their prior consent, in violation of the TSR. The FTC also alleges that these defendants violated the TSR by misrepresenting material aspects of their purported debt relief services and charging or receiving a fee in advance of providing debt relief services. As noted above, Kasm settled with the FTC over its alleged TSR violations.

The FTC’s complaint further alleges that Stratics did not conduct adequate due diligence to ensure that the RVM messages sent by its customers identified the seller or caller, and did not ensure that customers were scrubbing numbers against the National Do Not Call Registry and state do-not-call lists before permitting those customers to send RVM robocalls. Stratics offers its customers RVM services, which deliver prerecorded voice messages to consumers without causing the consumers’ phones to ring. The FTC alleges that Stratics’ provisioning of these services, coupled with its failure to conduct due diligence on its customers, violated the TSR. Specifically, the FTC argues that Stratics provided substantial assistance to its customers through its RVM and SIP termination services, and that Stratics knew or consciously avoided knowing that it was assisting and facilitating its customers’ TSR violations because, among other things, Stratics was aware of the FTC’s enforcement of the TSR with respect to RVM robocalls.^[1]

This Action May Signal a Renewed Focus on Robocall Enforcement Generally and Platform Providers

Specifically. Both the FCC and state attorneys general have been active in bringing enforcement actions against robocallers and voice over Internet protocol (VoIP) providers alike – the FCC issued a cease-and-desist letter against Stratics in 2021 for allegedly transmitting robocalls that violated the Telephone Consumer Protection Act, and all 50 state attorneys general formed the Anti-Robocall Litigation Task Force in August 2022. The Task Force has issued dozens of civil investigative demands to gateway providers and other entities suspected of routing illegal foreign robocalls. However, the DOJ and FTC have lodged just one enforcement action against a VoIP provider for a TSR violation since 2020. This latest action against Stratics could, however, foretell similar actions by the DOJ and FTC in this space. VoIP providers should ensure that they are monitoring both the traffic that their customers are sending, and the tools that their customers have in place to ensure they are complying with the TSR and Telephone Consumer Protection Act.

The FTC and DOJ complaint also reflects a developing enforcement trend whereby agencies are targeting providers for alleged illegal robocalls initiated by their platform customers. Last month, the FCC issued a cease-and-desist letter to Twilio, alleging that one of its clients (*i.e.*, PhoneBurner) enabled an apparently illegal robocall campaign on behalf of PhoneBurner’s client, MV Realty. Although MV Realty was utilizing the PhoneBurner platform to originate the outbound calls, the FCC’s cease-and-desist letter to Twilio noted that neither PhoneBurner nor Twilio could provide the agency with evidence of consent. Similarly, the DOJ complaint noted that Stratics Networks had access to the prerecorded messages its customers uploaded to its RVM platform and reserved the right to audit its customers’ accounts, but did not “conduct due diligence to ensure that . . . the call recipient had given express consent to receive the call.” Although both PhoneBurner and Stratics maintained terms of service requiring their calling customers to comply with the TSR and TCPA, enforcement agencies are increasingly holding voice providers accountable for the non-compliance of their customers.

We have a deep and experienced robocalling and robotexting bench. 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.

[1] The Federal Communications Commission (FCC) recently found that RVMs also violate the Telephone Consumer Protection Act. In November 2022, the FCC also issued a Declaratory Ruling finding that RVMs delivered to wireless phones require called party consent because they constitute “calls” made using an artificial or prerecorded voice under the Telephone Consumer Protection Act. *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Petition for Declaratory Ruling of All About the Message, LLC*, Declaratory Ruling and Order, CG Docket No. 02-278, FCC 22-85 (2022).