

FCC Hits Political Telemarketer with Proposed \$10 Million Fine

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Last month, the Federal Communications Commission (FCC) took steps to enforce robocall laws against a political telemarketer. Specifically, with its December 2019 actions, the FCC alleged that Kenneth Moser and his telemarketing company, Marketing Support Systems, violated both the Telephone Consumer Protection Act (TCPA), the law that limits automated calling without adequate consent, and the Truth in Caller ID Act, the law that regulates unlawful Caller ID spoofing. While Moser's alleged calling activities were particularly egregious, the FCC's actions should serve as a reminder to all political callers that running afoul of robocalling laws can be very costly.

Background on the Alleged Violations

Moser's alleged illegal activity occurred during California's 2018 primary election. On May 30 and 31, 2018, approximately one week before the primary, Moser allegedly placed more than 47,000 robocalls targeted at residents of the California 76th State Assembly District in San Diego County. The robocalls described in graphic detail an alleged sexual assault involving one of eight candidates for the open Assembly seat. The allegations in the recorded message, however, had already been disproven by law enforcement. Notably, the robocalls appeared to originate from a telemarketing company called HomeyTel, which is a company with which Moser had a "long and contentious relationship." As a result of these calls, HomeyTel received a multitude of complaints from consumers who received the calls, and a cease-and-desist letter from the candidate. The California Secretary of State referred a complaint about the matter to the FCC's Enforcement Bureau, which investigated, resulting in the FCC's proposed \$10 million fine against Moser.

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Practice Areas

Election Law & Government Ethics
Telecom, Media & Technology
The Telephone Consumer Protection Act (TCPA)

The FCC's Enforcement Actions

Specifically, the FCC adopted two separate enforcement actions against Moser and his company, Marketing Support Systems. The first item – a Citation and Order (Citation) – found that Kenneth Moser, doing business as Marketing Support Systems, violated the TCPA by making the more than 47,000 unlawful political robocalls, including by failing to provide the phone number and identity of the entity responsible for initiating the prerecorded voice messages, and by making calls absent adequate consent or an emergency purpose. While the Citation is an interim step for the Commission and did not come with any proposed fines, the FCC emphasized that if Moser fails to comply with the TCPA's requirements moving forward, he could be liable for "significant fines."

The second item – a Notice of Apparent Liability (NAL) – proposed a \$9,997,750 fine for alleged violations of the Truth in Caller ID Act by unlawfully spoofing the telephone number assigned to another telemarketing company when transmitting prerecorded voice calls. The FCC's Enforcement Bureau concluded that Moser allegedly violated the Truth in Caller ID Act by apparently selecting HomeyTel's phone number to appear as the caller ID with the intent to cause harm to HomeyTel and others. Due to the "egregious circumstances" surrounding the alleged calls, the Enforcement Bureau proposed the nearly \$10 million fine. Notably, the Enforcement Bureau held Moser personally liable for the consequences of his apparently unlawful actions, as staff found no evidence that Marketing Support Systems is a legally incorporated entity.

Political Robocallers Should Be Aware of the TCPA and the Truth in Caller ID Act

As illustrated above, various laws and FCC regulations apply to political robocalls. Under the TCPA, the relevant requirements depend on what type of number is dialed. The FCC's regulations treat political robocalls made to wireline and wireless numbers differently, and the agency's application of the law for each is often nuanced and fact-specific. The FCC's regulation of political robo-texts is similarly particular and fact-dependent. Further, there are other requirements imposed on political calls under the TCPA, including that a caller placing a prerecorded call must identify itself at the beginning of each call. Political robocallers should also be aware of the Truth in Caller ID law, which prohibits manipulating caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value.

Robocall rules are complex and nuanced, and the stakes of a misstep are high. For more detailed information about how political calls and texts are handled under the TCPA, see our earlier post [here](#), or reach out with specific questions.