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## FTC, DOJ send more warnings to VoIP providers about consequences of facilitating illegal robocalls

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On Thursday, the Federal Trade Commission (FTC) sent another clear message to Voice over Internet Protocol (VoIP) service providers that the agency will hold them accountable for turning a blind eye to their customers' unlawful telemarketing practices. In a press release, the FTC said that it had sent letters to 19 unidentified VoIP providers, warning them that the FTC would take legal action against any provider found to be "assisting and facilitating" illegal robocalling practices. The FTC has recently been joined in its efforts by the U.S. Department of Justice (DOJ), which on Tuesday filed two civil actions against VoIP providers for allegedly facilitating massive foreign-based schemes involving government- and business-imposter calls to American consumers.

The FTC, an independent U.S. regulatory that combats unfair and deceptive practices affecting consumers, enforces the Telemarketing Sales Rule (TSR), 16 C.F.R. Part 310. The TSR, which implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101 *et seq.*, prohibits deceptive sales pitches and protects consumers from abusive, unwanted, and late-night sales calls. The TSR provides not only that the actual "sellers" and "telemarketers" can be found liable under the TSR, but also any business that "*provide[s] substantial assistance or support to any seller or telemarketer when that [business] knows or consciously avoids knowing*" that the seller or telemarketer is engaged any of these prohibited activities. 16 C.F.R. § 310.3(b). Each illegal call is subject to a maximum civil penalty of \$43,280, *see* 16 C.F.R. § 1.89, and the FTC has the authority to seek injunctive relief against violators, *see* 15 U.S.C. § 53(b), and to seek the refund of money or payment of damages to address violations of the TSR. *See* 15 U.S.C. § 57b(b).

As the FTC states in its letter to the 19 VoIP providers, "[c]ombating illegal telemarketing is a top priority for the FTC, with a special emphasis on halting illegal robocalling." Traditionally, the FTC focused these efforts on the individuals and entities actually making the deceptive or abusive calls (i.e., sellers and telemarketers). Recently, however, the FTC has turned its attention to upstream VoIP providers that the FTC believes "know[] or consciously avoid[] knowing" that their customers are making such calls.

For example, just last month, the FTC took the [unprecedented action](#) of shutting down VoIP provider Globex Telecom, Inc. (Globex) for allegedly providing Educare Centre Services, Inc. (Educare) with the means to make unlawful calls, including illegal robocalls, to market Educare's

phony services. In *FTC, et al. v. Educare Centre Services, Inc., et al.*, (No. 3:19-CV-196), the FTC was able to avoid the difficult question of what it means for a VoIP provider to “know[ ] or consciously avoid[ ] knowing” that an end user is engaged in illegal telemarketing services since Globex’s president and CEO allegedly controlled or directly participated in Educare’s scheme. Indeed, most enforcement actions against those who provide “substantial assistance” to illegal telemarketers have alleged similar conduct that leaves little question that the person or business knew about the end user’s prohibited activities.

Significantly, the DOJ is on the same page as the FTC when it comes to the new focus on VoIP providers in the fight against illegal telemarketing. On Tuesday, the DOJ filed two civil actions against VoIP providers and their owners for allegedly carrying hundreds of millions of fraudulent robocalls to American consumers. The DOJ called it a “first of its kind enforcement action” in a [press release](#). The two cases involve similar allegations against five companies and three individuals allegedly responsible for serving as “gateway carriers” for “[n]umerous foreign-based criminal organizations.” According to the DOJ, the calls caused “massive financial losses to elderly and vulnerable victims” by threatening them with “catastrophic government actions,” such as termination of social security benefits and deportation. The DOJ alleges the VoIP providers continued to serve as the entry point for “astronomical numbers” of foreign-initiated robocalls into the U.S. despite “repeated red flags and warnings about the fraudulent and unlawful nature of the calls they were carrying.” The DOJ stated that it would “pursue to the fullest extent of the law individuals in the United States who knowingly facilitate imposter fraud calls, using both criminal and civil tools where appropriate.”

Like the *Educare* case brought by the FTC in December, the two cases brought by the DOJ on Tuesday involve allegations of conduct by the VoIP providers that, if true, likely mean the VoIP provider had actual knowledge of telemarketing misconduct. However, the messaging of both agencies surrounding these recent actions should cause VoIP providers to pay close attention to warning signs about potential unlawful uses of their services.

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