




## Kevin G. Rupy

Partner



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Kevin's practice centers on the legal and policy issues surrounding both traditional and emerging communications technologies. He represents clients before the Federal Communications Commission (FCC), Federal Trade Commission (FTC), and other federal agencies and has worked on a broad range of issues impacting broadband, voice, and video providers. Kevin has extensive experience working on legal issues involving the FCC's various Universal Service Fund programs, including the E-Rate, High-Cost Fund, Lifeline, and Rural Health Care programs. He is a nationally recognized authority on key issues affecting the telecom industry, particularly those relating to legal and illegal robocalls. Prior to his arrival at the firm, Kevin was Vice President of Law and Policy at USTelecom, where he represented Fortune 500 companies in the wireline broadband marketplace. In that role, he frequently served as a liaison between association members and government agencies and Congress. During his tenure at USTelecom, Kevin established and led the Industry Traceback Group, which is now the FCC's officially designated Traceback Consortium.

## Representative Matters



- Counsels clients on a range of regulatory obligations under federal law, including under the Communications Act, the Telephone Consumer Protection Act (TCPA), the Truth-in-Caller ID Act, and helps clients assess compliance risk and evolving expectations under existing and proposed legislation.
- Testified before the U.S. Senate on five occasions regarding issues related to robocalls, including testimony regarding the Senate's consideration of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act).

## Practice Areas



Pole Attachment and Infrastructure  
Deployment Litigation and Counseling  
Telecom, Media & Technology  
Telecommunications & Broadband  
Service  
The Telephone Consumer Protection  
Act (TCPA)

## Credentials



### Education

J.D., Washington College of Law,  
American University

B.A., Fordham University

### Bar and Court Memberships

District of Columbia Bar

Virginia Bar

- Counsels clients in FCC and FTC enforcement and compliance matters, to include the development and implementation of compliance plans.
- Counsels clients in numerous FCC rulemaking proceedings regarding implementation of the TRACED Act, to include rulemakings related to the creation of various call blocking safe harbors, establishment of the agency's Traceback Consortium selection framework, and creation of the information sharing database on illegal robocalls, among others.
- Advises robocall analytics providers, voice service providers and enterprise callers on FCC regulations and proceedings resulting from passage of the TRACED Act.
- Counsels clients regarding participation in the FCC's various broadband subsidy programs, including the Connect America Fund (CAF), the Rural Digital Opportunity Fund (RDOF), and the Uniendo Fund. Has also advised clients on compliance and buildout obligations related to the CAF, RDOF, and Uniendo Funds.

## Professional Experience

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- Vice President, Law & Policy, United States Telecom Association (2005-2019)
- General Counsel, Bluemont Vineyard, LLC (2007-Present)
- Associate, Private Law Firm (2000-2005)
- Law Clerk, Mobex communications, Inc. (1998-2000)
- Logistics Officer, United States Marine Corps (1997-1998)
- Law Clerk, Private Law Firm (1997)
- Material Operations Director, Counterpart International (1995-1997)
- Logistics Officer, United States Marine Corps (1990-1995)

# The Telephone Consumer Protection Act (TCPA)

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Wiley has extensive experience in all aspects of the Telephone Consumer Protection Act (TCPA) and the Telemarketing Sales Rule (TSR), having advised clients on federal telemarketing laws since they first came into effect in the 1990s. The firm has litigated major TCPA cases for both large corporations and small businesses. The firm's TCPA experience also includes compliance and regulatory matters as well as legislative monitoring and lobbying services. Because of the firm's Federal Communications Commission (FCC) expertise, we offer a unique capacity to address TCPA and TSR issues on multiple fronts to achieve the desired result.

## **Our services include:**

### **Litigation**

State and federal telemarketing regulations pose a significant threat of legal action. Regulators continue to see political advantage in an aggressive enforcement stance, while plaintiffs are lured by the statutory damages possible in a class action suit. Wiley is familiar with and sensitive to the unique concerns of businesses faced with consumer class action litigation under the TCPA. By virtue of our experience in the courts and at the FCC, the firm is able to devise creative defenses and map out multiple paths to victory. And when the facts counsel in favor of it, we can protect our clients' businesses and budgets by negotiating a settlement at the optimal time on optimal terms.

The firm has litigated TCPA cases in the federal and state courts and at the trial and appellate levels. We have defended TCPA lawsuits by successfully obtaining a primary jurisdiction referral to the FCC, effectively derailing the litigation. The firm also has successfully challenged federal and state powers under the TCPA, including actions arguing for partial state preemption.

Wiley's TCPA litigation experience includes successfully defending:

- A national wireless carrier in a putative nationwide class action involving text messaging;
- A large government contractor facing class action litigation for a text and calling program undertaken on behalf of a government agency;
- A major retailer in class action litigation involving its faxing activities; and
- A mobile marketing firm alleged to have violated the TCPA.

### **Compliance and Regulation**

The firm counsels clients about potential TCPA-related exposure and develops compliance programs to minimize their risk. Based on our understanding of the regulatory landscape and familiarity with the legal

requirements, our comprehensive compliance counseling includes: (1) identifying how businesses can manage ever-tightening restrictions on solicitations via phone, text, and fax, as well as limitations on “robocalling” and autodialers for both telemarketing and non-telemarketing calls; (2) developing technical, marketing, organizational, and employee training programs in order to meet legal requirements and qualify for “safe harbors”; (3) drafting and negotiating agreements with third parties like data processors and calling companies that participate in telemarketing campaigns, in order to limit the risks to our clients; and (4) assisting multiple broadcasters and media companies with the development of calling and texting programs to connect with audiences.

Wiley also represents clients in enforcement proceedings before administrative agencies and in advocating modifications to their telemarketing rules and policies. The firm has obtained favorable clarification from the FCC and the Federal Trade Commission (FTC) concerning the application of the telemarketing regulations to particular business models, and successfully advocated for sensible approaches that support legitimate commercial contacts. The firm also has defended against FCC, FTC, and state enforcement actions alleging telemarketing violations, often prevailing on the basis of “safe harbor” defenses and regulatory exceptions.

Wiley’s TCPA regulatory experience includes representing:

- A major online financial services firm subject to simultaneous FCC, FTC, and state AG investigations;
- Consumer financial firms and trade associations in an FCC proceeding on TCPA debt collection rules and related litigation;
- Multiple insurance companies facing TCPA enforcement actions before the FCC;
- Multiple trade associations, political organizations, and other nonprofit entities facing enforcement actions under the TSR; and
- Multiple clients facing liability based on the actions of their sales force of independent contractors, including in the insurance, home security, and business-to-business products industries.

### **Legislative / Lobbying**

On behalf of our clients, we routinely monitor the landscape of TCPA reform and help determine how to best engage and drive their agendas. Our work regularly focuses on: determining (and helping to shape) the definitive road map for TCPA reform; assessing threats and opportunities; determining key principals to meet with; assessing potential coalition opportunities; and discussing on a continual basis how to further clients’ interests.

# FCC and State AG Partnership Signals Major Shift in Robocall Enforcement

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July 13, 2022

On July 7, 2022, the Federal Communications Commission (FCC or Commission) and the Attorney General of the State of Ohio (Ohio AG) announced a coordinated enforcement initiative that signals a major shift in how state and federal enforcers are targeting illegal robocallers. In a series of coordinated announcements, Ohio Attorney General Dave Yost **announced** the filing of a lawsuit identifying 22 defendants responsible for bombarding U.S. consumers with billions of illegal robocalls regarding fraudulent auto warranty plans. In a separate but related initiative, the FCC **issued eight cease and desist letters** to voice over internet protocol (VoIP) providers, including some of the VoIP defendants in the Ohio AG's case. The FCC believes that upwards of eight billion robocalls were generated as part of the scheme. The closely coordinated effort by the FCC and the Ohio AG signals a major shift at the federal and state level in robocall enforcement toward more coordinated state and federal efforts and stricter requirements to mitigate illegal robocalls across the entire calling ecosystem.

## Ohio AG Names 22 Defendants, Including VoIP Providers and Recidivist Robocallers

The Ohio AG's Complaint, filed in federal court in the Southern District of Ohio, names 22 defendants led by Roy Cox Jr., Aaron Michael Jones, and Stacey Yim, and alleges claims under the Telephone Consumer Protection Act (TCPA), the Federal Trade Commission's (FTC) Telemarketing Sales Rule (TSR), and various Ohio consumer protection laws. The Ohio AG alleges that each Defendant "performed different, though sometimes overlapping, functions to create layers of protection for the primary beneficiaries of the scheme, individual Defendants Jones, Cox, and Yim." Cox and Jones have previously been sued by the FTC for similar robocall practices. For example, Aaron Michael Jones has been

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## Practice Areas

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Privacy, Cyber & Data Governance  
Telecom, Media & Technology

sued three times for unlawful robocalling, twice by the FTC in 2017 and 2019 and once by the State of Texas in 2011. Cox was similarly targeted by the FTC in 2011, for robocalls selling credit card interest rate reduction programs, extended automobile warranties, and home security systems.

The call volumes associated with the scheme at issue in the Ohio AG's Complaint are staggering. According to the Complaint, since at least July of 2018, each of the Defendants, acting individually and collectively through a common enterprise, allegedly participated in an unlawful robocall operation that bombarded American consumers with "**billions of robocalls**." Ohio consumers alone allegedly received at least 800 million illegal robocalls between July 2018 through at least July 2021, most of which were pitching fraudulent "auto warranty" plans. According to the Complaint, the call volume was the "equivalent to calling every person in Cincinnati twice a day for over 1,000 consecutive days without consent."

### **FCC Authorizes Call Blocking by Carriers; Discloses 'Coordinated' Investigation**

Concurrent to the Ohio AG's filing of its Complaint, the FCC issued eight cease and desist letters, a Public Notice to all U.S. voice providers, and a press release providing further insights into the coordinated nature of the investigation into this auto warranty fraud scheme. Of note, the Public Notice advises "all U.S.-based voice service providers" that they "may block voice calls or cease to accept traffic" pursuant to the FCC's rules, from the eight VoIP providers identified in the Complaint.

Further, the Public Notice also states that the FCC may issue a subsequent Order to all U.S.-based voice service providers notifying them whether the eight VoIP providers in question have failed to implement the requirements outlined in their specific Cease and Desist letters. In the event that an Order is subsequently issued by the Bureau, all U.S.-based voice service providers will be **required** to "take steps to effectively mitigate illegal traffic ... up to and including blocking, if necessary." If the Bureau issues that Order, it would shift the mitigation obligation from the eight VoIP providers to all U.S.-based voice providers.

While the FCC has sent well over a dozen such Robocall Cease and Desist letters to providers since 2021, this latest round of letters is distinct because it is the first Public Notice that the FCC has issued concurrently with the letters, in which the FCC strongly encourages all downstream providers to take advantage of the call blocking safe harbor with respect to this traffic.

This most recent round of eight Cease and Desist letter is also notably stricter on targeted carriers with respect to potential delisting from the FCC's robocall mitigation database (RMD) and potential blocking by U.S.-based providers. Unlike earlier iterations of the agency's Cease and Desist letters, the recent tranche of letters specifically delineates the potential next step of removing the provider's registration from the RMD, which the FCC notes would "**require[e] all intermediate providers and terminating voice service providers to cease accepting your traffic.**" (emphasis in originals). In order to avoid removal from the RMD, letter recipients are generally required to (1) take steps to "effectively mitigate illegal traffic within 48 hours," and (2) inform the FCC and the Traceback Consortium by Thursday, July 21, 2022, of the steps they have taken to "implement effective measures" to prevent customers from using their networks to make illegal calls. If a letter recipient fails to act by the above referenced

deadlines, the FCC will authorize U.S.-based voice service providers to “**block ALL call traffic transmitting from your network, permanently.**” (emphasis in original).

The FCC’s accompanying [press release](#) also announced that the Enforcement Bureau has opened a formal case and is actively investigating these calls for possible legal violations. Of particular note, it states that “[n]one of today’s actions foreclose the possibility that the FCC might also take enforcement measures including financial penalties against the parties.” In addition, the FCC states in its press release that these efforts are “fueled by coordinated investigative efforts with our state partners,” and that “[s]tate and federal robocall enforcement entities are working together like never before to combat robocall and spoofing scams.”

### **The Changing Enforcement Dynamic in 2022 – A Move Toward Coordinated and Stricter Enforcement**

The latest efforts by the FCC and the Ohio AG are part of a larger trend, where federal and state agencies have clearly opened a new front on the fight against illegal robocalls by closely coordinating joint enforcement initiatives. For example, over the last year, the FCC has [announced](#) Memoranda of Understanding (MOU) between state robocall investigators and the FCC’s Enforcement Bureau in 36 states and the District of Columbia. These MOUs generally establish information-sharing and cooperation structures to investigate spoofing and robocall scam campaigns, and the FCC has noted that these partnerships can “provide critical resources for building cases and preventing duplicative efforts in protecting consumers and businesses nationwide.” The MOUs may also facilitate relationships with other actors in this space including other federal agencies and robocall blocking companies, and support for and expertise with critical investigative tools including subpoenas and confidential response letters from suspected robocallers. While originally viewed as cooperative agreements focusing on information sharing, the Ohio AG Complaint signals that these MOUs are now being leveraged by federal and state enforcers to pursue joint enforcement initiatives. In recent months, various state AGs have announced a series of independent enforcement actions, including in [North Carolina](#), [Vermont](#), and [Indiana](#). The Ohio AG and FCC action suggests that more joint efforts may be forthcoming.

Moreover, the coordinated effort by the FCC and the Ohio AG also signals stricter robocall enforcement in general – on both targeted carriers that are the source of these illegal calls, as well as on downstream providers more generally. Specifically, the FCC’s July Public Notice encourages blocking of the targeted carriers’ traffic in parallel to calling on the targeted carriers to mitigate their bad traffic. Additionally, should the FCC issue a subsequent Order against non-compliant providers that fail to meet the requirements contained in their Cease and Desist letters, all U.S.-based voice providers could be placed under an affirmative obligation to block all voice traffic from such providers.

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Wiley has a deep and experienced bench of lawyers who handle robocalling and robotexting issues for clients. Our experts handle federal and state policy issues; compliance with federal and state requirements; complex Telephone Consumer Protection Act (TCPA) issues, including political and charitable outreach; and TCPA enforcement actions and investigations.