

**Statement of Eric J. Bash
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**Before the
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Committee on Commerce, Science & Transportation
Subcommittee on Consumer Protection, Product Safety, and Insurance**

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Good morning Chairman McCaskill, Ranking Member Heller, and Members of the Subcommittee. My name is Eric Bash, and I am an Associate Chief in the Enforcement Bureau of the Federal Communications Commission (FCC.) My responsibilities include oversight of the agency's enforcement of provisions in the Communications Act and the FCC's rules that are designed to protect consumers of telecommunications services. These provisions and rules include restrictions against "robocalls," which is a popular shorthand way for to calls made using a prerecorded message or using an autodialer, whether the message is live or recorded. Thank you for the opportunity to appear today to address the FCC's role in combatting these calls.

Almost every American is familiar with robocalls from their own personal experience. Who, for example, hasn't answered a phone call at one time or another, only to hear a recorded message encouraging the called party to "press 1" to claim a free vacation? Or to redeem a "last chance" to lower mortgage rates? Or to extend an auto warranty? There are certainly legitimate robocalls – such as those consumers want, for example, to alert them to changes in school schedules – but most of these calls, at best, annoy consumers, and at worst, trick them into fraudulent transactions.

At the FCC, we are also aware of, and take very seriously, the problem of robocallers making huge volumes of calls, either simultaneously or in rapid succession, to multiple lines at the same place of business, in order to overwhelm it. When these robocalls target first responders or hospitals telephone lines, they can threaten to interfere with legitimate calls that, if left unanswered, may literally mean the difference between life and death.

The prevalence of these types of robocalls is on the rise. This is because of the ready availability and low cost of phone service and the software needed to make the calls, as well as the ability of callers to "spoof" the number from which they are calling in an attempt to disguise who they are and avoid detection. It is no surprise, then, that robocalls are an increasing source of consumer complaints in recent years at the FCC, with the number of complaints about the topic doubling in the past two years to over 100,000 filed in 2012. While this is only a fraction of the total number of robocall complaints filed each year at various agencies, the volume at the FCC alone still speaks volumes, so to speak, about the extent of the problem. The FCC is also hearing more and more from first responders who are victims of sporadic autodialing.

I have been asked to address you this morning to explain the FCC's role in combatting illegal robocalls. In doing so, I think it would be helpful first to describe the applicable law that Congress has charged the FCC with enforcing. I will then turn to the enforcement powers and process that Congress has given the FCC to discharge its responsibilities, and highlight some recent actions the agency has

taken. I will close my prepared remarks by identifying some enforcement challenges we face in combatting illegal robocalls, and how we might begin to overcome them. I will also explain how the Federal Trade Commission's authority in this area complements the FCC's.

FCC-Enforced Legal Standards

So what makes a robocall illegal under FCC-enforced standards? It depends upon the kind of number called, and the purpose of the call. The FCC's rules in this area flow directly from the Telephone Consumer Protection Act of 1991, or TCPA.

Restricted Lines. Under the FCC's rules, no telephone call can be made using an autodialer or an artificial or prerecorded voice to certain "restricted lines" for non-emergency purposes without the called party's prior express consent. These "restricted lines" are emergency telephone lines (such as 911 lines), lines in guest/patient rooms in health care facilities, and all numbers assigned to mobile devices. Note that this restriction applies not just to calls with an artificial or prerecorded voice, but also to live calls made with an autodialer. For telemarketing calls, the prior express consent will have to be in writing after October 16, 2013.

In this day and age of heavy mobile phone use, it may be worth repeating that the FCC's rules flatly prohibit all autodialed or prerecorded calls to mobile phones made for a non-emergency purpose without the called party's permission. It does not matter whether the call is to persuade the called party to buy some *thing* or to support some *cause*. And, despite common mischaracterizations of the law, it does not matter whether the called party is charged for the call, or whether the content of a message is blasted by text or voice. (The FCC has been clear that "autodialed" text messages fit within the restriction.) What matters is that a robocall was placed to a mobile phone, for a non-emergency purpose without the called party's consent. Robocallers can ensure that they are complying with this restriction by scrubbing their call lists against the telephone numbers that several commercial services offer to identify those assigned to mobile telephones.

Residential Lines. Like calls made to restricted lines, calls using an artificial or prerecorded voice can be lawfully initiated to a residential line for an emergency purpose or with the called party's prior express consent, and, for telemarketing calls, the prior express consent will have to be in writing after October 16, 2013. But calls using an artificial or prerecorded voice can also be lawfully initiated to residential lines under several other circumstances. Such calls may be made if they contain certain disclosures and: (1) the call is made for a non-commercial purpose; or (2) the call is made for a commercial purpose but does not constitute telemarketing; or (3) the call delivers a health care message and is made by certain defined persons; or (4) the call is made by or for a tax-exempt non-profit organization. The disclosures must identify, at the beginning of the call, the person or entity responsible for initiating the call, and, during or after the message, provide a telephone number where that person or entity can be reached. And it is important to note that the restrictions for residential lines apply only to calls using prerecorded messages, not those using an autodialer.

PSAP Lines. Pursuant to legislation passed last year, the FCC has also adopted rules that will create a special do-not-call registry for lines answered by public safety answering points (PSAPs), and has prohibited autodialed calls to numbers registered on that list. The legislation was designed to address the situation of autodialers placing calls to telephone numbers associated with emergency lines, and thereby precluding legitimate emergency-related calls from coming through. Note that this restriction applies to all autodialed calls, whether live or prerecorded.

FCC Enforcement Process

Congress has empowered the FCC to enforce the Communications Act, including the TCPA, and the agency's implementing rules and orders, in several ways. In designating the FCC as the federal agency that licenses and regulates those involved in electronic communication by wire or radio, Congress created different enforcement mechanisms that vary in terms of availability and severity according to whether the wrongdoer holds (or should hold) a license from the FCC.

For licensees, such as broadcasters and carriers, the FCC's most powerful tool to enforce compliance with the law is to revoke a license for non-compliance, or deny issuance or renewal of the license. Because obtaining or retaining an FCC license may literally mean the difference between economic life and death for a licensee, the FCC does not resort to this remedy except in the most egregious cases of noncompliance.

The FCC more commonly enforces the Communications Act, including the TCPA, and its implementing rules and orders by imposing monetary penalties. To do so, the FCC must either conduct a hearing, or issue a notice of apparent liability for forfeiture, or NAL. For administrative efficiency and other reasons, the agency most frequently follows the latter approach. A party subject to an NAL has an opportunity to submit factual and legal arguments in response explaining why the forfeiture proposed should be canceled or reduced. The FCC evaluates the response, and assuming it concludes that a forfeiture of some amount should be assessed, issues a final order imposing the penalty. If further legal action is necessary to collect the penalty, the FCC must refer the matter to the U.S. Department of Justice. While the FCC may impose a forfeiture either through a hearing or an NAL against both licensees and non-licensees, the Communications Act distinguishes between these groups, both in terms of process required and the severity of the penalty permitted. For non-licensees, under current law, generally speaking the FCC may impose a maximum penalty of \$16,000 per violation, but may do so only after first issuing a citation to the wrongdoer finding that it has engaged in an illegal act, and, subsequent to the citation, the wrongdoer again engages in violations of the same type. By contrast, for carriers, which operate under express authorization from the FCC, the agency may impose a forfeiture of up to \$150,000 per violation, without first citing the carrier. Likewise, broadcasters, which operate pursuant to an FCC license, generally speaking are directly subject to forfeitures of \$37,500 per violation, without a prior citation. (These forfeiture amounts are those generally applicable for violations of the Communications Act, including violations of TCPA. Note that Congress has adopted other penalty structures in certain other circumstances.)

The Communications Act also authorizes the FCC to issue an order to cease and desist against anyone violating a law it enforces; the Act envisions a trial-type administrative hearing in order to invoke this remedy. The Communications Act also authorizes the Department of Justice to obtain an injunction on behalf of the FCC.

FCC Enforcement Actions

Using these enforcement powers, in the last decade, the FCC has issued more than 500 citations, and taken approximately 10 penalty-related actions involving around \$3.5 million, for violations of its robocall rules. (These are in addition to more than 500 citations and approximately 20 penalty-related actions for do-not-call telemarketing violations.) The FCC also issued an Enforcement Advisory last fall, as the election season was in full swing, to remind campaigns and those making calls on their behalf of the rules of the road for making robocalls. It is worth reiterating, as this advisory suggests, that the sweep of our rules is broad; they address not just telemarketing robocalls, but all robocalls, including political robocalls and robocalls to "restricted lines" without the called party's permission.

I want to highlight the FCC Enforcement Bureau's two most recent robocall enforcement actions, taken just a few months ago. These reflect a change in approach designed to enhance the effectiveness and efficiency of agency enforcement in this area. Instead of targeting a single enterprise or individual behind a single type of robocall, the Bureau cited operators of platforms that make prerecorded calls in violation of the robocall rules. These operators offered a service whereby third-party clients could transmit or upload to the operator for delivery to specified called parties, along with the telephone numbers to which the operator was to place the calls. They could also choose the phone number that they wished the platform to display to the called party. The investigations leading to these citations found that the operators had made nearly *six million* impermissible robocalls in *just several months*. By addressing the platforms that make the illegal calls, as opposed to focusing on end-users behind such calls, we expect to cast a wider net and more efficiently use our limited resources to multiply the impact of our enforcement efforts. While I cannot comment on pending law enforcement matters where we have not yet taken a public action, I can say that these platforms remain an area of emphasis. I also want to add that, while the express language of the TCPA disallows "making" prerecorded calls under the circumstances that were the subject of our platform citations, and unambiguously outlaws platforms from "making" calls like those I have described, the FCC recently issued a ruling to re-emphasize that anyone who makes a call on behalf of a third party is liable for violations of FCC rules implementing the TCPA. The third party on whose behalf an illegal call is made may also be vicariously liable for the violation.

Law Enforcement Challenges

Notwithstanding the actions the FCC and others have taken over the last decade, significant challenges remain to stopping illegal robocalls, especially from those attempting to entice the called party to engage in a fraudulent transaction.

Identification of Perpetrator. A fundamental problem for law enforcement in dealing with fraudulent as well as other robocallers remains identifying the parties responsible for them. Consumer complaints filed with the FCC about robocalls ordinarily provide little more information than the names used by callers, and the telephone numbers displayed on the called parties' caller ID, because this is normally all the data available to the complainant. But these pieces of information are not sufficient to enable prompt enforcement action if the robocaller has used a fake and nondescript name, and "spoofs" the number from which it is calling – that is, presents on the called party's caller ID a number other than the one from which the robocaller is actually calling. In these circumstances, subpoenas issued to the carrier that controls the apparent originating number may not yield identifying information. As a result, investigators must work backward and subpoena the called party's carrier for information about where that carrier obtained the call. Because multiple carriers may be involved in handling a single call, investigators may need to repeat this process a number of times before they can identify the true originator of a given call. Time is of the essence, as carriers maintain this kind of call detail record only for limited periods of time, and because the FCC is required by law to act within a year of a violation if it intends to impose a forfeiture penalty. As a result, the FCC is exploring ways to streamline the subpoena process with carriers.

FCC Enforcement Options. Entities that or individuals who do not hold a Commission authorization and are not required to have one pose particular enforcement challenges. As I have noted, while we may cite a wrongdoer, finding that its conduct violates the law, we may not impose a monetary penalty directly. And while citations may work reasonably well for those who are unknowingly or negligently violating the regulatory and statutory provisions on robocalls, we believe a more immediate and tangible penalty may be needed to cause those who are intentionally violating the law to bring their conduct into compliance. Swift, stern enforcement powers are especially needed against fraudulent robocallers who use different names, change addresses frequently, and appear to open and close businesses on a regular basis. Law enforcement is also complicated, of course, when the robocaller appears to be physically located outside of the United States.

Federal Trade Commission

As Members of this Subcommittee know, the FCC shares enforcement responsibility at the federal level with the Federal Trade Commission (FTC) for combatting telemarketing calls, including telemarketing robocalls. The agencies maintain consistency between their telemarketing rules pursuant to the Do-Not-Call Implementation Act of 2003. Thus, with respect to robocall rules in particular, both agencies' rules will, as of October 16, 2013, prohibit making prerecorded telemarketing calls, except with the prior express written consent of the called party. This consent is in addition to, and distinct from, registering a phone number on the national do-not-call list.

To coordinate the exercise of their joint responsibilities in the telemarketing area, the FCC and the FTC also entered into a longstanding Memorandum of Understanding. Under the MOU, the agencies have agreed to, among other things, meet at regular intervals to discuss matters of mutual interest, to share complaints regarding potential violations of federal telemarketing rules, and to work together to implement consistent and non-redundant enforcement of such rules. In fact, Ms. Greisman and I met with our agencies' respective staff just last week for law enforcement coordination purposes.

One particular way the agencies have coordinated enforcement in the telemarketing area is by each agency focusing on the areas where its enforcement tools are best suited to the misconduct at issue. For example, the FCC's authorization over carriers provides a very powerful means of pursuing and remedying violations involving them. (While the FCC has not yet taken any action against a carrier for robocall violations, it has for do-not-call violations.) Moreover, our regulatory expertise with carriers gives us a familiarity with their processes that is uniquely helpful to us in obtaining the information we need to pursue robocall violations. The FTC, on the other hand, possesses particular advantages in discouraging robocall activity in connection with its efforts to thwart the fraudulent activity that often underlies robocalls. The FTC's ability to bring suit against non-licensee miscreants, freeze assets and obtain restraining orders based on fraudulent activity can be quite effective in discouraging robocall behavior, although it is also quite resource intensive.

Overcoming Enforcement Challenges and Further Protecting Consumers

To maximize the FCC's enforcement impact, Congress might consider making certain changes to the FCC's powers. For example, Congress might consider:

- allowing the FCC to impose a forfeiture on non-licensee robocall violators without first having to issue a citation;
- expanding the current statute of limitation from one year to at least two years, given the frequent need to engage in the time-consuming process of identifying callers by working backwards through a chain of carriers; and
- increasing the maximum forfeiture that the FCC can impose on non-licensee robocallers.

Congress might also consider revising the Truth-in-Caller-ID Act of 2010. This statute prohibits spoofing when done by persons in the United States with the intent to defraud or cause harm or wrongfully obtain anything of value. When the FCC adopted implementing rules approximately two years ago, the agency's Chairman sent a report to Congress with proposed additional changes to the statute, including:

- expanding the scope of the prohibition to apply to persons outside of the United States when their spoofing is directed at people inside the United States;
- clarifying whether the existing restrictions should apply to Voice over Internet Protocol providers that enable only outbound calls; and
- giving the FCC appropriate authority to regulate third-party spoofing services.

As the report explained, the Department of Justice has advocated that third-party spoofing providers should be required to verify that a user has authority to use the telephone number it is seeking to have substituted for its own, in order to make it easier to identify actors who use these services for fraudulent or other harmful purposes.

Technological solutions that empower consumers to block illegal robocalls so that they do not receive them in the first instance may also be helpful in thwarting illegal robocalls. An industry standards organization is currently working with FCC technology staff to design a system whereby originating carriers would cryptographically sign calls, so that receiving carriers can validate that callers in fact have the right to use the number they are using; as more carriers implement such solutions, methods could be developed to protect consumers from calls where the number cannot be validated. The staff involved hope that the joint effort may lead to implementable specifications in about a year. Other ideas about technical solutions were presented at the FTC's robocall summit last fall, as well as in the FTC's contest that closed just a few months ago.

As legal changes and technological solutions are being considered, the FCC, along with the FTC and others, must continue to educate consumers about how to protect themselves from illegal robocalls, and when they receive them, how to file the most useful complaint with law enforcement. Such education includes discouraging consumers from interacting with any of the prompts in a robocall, and making sure that their complaints include as much information as possible, including the exact time and date of the call they received, and the carrier to whose service they subscribe. The FCC's website has its own consumer education materials, complaint forms, and cross-references useful material provided by the FTC.

Conclusion

Thank you again for the opportunity to appear before you today to explain the FCC's role in addressing illegal robocalls. I welcome any questions you have for me.