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FTC Announces \$50,000 Prize for Technical Solution Enabling Consumers To Block Robocalls

In last week's all-day Robocall Summit at the Federal Trade Commission ("FTC"), representatives of the FTC and the Federal Communications Commission ("FCC"), and the Indiana Attorney General, repeatedly referenced their frustration in the face of a constantly multiplying number of consumer complaints regarding unwanted robocalls and their inability, as regulators, to stay ahead of the "bad guys" in an increasingly digital world. The FCC's Chief Technology Officer lamented that "automation has been all on the side of the bad guys. ...Law enforcement operates in the analog world."

In announcing the creation of a \$50,000 prize to whomever develops the best technical way to enable the real-time blocking by consumers of robocalls to landlines and cellphones, and in emphasizing how popular such a tool would be with fed-up consumers, David Vladeck, Director of the FTC's Bureau of Consumer Protection, stated that, "The FTC is attacking illegal robocalls on all fronts and one of the things that we can do as a government agency is to tap into the genius and technical expertise among the public." And then Mr. Vladeck made a prediction: "the winner of our challenge" he said, "will become a national hero."

Much of the Summit was devoted to discussing the impact of illegal robocalls on consumers and what consumers can do to prevent becoming victims of such calls. Enhancing consumer awareness that telemarketing robocalls are illegal was emphasized as an important goal moving forward. Further, many of those given speaking roles at the Summit were representatives of companies that provide caller-ID services, blocking technology, call screening, and other services for consumers and businesses to act defensively against telemarketers' illegal use of robocalling.

Verizon Communications, for example, provides a service to block all content

(including voice calls, text messages, picture messages, etc.) from up to five numbers for free in its service package. Another company, PrivacyStar, offers a mobile application that blocks unwanted calls and text messages, and even provides consumers the ability to file a complaint with the FCC or FTC reporting telemarketers using robocalls. PrivacyStar has a “Smart Block” feature that automatically blocks the top 25 most commonly blocked numbers. A Canadian service provider, Primus Telecommunications Canada, Inc., uses technology that pre-screens calls from suspected telemarketers before permitting the caller to be connected with the consumer being called. With technology constantly evolving, the emphasis of Summit panelists was placed on staying ahead of the “bad guys.”

Throughout the day, panelists from government and industry emphasized the challenges presented by a global network of robocallers intent on manipulating the VoIP system for malicious and illegitimate purposes. The speakers at the Summit emphasized the various forms of deception being used by telemarketers employing robocalling. Those included the use of caller-ID spoofing (causing a delay in uncovering the true origin of a call) and the changing network structure as a result of advances in technology.

Both the FTC and the FCC representatives commented on the policies of their respective agencies toward enforcement. Not surprisingly, in making enforcement decisions when there has been an apparent abuse of autodialer technology, the FTC and FCC pay particular attention to targeting the entities responsible for generating the greatest volume of consumer complaints. When asked the magic number of complaints needed to trigger an enforcement action, however, the panelists emphasized that, while the greater the number of complaints about a particular entity, the greater the chance of an enforcement action, context is key. The Commissions look to the evidence provided in the complaints about what kinds of calls are being made, the volume of those calls, whether the caller is ultimately stealing money from people, and the like. The ultimate goal, they said, is figuring out which entities to pursue in order to stop the greatest number of illegal calls.

During the discussion about the current state of law enforcement, Eric Bash, Associate Chief of the FCC Enforcement Bureau, reminded listeners that, soon, the FCC will no longer be recognizing the “established business relationship” exemption to the prior consent requirement under the Telephone Consumer Protection Act (“TCPA”) for telemarketing calls made to residential lines. Moreover, the FCC will soon be requiring the prior express written consent of consumers in order to contact them on their wireless devices for any nonemergency purpose. These changes were announced in a Report and Order released in February, *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278 (Feb. 15, 2012), and will be effective upon final government approval.

Notwithstanding the general tenor of the Summit, panelists did point out numerous times throughout the day that merely because a call is a robocall, that call is not necessarily illegal. This seems to indicate that there is at least some understanding at the relevant agencies of the beneficial uses of autodialing technologies by businesses; but the thrust of the Summit, nonetheless, focused on consumer protection over the protection of business practices.

Finally, those hoping to be enlightened on the actual state of the law as it relates to the evolution of technology were likely disappointed. In response to the question, “what exactly is an autodialer,” Mr. Bash simply read the statutory definition from the TCPA, ignoring ambiguities in that definition that have generated a host of requests for declaratory rulings over the course of the past year. Interestingly, last week and this, the FCC released a flurry of public notices seeking comment on many of those requests (and other requests are also out for comment), in what could be seen as a sign that the FCC intends to soon tackle the gray areas in the statutory definition of an “autodialer.” Stay tuned.