

Communications, Internet & Technology

Industry-Led Strike Force Convenes to Address Robocall “Scourge”

By *John L. Flynn and Bradley Humphreys*

The experience is familiar—perhaps an interruption during dinner by “Rachel from Cardholder Services,”^[1] a recording announcing that you’ve won an all expenses paid cruise, or, more ominously, one claiming to be from the IRS demanding payment of delinquent taxes. Robocalls. The FCC receives over 200,000 robocall-related complaints per year, making them the FCC’s number one consumer grievance. This summer, Chairman Wheeler called on industry players across the telecommunications “ecosystem” to band together to fight the “scourge” of robocalls. The result was the formation of the Robocall Strike Force (RSF)—made up of companies and industry organizations—which held its first meeting on August 19, 2016.

Background

The FCC’s enlistment of major industry players follows years of effort to protect consumers from unwanted robocalls. As background, the Telephone Consumer Protection Act (TCPA), enacted in 1991, broadly prohibits with narrow exceptions (1) the use of telemarketing calls employing an artificial or prerecorded voice to residential telephones without prior express consent, and (2) making any non-emergency calls using an automatic telephone dialing system—known as an “autodialer”—or an artificial or prerecorded voice to a wireless telephone without prior express consent.^[2]

As telephone technology has changed, and as the volume of robocall-related complaints has grown, the Commission has taken various steps to attempt to clarify (and expand) its interpretation of the TCPA.^[3] Most recently, on July 1, 2015, the Commission issued a Declaratory Ruling and Order generally strengthening the TCPA’s protections. Among other things, the Order expanded the FCC’s interpretation of “autodialer”^[4] and concluded, subject to a one-call safe harbor, that robocalls to reassigned wireless numbers are prohibited without the new number holder’s consent, even if the prior number holder *had* consented.^[5]

In the same Order, in response to concerns carriers were claiming that “legal barriers” prevented them from offering advanced call-blocking technology^[6], the Commission made clear that carriers and Voice over Internet Protocol (VoIP) providers face no legal impediment to implementing consumer-initiated call-blocking technology that can help consumers stop unwanted calls.^[7] The FCC warned that, though it was not currently requiring call-blocking tools, it reserved the right to do so in the future.^[8] This summer—in a move that sparked the formation of the RSF—Chairman Wheeler took the next step by calling on the CEOs of major wireless and wireline phone companies to offer call-blocking services to their customers free of charge.^[9]

The Federal Trade Commission (FTC) too has been active in attempting to shield consumers from robocalls. The FTC maintains the national Do Not Call Registry, established in 2003, which prohibits telemarketers from contacting consumers that register their telephone numbers on the national list. Yet violations persist, often through technology that allows robocallers to cheaply autodial thousands of phone calls every minute. And attempts to shut down or punish these bad actors are complicated by “spoofing,” which allows callers to falsify the information transmitted through Caller ID. In 2012, the FTC launched its “Robocall Challenge,” offering a \$50,000 cash prize for the entry that most effectively blocked illegal robocalls. The winner, Nomorobo, advertises that it has stopped over 128 million robocalls to date.^[10]

The RSF and Its Mission

Building on these initiatives, the RSF brings together 33 different industry players—among them telcos, wireless carriers, equipment manufacturers, and others—that have committed to proposing concrete steps to reduce unwanted robocalls within 60 days of the RSF’s first meeting on August 19. At that meeting, Chairman Wheeler stressed that Americans are “fed up” with robocalls and set out three goals for the RSF: (1) to develop and conform authentication standards for VoIP and TDM-based calls, including gateway verification; (2) to develop tools to allow third-parties to develop call-filtering options, and (3) to develop cross-carrier efforts to detect and stop bad actors. Chairman Wheeler also indicated that, if the RSF is unable to develop voluntary industry answers, the Commission would be “forced to look for other solutions.”^[11]

Commissioner Clyburn and Commissioner Pai also stressed the importance of the RSF’s mission. Commissioner Clyburn commended the FCC’s 2015 Order for providing a “green light” to implement robocall blocking technology.^[12] Commissioner Pai, for his part, pointed to Nomorobo as an example of how third-party innovation can help solve the robocall problem. He also asked the RSF to consider, among other things, whether the Commission should encourage Congress to pass the proposed Anti-Spoofing Act of 2015, whether the Commission should take more enforcement actions against unscrupulous telemarketers and known robocallers, and whether the Commission should provide a database of reassigned numbers to make it easier to avoid dialing wrong numbers by mistake.^[13]

The RSF’s chair, Randall Stevenson, CEO of AT&T, called robocallers a “formidable adversary” and acknowledged that the industry has had limited success so far in finding effective solutions. He stressed that, while some robocalls are legitimate but unwanted, many are patently illegal—either because they violate the Do Not Call rules or because the intent is to defraud customers. Stevenson stated that the RSF has committed to conform to VoIP caller ID verification standards as soon as they are available from standard-setting bodies, and—as members of those bodies—to accelerate the standard-setting process. He also expressed the RSF’s commitment to adopt SS7 solutions associated with VoIP calls and to work together to examine the feasibility of do not originate caller lists.^[14]

The RSF will report to the Commission its findings and recommendations by October 19, 2016. By then, it should become clearer whether industry-supported solutions to combating robocalls are likely, or whether we should expect further Commission-led action.

[1] See David Lazarus, *Giving ‘Rachel’ Telemarketer an Earful*, LA Times (Jan. 5, 2014).

[2] Pub. L. No. 102-243, 105 Stat. 2394 (1991) (codified at 47 U.S.C. § 227).

[3] See, e.g., *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, GC Docket No. 02-278, Report and Order, 18 FCC Rcd 14,014, 14,091, ¶ 165 (2003) (concluding that the TCPA applies to text messages).

[4] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, GC Docket No. 02-278, Declaratory Ruling and Order, 30 FCC Rcd 7961, 7972-79, ¶¶ 10-24 (2015) (“2015 Declaratory Ruling and Order”).

[5] *Id.* at 7999-8012, ¶¶ 71-97.

[6] Letter from National Association of Attorneys General to Tom Wheeler, Chairman, FCC at 1-2, GC Docket No. 02-278 (Sept. 9, 2014); *2015 Declaratory Ruling and Order*, 30 FCC Rcd at 8033-34, ¶ 153.

[7] *2015 Declaratory Ruling and Order*, 30 FCC Rcd at 834, ¶ 154.

[8] *Id.* at 8038, ¶ 163.

[9] Chairman Wheeler, *Cutting Off Robocalls* (July 22, 2016), <https://www.fcc.gov/news-events/blog/2016/07/22/cutting-robocalls>.

[10] <https://www.nomorobo.com>.

[11] Chairman Wheeler's Remarks to the Robocall Strike Force (Aug. 19, 2016), <https://www.fcc.gov/news-events/events/2016/08/first-meeting-industry-led-robocall-strike-force>.

[12] Commissioner Clyburn's Remarks to the Robocall Strike Force (Aug. 19, 2016), <https://www.fcc.gov/news-events/events/2016/08/first-meeting-industry-led-robocall-strike-force>.

[13] Commissioner Pai's Remarks to the Robocall Strike Force (Aug. 19, 2016), <https://www.fcc.gov/news-events/events/2016/08/first-meeting-industry-led-robocall-strike-force>.

[14] Remarks of Randall Stevenson (Aug. 19, 2016), <https://www.fcc.gov/news-events/events/2016/08/first-meeting-industry-led-robocall-strike-force>.

CONTACT US



John L. Flynn, Partner, Jenner & Block

Phone: 202 639-6007 Email: jflynn@jenner.com [Download V-Card](#)



Bradley Humphreys, Associate, Jenner & Block

Phone: 202 639-6028 Email: bhumphreys@jenner.com [Download V-Card](#)

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