

# Federal Trade Commission

SIPNOC 2024

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Presented by:

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Division of Marketing Practices



**FEDERAL TRADE  
COMMISSION**

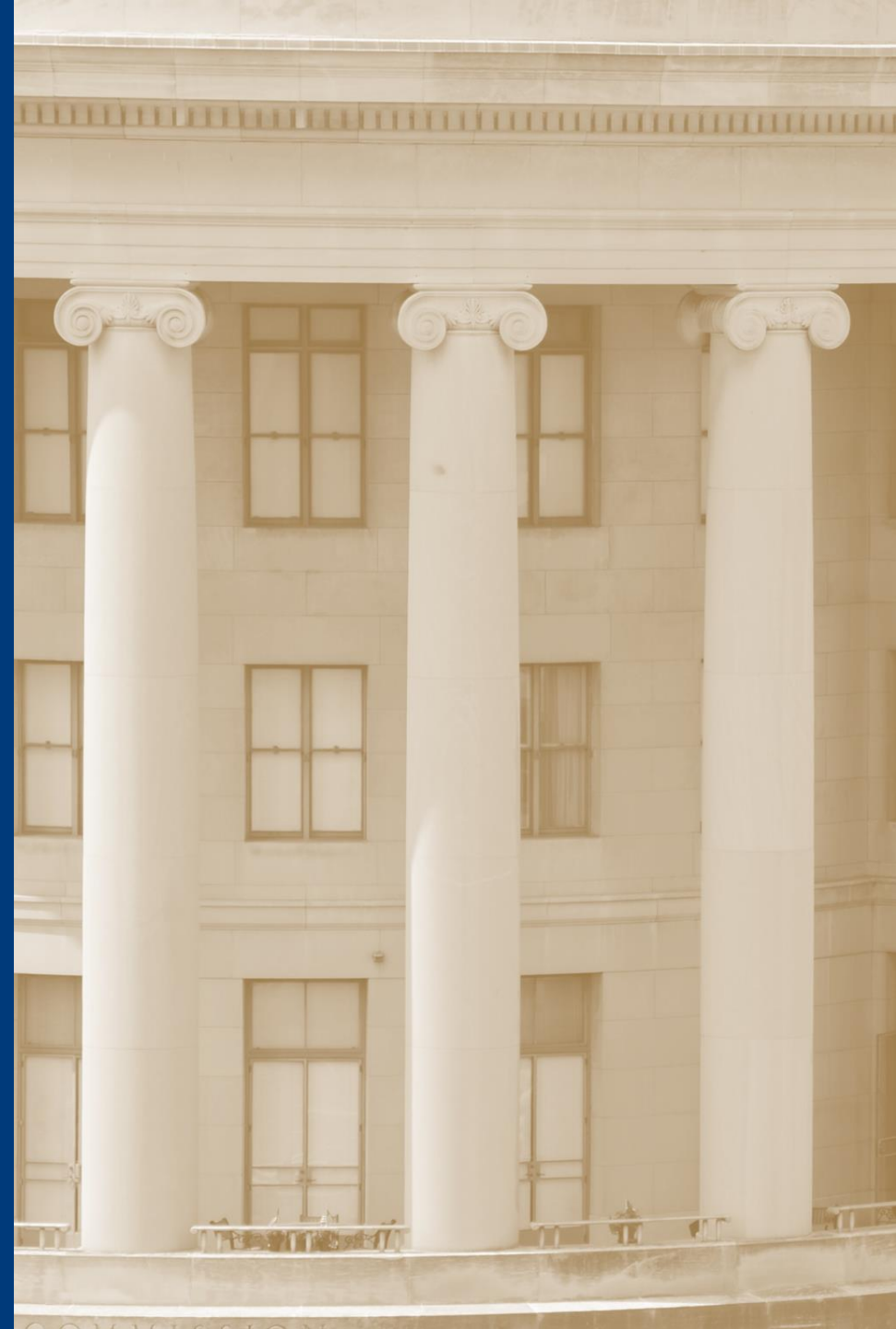


Prepared for:  
**SIPNOC**

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- The views expressed today are my own and not necessarily those of the Federal Trade Commission or any Commissioner



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# Authority in the Telecom Space

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- Created by the Federal Trade Commission Act of 1914
- “[U]nfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.”
- Began suing telemarketing fraudsters in federal court under the FTC Act in the 1980s
- Gained new powers to regulate telemarketing under the Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994, which led to the Telemarketing Sales Rule

# What Calls Are Covered?

- Calls that are part of a campaign or plan to get consumers to purchase a product or service
- Charitable solicitation calls by for-profit fundraisers
- Hybrid calls, e.g. “survey” calls that include a sales pitch
- Sellers are liable for calls made by their dealers / affiliates
- Doesn't matter how the call is made (autodialer) or the type of device (cell phone, landline etc)

“telemarketing”

# Prohibits Deceptive and Abusive Telemarketing Practices

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- Deceptive
  - Misrepresenting any material aspect of the product.
  - Failing to disclose the cost to purchase, material restrictions on the use of the product, or the refund policy
- Abusive
  - Calling numbers on the —National DNC Registry without consent
  - Making “Robocalls”—calls delivering prerecorded messages, regardless of DNC registration without consent
  - Spoofing—using deceptive caller ID numbers

# Assisting and Facilitating

## § 310.4

- VoIP service
- Consent Farms
- Dialing software

(b) *Assisting and facilitating.* It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide **substantial assistance or support** to any seller or telemarketer when that person **knows or consciously avoids knowing** that the seller or telemarketer is engaged in any act or practice that violates §§ 310.3(a), (c) or (d), or § 310.4 of this Rule.

- Failure to know your customer despite warning signs
- Communication from your customer
- Subpoenas
- Tracebacks
- Complaints



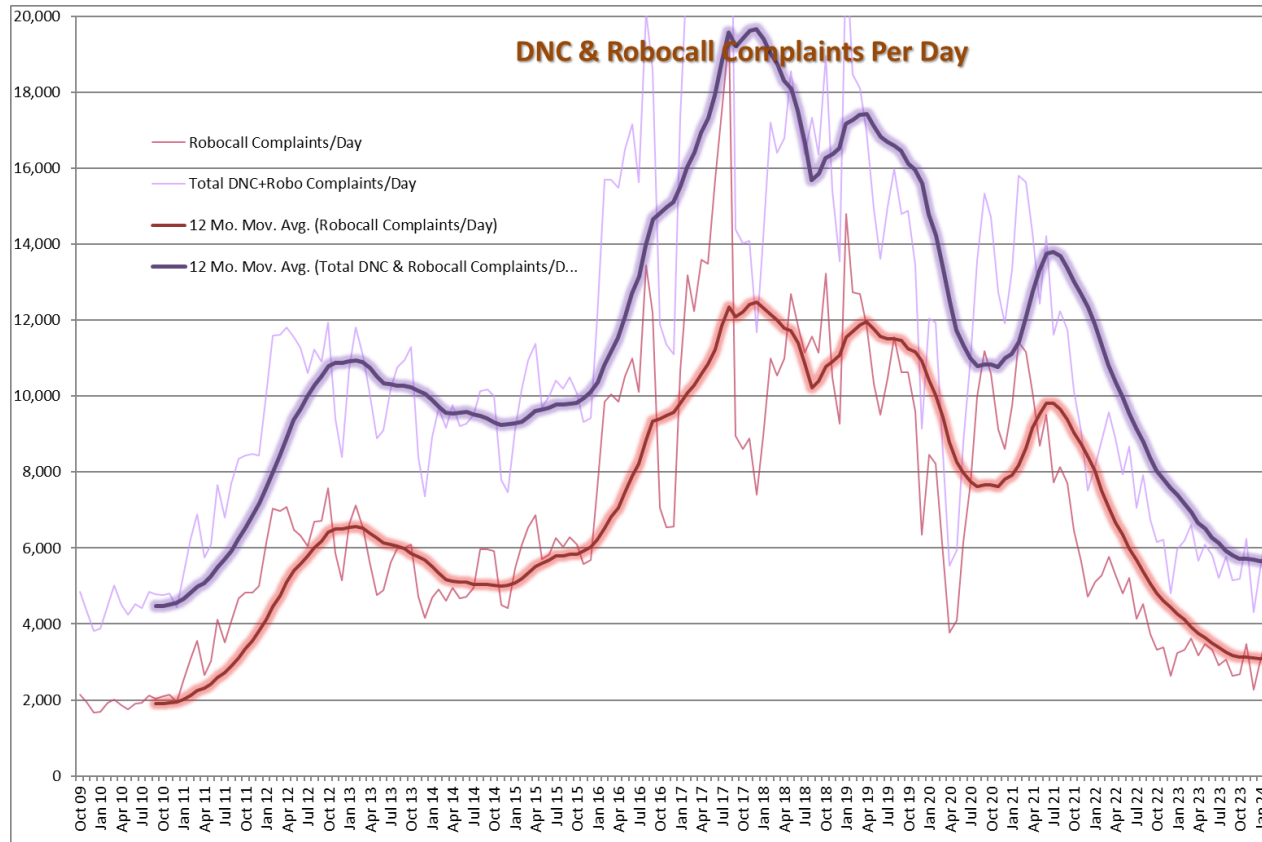
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# Actions against Robocalls

# Complaint Trends



- Complaints about DNC and robocalls are down 60% from 2021
- But robocalls are still our top source of complaints



# Summary of Actions

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- We've targeted every level of participant
  - Lead generators
  - Telemarketers
  - VoIP Providers
- Since 2003 we've filed 170 lawsuits alleging DNC and robocall violations
  - 563 companies
  - 446 individuals
  - We've collected over \$407 million



# Cases Against Consent Farms

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- ***U.S. v. Response Tree*, 8:24-cv-0001 (Jan. 24, 2024)**
  - 50 websites, one patriotrefi.com lead to 85,000 calls
  - 10,000 live leads a day, prices from less than \$.01 to more than \$100.
- ***U.S. v. Fluent*, 9:23-cv-81045 (S.D. Fla. July 17, 2023)**
  - Thousands of lead generation websites
  - 900,000 registrations per day
  - Sold 620 million leads
- ***U.S. v. Viceroy Media Solutions*, 3:23-cv-3516 (July 14, 2023)**
  - Two job related lead generation websites
  - Sold 46 million leads to 37 clients



## Confirm your information to finish your registration

FIRST NAME

LAST NAME

PRIMARY PHONE



By checking the box below I consent to receive monitored or recorded phone sales calls and text messages - Msg and data rates may apply - from CAC and our [Marketing Partners](#) on the landline or mobile number I provided even if I am on a federal or State do not call registry. I understand these calls may be generated using an autodialer and may contain pre-recorded messages and that consenting is not required to participate in the offers promoted.

For SMS message campaigns: Text STOP to stop and HELP for help. Msg & data rates may apply. Periodic messages; max. 30/month.



☐ I CONFIRM

that all of my information is accurate and consent to be called and texted as provided above.

CONTINUE ►



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**We found 250 Sales Jobs in 94103!**



Enter Your Contact Info Below

\*First Name:

\*Last Name:

\*Email Address:

\*Phone:

☐ Receive Daily Job Updates by email - Confirm the request to get started!

By clicking the button, I agree that I'm a U.S. Resident over the age of 18 and I agree to this site's [terms](#) and [privacy policy](#). I also agree to be contacted by QuickJobs, Fuentes, NewJobConnections, or its [partners](#) regarding career alerts or other opportunities via text, phone, email, artificial voice messages with an automated telephone dialing system and prerecorded messages. Message frequency may vary. This is not required as a condition of purchasing any goods or services or for employment. I may revoke consent at anytime. Messaging and data rates may apply. Text STOP to opt out. Text HELP to receive help.

[Skip Here](#) if you are not interested

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Career Placement Advisors, Career Finder Network, Career Resource Center, Rocket Jobs, Nexxt, Infinity One, MyJobHunter, My Job Group, Home Protectors, Educa, Iberdrola, American Disability Helpline, United States Disability, Email Magic LLC, Home Support Group, Heard and Smith, Premier Disability, Advocacy Center, Consumer Council, Medical Support Group, Home Support Group, Advocate Group, Citizens Disability, Miami Media, Insurance Proz, royal sea cruises, Gerber Life Insurance, Blogly, Transparent Truth, DMS, SOS Team, National Disability, Disability Advisor, AiMediaOne, Help Advisors, Debt Help Express, SMG, Follow My Lead, Job Funnel, Insurance Guide, Complete Home Services, American Police Officers Alliance, Fit Funnel, FindCredit, EZLiving, Eligo, Nordic, Indra, Park Power, RPA Energy, Titan, Tomorrow Energy, WGL, Town Square, Residents Engery, IDT, Citycom Solar, WMG, Direct Energy, CleanSky Engery, Solar Simplified LLC, Insurance Guide, Complete Home Services, 21st Century, Allstate, All Web Leads, American Family, Amica, Charity Guide, Farm Bureau, Farmers, LCN, Liberty Mutual, MAPFRE, Nationwide, Plymouth Rock, Progressive, Safeco, Select Quote, Solid Quote, State Farm, The General, The Hartford, The Lead Company, Travelers, Tri-State Consumer Insurance, USAA, National Debt Helpers, Senior Aid Helper, JobsFunnel, Career Helper, Arcamax, Career Guide.



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# DNC and Robocall Exceptions

## National Do Not Call

- Established business relationship
  - Transactional within the last 18 months
  - Inquiry or application within the last 3 months
- “Express agreement in writing:
  - that “**clearly evidence such person’s authorization** that calls made by or on behalf of a **specific party** may be placed to the person.”
  - Includes the telephone number and the signature (can be electronic)
  - 16 CFR 310.4(b)(1)(iii)(B)

## Robocalls

- Express written agreement that “***the seller has obtained from the recipient of the call***”
  - “only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize ... prerecorded calls”
  - “obtained without requiring ... that the agreement be executed as a condition of purchasing”
  - “evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific seller”
  - “includes such person’s telephone number and signature” (can be electronic)
  - 16 CFR 310.4(b)(1)(v)



# Guidance on Consent

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- Complying with the Telemarketing Sales Rule

May a seller obtain a consumer's written permission to receive prerecorded messages from a third-party, such as a lead generator? No. The TSR requires the seller to obtain permission directly from the recipient of the call. The seller cannot rely on third-parties to obtain permission.

- Q&A for Telemarketers & Sellers About DNC Provisions in the TSR

a good or service. Third, the seller must have obtained express consent directly from the consumer to place the calls. This means that a seller cannot place calls with prerecorded messages to consumers whose information the seller obtained from third-parties. For more information, please see the [Exemptions to the National Do Not Call Registry Provisions](#) section and the [Telemarketing Calls that Deliver Prerecorded Messages](#) section of [Complying with the Telemarketing Sales Rule](#).



# Differences between TCPA and TSR

## TCPA

- FCC's rulemaking on "closing the lead generator loophole"
  - *One-to-One consent (one seller at a time)*
  - *Logically and Topically Related*
  - *Consent to live calls or robocalls*

## TSR

- Our rule isn't new
  - *No one-to-one requirement, but you do have to consent to a "specific seller."*
  - *No relation test*
  - *You can't consent to third-party robocalls.*



# Cases Against VoIP Providers

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- Globex (9/20); Alcazar (12/20); VoIP Terminator (4/22); Stratics (2/23); Xcast Labs (5/23); and Hello Hello Miami (7/23)
- Our cases allege substantial assistance to illegal telemarketing and knowledge or conscious disregard. The complaints explain the level of knowledge typically tracebacks, subpoenas, communications with customers.

# VOIP Orders - KYC

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- **Screening**

- Know who the customer is:

- Name of principles, controlling persons, owners
    - Person responsible for TSR compliance
    - Business and trade names and DBAs
    - Address
    - EIN



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# KYC provisions from orders

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- **Screening Continued**

- Know your customers' business:

- What they're selling
    - How they're selling,
      - Review websites
      - If they're telemarketing
        - Caller ID's and callback numbers they'll be using
        - Proof that the customer has authorization to use them.

- Know your customers' history

- Whether they've received subpoenas, CID's
    - Whether they've been the subject of lawsuits related to telemarketing or TSR/TCPA violations



# KYC provisions from orders

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- **Verify the information you've been given**
  - Review the website
  - Review databases of complaints
  - Check the FTC and FCC website
  - Review tracebacks
  - Perform google searches
  - Compare your customer's numbers to the FTC's daily list of DNC and robocall complaints.

# Other Best Practices

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- You don't need a one size fits all approach
  - Are your customers end users or providers?
  - What's their risk profile?
  - Why are they looking for a new provider?
- KYC is an ongoing obligation
  - Screen, monitor, repeat
- Take it seriously
  - Who are the people performing this
  - Who do they report to
  - How often do you train employees
  - How often do you update your policies
  - Do you document everything
- Use call analytics

# TSR Recordkeeping

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- 16 CFR 310.5. Amended in April.
  - 5 year retention.
  - Advertising materials, brochures, prerecorded messages.
  - Records of customers. Date, time, and amount of purchase.
  - Records of consent: copy of the request in the same manner and format it was presented, a copy of the consent provided and the date.
  - Records of employees and fictitious names used
  - Records of DNC access.
  - Records of service providers used to deliver outbound calls.

# TSR Recordkeeping

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- Effective 10/15
  - Sellers and telemarketers must keep robust call detail records.
  - The telemarketer, the seller, the good or service, inbound/outbound, prerecorded message, number date time and duration, scripts, displayed caller ID, disposition of the call
- Penalties
  - Each failure to keep records is a TSR violation
  - Sellers and Telemarketers can allocate this responsibility, but sellers must have practices to ensure telemarketers are complying.



# Cases Against Other Third-Parties

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- ***Christiano and TelWeb* May 2018**

- Christiano created the dialing software that could blast robocalls. Knew that his customers were using it to send illegal robocalls but didn't terminate them. Hundreds of millions of calls, including neighborhood spoofing.

- ***Stratics*, February 2023**

- Complaint alleges Stratics offered an outbound calling service and a ringless voicemail platform service.
- Didn't check whether the numbers being called were on the DNC. One of its customers, Atlas, sent 23 million ringless voicemail calls deceptively advertising a debt relief service.
- Received tracebacks for robocalls using the ringless voicemail service. Stratics sometimes failed to comply with the tracebacks and often kept the customers active.

# Auto renewal

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- ***FTC v. Vonage*, 3:22-cv-6435 (D. N.J. Nov. 3, 2022)**
  - Paid \$100,000,000 for making it difficult for customers to cancel
  - Many paths to sign up, but canceling required speaking with an agent.
  - Hard to reach, limited hours, and often still charged.
- ***FTC v. Care.com*, 1:24-cv-0987 (W.D. Tex Aug. 26, 2024)**
  - Signed nearly 3 million care providers up for monthly memberships \$9 a month to \$20 a year.
  - Unsubstantiated claims about job availability and pay rates
  - Hidden “cancelation flow,” as long as six different pages.



# Thank You!

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