

Telephone and Texting Compliance News: Regulatory Update — Senate Holds Hearing on “Protecting Americans from Robocalls”; Senators Reintroduce Bill to Strengthen Robocalling Penalties; FCC Approves Inquiry into Impact of AI on Robocalling

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Senate Holds Hearing on “Protecting Americans from Robocalls”

The US Senate Commerce, Science, and Transportation Committee’s Subcommittee on Communications, Media, and Broadband (“Subcommittee”) held a hearing on “Protecting Americans from Robocalls.” Testifying before the Subcommittee were representatives from both industry and consumer protection groups, including the National Consumer Law Center; the US Chamber of Commerce; USTelecom, the leader of the Industry Traceback Group; and the Chief Technology Officer from YouMail, a data-analytics and voicemail provider.

Subcommittee Chairman Senator Ben Ray Luján (D-NM) opened the hearing by noting that Americans receive roughly 1.5 to 3 billion scam and likely illegal telemarketing calls every month. Chairman Luján also noted that these calls have eroded trust in the US’s communications networks, which results in people missing important calls from legitimate callers such as their doctors, banks, or children’s schools. But Chairman Luján also pointed out that illegally spoofed calls, robocalls, and deceptive telemarketing do real harm to Americans — citing statistics that scam callers

defrauded Americans out of an estimated \$39 billion in 2022 alone.

However, Chairman Luján also praised the efforts of the Federal Trade Commission (FTC) and Federal Communications Commission (FCC), operating under the 2019 Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED) Act, in trying to curb these illegal and unwanted calls. Calling the TRACED Act a success, Chairman Luján cited studies from the FTC showing that **Do Not Call** complaints have dropped by half since 2019 due to actions taken by the FCC to fine scam callers hundreds of millions of dollars and empower voice service providers to block calls that appear likely to be scams.

During witness testimony, the Subcommittee heard conflicting views on the success of the FCC's actions, with the National Consumer Law Center stating that the FCC has not meaningfully reduced the number of unwanted and illegal calls and should adopt aggressive rules such as establishing a system to suspend the ability of a provider to transmit calls if it is determined they were complicit in transmitting illegal robocalls. In contrast, the U. S. Chamber of Commerce and USTelecom testified that legitimate businesses and callers already support efforts to crack down on illegal robocalls and that the widespread deployment of STIR/SHAKEN has made it harder for scammers to make spoofed calls.

USTelecom also testified that the reduction in spoofed calls has, unfortunately, given rise to more unsolicited telemarketing calls. To address this unintended consequence, USTelecom urged Congress to provide more resources to the Department of Justice to ensure it can sufficiently prosecute the criminals behind the illegal robocalls. Likewise, USTelecom urged both Congress and the FCC to take action to expand the role of the Industry Traceback Group to allow it to investigate *how* bad actors get access to consumers' phone numbers in the first place — suggesting that Congress reintroduce and pass the Robocall Trace Back Enhancement Act.

Finally, the Subcommittee heard testimony from YouMail explaining that the technology that scammers use to make their illegal calls is changing rapidly, creating enforcement difficulties. In particular, YouMail asserted that because enforcement and traceback efforts rely largely on the audio

content of calls and other distinguishing characteristics (such as short duration or high volume of calls), AI technology that allows robocallers to modify their tactics to evade detection — such as voice cloning; generative AI that no longer has the tell-tale signs of a scam, like broken English or strange word choices; or the ability to generate text message conversations that mimic authentic human interaction — presents new and tough challenges for regulators. Accordingly, YouMail urged federal and state agencies to shift their resources toward increasing their investigative capabilities and consider new policies to address early adopters of next-generation robo-communication tools.

Senators Reintroduce Bill to Strengthen Robocalling Penalties

Senators Catherine Cortez Masto (D-NV), Amy Klobuchar (D-MN), Maggie Hassan (D-NH), and Kirsten Gillibrand (D-NY) reintroduced the Deter Obnoxious, Nefarious and Outrageous Telephone (“DO NOT”) Call Act. The bill would authorize prison sentences of up to one year for willful and knowing violations of the Telephone Consumer Protection Act and up to three years for repeat offenders. The DO NOT Call Act would also double the fines for illegally spoofing (using a false or misleading caller ID number) from \$10,000 to \$20,000.

Senators Cortez Masto, Schumer (D-NY), Hassan, Klobuchar, and Gillibrand originally introduced this legislation in 2021. That legislation was referred to the Senate Committee on Commerce, Science, and Transportation but did not receive a full committee vote before the end of the previous session. Further, as we reported [earlier this year](#), Representative David Kustoff (R-TN) introduced a similar bill in the House of Representatives, which was referred to the Energy and Commerce Committee’s Subcommittee on Communications and Technology but has not moved since February.

In a [statement announcing](#) the legislation, Senator Cortez Masto noted that in 2022, Americans received roughly 78 billion robocalls and 225 billion robotexts, costing victims of the scams a total of \$65 billion from calls and \$20 billion from texts. Senator Cortez Masto said, “My legislation will give law enforcement the tools it needs to protect Nevadans and hold scammers

accountable.” Senator Klobuchar echoed that statement, saying, “Our legislation will give law enforcement the tools they need to crack down on scammers and deter criminals from abusing robocalls.”

FCC Approves Inquiry into Impact of Artificial Intelligence (AI) on Robocalling

In line with the concerns expressed at the Subcommittee hearing, as we [reported last month](#), the FCC is already taking steps to consider how new AI technologies will change the robocalling and texting regulatory environment. In approving that Notice of Inquiry (the draft of which was circulated earlier), FCC Chairwoman Jessica Rosenworcel expressed optimism that while bad actors could use AI and new technologies to improve their scams and hurt more Americans, that same technology held promise in stopping those scams, stating:

“The anxiety about these technology developments is real. Rightfully so. But I think we make a mistake if we only focus on the potential for harm. We need to equally focus on how artificial intelligence can radically improve the tools we have today to block unwanted robocalls and robotexts. We are talking about technology that can see patterns in our network traffic, unlike anything we have today. This can lead to the development of analytic tools that are exponentially better at finding fraud before it ever reaches us at home. Used at scale, we can not only stop this junk, we can help restore trust in our networks.

That is why today we are launching an inquiry to ask how artificial intelligence is being used right now to recognize patterns in our network traffic and how they could be used in the future. We know the risks that this technology involves, but we also want to harness the benefits — just like the recently released Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence recommends.”

Comments on the adopted Notice of Inquiry must be submitted by December 18, 2023, and reply comments must be submitted by January 16, 2024.

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