

**ALERT**

# VoIP Providers Facing “Coordinated Effort” on Illegal Robocalls by Federal Agencies: To Avoid Enforcement Scrutiny, VoIP Providers Should Assess Current Practices and Procedures

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Federal enforcement authorities are increasingly targeting certain voice providers that allegedly facilitate illegal robocalls, and these enforcement efforts are poised to pick up in connection with concerns about coronavirus-related (COVID-19) robocall scams. Since late last year, the Federal Trade Commission (FTC), the Department of Justice (DOJ), and the Federal Communications Commission (FCC or Commission) have each pursued separate enforcement and regulatory initiatives designed to address so-called gateway providers transiting illegal robocalls. These agencies are also working together in what the FCC has called a “coordinated effort.”

This coordinated effort reflects a paradigm shift in robocall enforcement. Prior to these actions, federal agencies generally targeted the underlying call originators—that is, the bad actors placing the illegal robocalls. With this notable shift, however, enforcement authorities are now increasingly targeting certain voice service providers that carry the illegal calls. Specifically, the DOJ, FCC, and FTC are now targeting certain Voice over Internet Protocol (VoIP) providers. Given this increased focus by enforcement agencies, VoIP providers should assess their existing practices and procedures to ensure compliance with current industry best practices and federal enforcement developments to stop illegal robocalls, which continue to be a top complaint from consumers.

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## Practice Areas

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Telecom, Media & Technology

## **Agencies are Actively Targeting VoIP “Gateway Providers.”**

While each action from the DOJ, FCC, and FTC varies in approach, as described in detail below, the common thread is that they all specifically target VoIP providers acting as so-called “gateways,” meaning that these providers serve as the “gateway” for illegal robocalls that originate from overseas to enter the domestic telephony network. To illustrate the importance of the “gateway” role, the DOJ accompanied one of its actions with this graphic. And in letters sent to various gateway providers earlier this year, the FCC’s Enforcement Bureau noted that “as the point of entry for this traffic into the U.S. telephone network,” the VoIP providers were “uniquely situated to assist government and industry efforts to combat apparently illegal robocalls.”

This approach is new. Federal agencies, which have traditionally focused on enforcements against illegal call originators, now appear to be targeting a select group of VoIP providers that allegedly actively participated in the schemes to fuel illegal calls.

## **FTC Initiates First-Ever Enforcement Action Against VoIP Provider.**

The first agency to take action targeting “gateway” VoIP providers was the FTC. Late last year, that agency targeted VoIP provider Globex Telecom, Inc. (Globex) for alleged violations under the Telemarketing Sales Rule (TSR), which prohibits a variety of deceptive practices in the sale of goods or services or the solicitation of charitable contributions over the telephone. The FTC, together with Ohio Attorney General, initially secured a temporary restraining order (TRO) against Globex for “assisting and facilitating” an alleged debt-reduction scam perpetrated by one of its customers.

## **DOJ Civil Suits Allege Wire Fraud Violations.**

The DOJ’s separate civil complaints against TollFreeDeals and Global Voicecom contain similar allegations to those in the FTC’s Globex action. In each of its cases, the DOJ sought and the court has now entered a TRO to immediately halt the defendants’ alleged transmission of unlawful robocall traffic, alleging that call centers based out of India used the defendants’ VoIP services to pass fraudulent government- and business-imposter fraud robocalls to American victims. The robocalls claimed to be from the Internal Revenue Service and the Social Security Administration, as well as several well-known brands.

The DOJ specifically alleged that both defendants served as “gateway” providers for the fraudulent robocalls, and “knowingly” introduced fraudulent robocalls into the domestic telephony network, in violation of the Wire Fraud Act. For example, the complaint against TollFreeDeals alleges that during a sample 23-day period the defendants carried more than 720 million robocalls. Noting that more than 425 million of those calls lasted less than one second, the DOJ stated that “high volumes of short-duration and unanswered calls are indicative of robocalls.” Additionally, the DOJ also alleges that the defendants ignored repeated red flags and warnings about the nature of the calls they were carrying, including industry notifications.

## **The FCC and FTC Are Increasingly Publicly Identifying VoIP Providers Suspected of Facilitating Illegal Traffic.**

In addition to their heightened enforcement activity, federal agencies are increasingly publicly naming VoIP providers that are alleged to be facilitating illegal robocall traffic. For example, in late January, the FTC sent letters to 19 unidentified providers warning them that “assisting and facilitating” illegal telemarketing or robocalling is against the law. The FTC’s Bureau of Consumer Protection explained that the warning letters “put VoIP providers on notice that we will take action when they knowingly facilitate illegal robocalls.”

With the onset of the COVID-19 global pandemic, the FTC subsequently sent letters to nine additional VoIP providers that it publicly identified. Both sets of letters warned each recipient that the FTC may take legal action against them if they assist a seller or telemarketer who they know, or consciously avoid knowing, is violating the agency’s TSR; the letters also specifically reference the FTC’s case against Globex, as well as the recent DOJ actions. The FTC’s efforts closely mirror those of the FCC’s Enforcement Bureau, which in early February, sent letters to seven publicly identified VoIP providers, as well.

Most recently, both the FCC and the FTC sent letters to three gateway providers warning them that their alleged facilitation of COVID-19-related scam robocalls originating overseas needed to cease immediately, or each would face “serious consequences.” Absent the gateway providers ceasing transmission of these calls into the United States, the FCC said that it would authorize other phone companies to begin blocking all traffic from their networks within 48 hours. Notably, the FCC and FTC stated that they were also “working closely with the U.S. Department of Justice on this first-of-its-kind effort to stop scammers from reaching American consumers.”

## **Industry Is an Important Partner with the Enforcement Agencies in This New Approach.**

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 once the FCC selects the designated traceback consortium.

Notably, the FTC and FCC accompanied their letters to the three gateway providers alleged to be facilitating COVID-19-related scams with a letter to the USTelecom Industry Traceback Group, “express[ing] gratitude for the USTelecom Industry Traceback Group’s prompt response to identify and mitigate fraudulent robocalls that are taking advantage of the national health crisis related to the Novel Coronavirus Disease (COVID-19).”

## **VoIP Providers Should Assess Their Current Practices and Procedures.**

Given the increased activity by federal enforcement agencies, VoIP providers should assess their current robocall mitigation practices and procedures. The significant uptick in federal enforcement activities is a clear indication that stopping illegal robocalls is a top priority and that VoIP providers are becoming a key focus by

enforcement authorities. In the current environment, where industry and the government are making a concerted effort to protect consumers, stop illegal activity, and restore faith in the voice network, the stakes are high, and the repercussions of even threatened enforcement actions can have a significant impact on any VoIP provider’s reputation and bottom line.

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Wiley’s Telecom, Media, and Technology (TMT) practice group is one of the most sophisticated in the nation, and our team of experienced attorneys leverages our extensive knowledge of the robocall environment – and deep experience and familiarity with agencies like the FCC, FTC, and DOJ – to assist potential clients in thoroughly assessing their current practices and procedures. We regularly help clients navigate technological developments and shifting regulatory and enforcement approaches to mitigate risks, facilitate compliance, and promote best practices.

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