

FCC Seeks Record-Breaking \$300 Million Fine for Robocall Warranty Scam

Violations of Telephone Consumer Protection Act prove costly to perpetrators of massive auto warranty scam operation. by Christopher Hazlehurst, J.D.

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Ralph B. Kalfayan, attorney at law

Communications Commission (FCC) ended 2022 with a bang, proposing that a whopping fine of just under \$300 million be levied against the perpetrators of a massive robocall warranty scheme. The proposed fine follows earlier FCC enforcement actions that interrupted the robocall scam, which the agency dubbed “the largest robocall operation the FCC has ever investigated.”

The Notice of Apparent Liability (NAL) was issued by the FCC on December 23, 2022, In the Matter of Sumco Panama SA, Sumco Panama USA, Virtual Telecom kft, Virtual Telecom Inc., Davis Telecom Inc., Geist Telecom LLC, Fugle Telecom LLC, Tech Direct LLC, Mobi Telecom LLC, and

Posting Express Inc. (DA/FCC #: FCC-22-99).

Per the FCC, the scam was operated by Roy Cox, Jr., Michael Aaron Jones, and affiliated entities, and it involved making billions of unlawful robocalls. More than five billion robocalls were made to half a billion phone numbers in a three-month span in 2021, during which a pre-recorded message would encourage consumers to speak with a sham “warranty specialist” about extending or reinstating their car’s warranty.

As part of its enforcement action, the FCC issued its first-ever “K4 Notice” and “N2 Order.” A K4 Notice is a notice authorized by section 64.1200(k)(4) of the FCC’s Rules to voice service providers to block voice calls or cease to accept traffic from certain providers. Along with the N2 Order, the actions were aimed at blocking traffic related to the auto warranty scam robocalls. The FCC boasts that its efforts led to a “massive 99% drop” in the volume of those calls. The FCC subsequently issued another K4 Notice in an action targeting a robocall scam related to student loan debt.

The agency alleges the auto warranty robocallers violated federal anti-robocalling and anti-spoofing laws. "Spoofing" makes the caller ID display a different number than the actual originating number. The Truth in Caller ID Act prohibits spoofing when done to cause fraud or other harm. The Telephone Consumer Protection Act (TCPA) prohibits robocalls (prerecorded voice messages) to mobile phones without recipient consent, proper identification of the caller at the start of the message, or a callback number to opt out of future calls. The robocalls in this instance spoofed neighbor numbers to recipients to hide the calls' origins and made no effort to either obtain recipient consent or make the required disclosures.

The FCC proposed a \$299,997,000 fine against the robocall firm, the agency's largest-ever fine, because the agency believed the robocallers met their criteria for "egregious violations." Consumers described the calls as "incessant" and a form of

"harassment." Among other conduct, the robocalls spoofed the phone numbers of hospitals during the COVID-19 pandemic, causing confused consumers to call hospitals to complain and tie up vital phone lines.

The FCC's proposal does not constitute a final imposition of a fine. The respondents have the opportunity to dispute the allegations, presenting legal arguments and evidence on their behalf.

If the FCC does determine to impose the fine as a final action, it's not clear that consumers would see any of the proceeds. Certain agencies, such as the Consumer Financial Protection Bureau, specifically direct civil penalty proceeds to funds designated for victim compensation and other relevant uses, such as financial education.

Most federal agencies, however, including the FCC, send penalty proceeds to the U.S. Treasury. For example, after AT&T was hit with a \$100 million fine based on claims the company misled customers about its unlimited data plan, the FCC stated the fine went to "the U.S. Treasury for general use." That means that Congress gets to decide where the money goes.

Aggrieved customers can also bring their own claims under the TCPA, including by way of a class action. The TCPA authorizes recipients of impermissible phone calls to recover up to \$1,500 for each violation.



Ralph B. Kalfayan, California Consumer Protection Lawyer

In addition to the TCPA, many states have enacted their own anti-robocalling and anti-spoofing laws. Ralph B. Kalfayan is the founder and lead attorney of the [Kalfayan Law Firm](#), a California consumer protection and class action law firm based in San Diego and serving clients nationwide. Mr. Kalfayan explains how California recently enacted a robocalling law of its own.

“On October 2, 2019, Governor Newsom signed the Consumer Call Protection Act which took effect on January 1, 2021, authorizing the State Attorney General to implement various sections of the Telephone Consumer Protection Act to combat unwanted and annoying robocalls in California.”

According to attorney Kalfayan, the California law generally prohibits certain types of solicitation or marketing calls and messages to consumers without a pre-existing relationship and prior consent (which can be revoked at any time). “The laws apply to cellphones, landlines, and fax machines,” says Kalfayan, and text messages are also included. Kalfayan provided a few examples of the restrictions in the law, which include:

- Automated, pre-recorded, or artificial voice calls or messages are generally prohibited;
- Calls cannot be made before 8 a.m. or after 9 p.m.;
- Sales and marketing callers must identify themselves, the entity they represent, the contact information of the entity, and why they are calling;
- Do-Not-Call List requests must be honored both before the call and during the call;
- Banks and debt collectors must get prior consent to contact cell phones via voice or text.

“Actual and statutory damages are available depending on the facts of each case,” Kalfayan says. “Statutory damages vary per claim between \$500 and \$1,500 for a knowing or willful violation.”

While this California law directs the State Attorney General to initiate enforcement actions, Kalfayan remarks that California residents can continue to pursue legal remedies under the Federal laws, including recovering statutory damages up to \$1,500 per violation.

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