

Telemarketing

**Trump, Clinton Robocalls Rising
As Election Day Draws Closer**

Presidential candidates Hillary Clinton (D) and Donald J. Trump (R) are ramping up efforts to collect donations and voter support through increased robocalls as election day fast approaches.

Across the board, political robocalls are up 64 percent since the beginning of the year, according to a report released Oct. 18 by caller identification application Hiya Media Inc.

Troy Lieberman, litigation associate at Nixon Peabody LLP in Boston and co-leader of the firm's Telephone Consumer Protection Act (TCPA) team, told Bloomberg BNA Oct. 18 that "it's not surprising to see an increase in robocalls, especially as we get closer to election day." Many political campaigns regularly use "autodialed and prerecorded calls" for political contributions and voter support, he said.



Andrew Harrer/Bloomberg

Political robocalls are governed under the TCPA, 47 U.S.C. § 227, and its implementing rules that establish statutory damages up to \$1,500 per willful violation. But, political calls are "typically treated like informational calls, as opposed to telemarketing calls, which have more stringent requirements," Lieberman said.

Political calls to landlines are permissible "as long as the caller provides the necessary requirements" but aren't allowed to mobile devices unless there is "prior

express consent from the caller," he said. "This is where most campaigns may run into trouble."

In the lead up to the election, political candidates up and down the ballot should heed caution when making automated phone calls without affirming that the voters' contact information was obtained legitimately. Failure to do so may lead to potential costly litigation and regulatory enforcement actions.

More Calls, Less Cash for Trump. Additionally, Trump has outpaced "Clinton by 388 percent" in political robocalls over the same time period, the report said.

Lieberman said that the increase in robocalls "is just the nature of elections and advancing technology." Continued advancement in robocall technology may make political call centers cheaper to operate, he said.

For example, Clinton has used the Megaphone application to reach potential voters and contributors. Megaphone and similar apps allow a user to send individual text messages to a long list of recipients in a short amount of time.

Applications like Megaphone and other advancements in autodialing technology likely play a role in increased robocalls this year, Lieberman said.

The increase in campaign calls, however, doesn't reflect the candidate's ability to attract voter contributions. According to Federal Election Commission data, through Aug. 31 Clinton has received more political contributions compared to Trump—\$373.3 million to \$165.9 million, respectively.

Unsavory Political Spam. Although many of the calls were legitimate and fell within protections under the TCPA, many consumers received political spam calls from malicious actors.

Since January 2016, political scam calls have increased 614 percent. Many of the scams focused on voter registration, campaign donations and election survey scams, the report said.

In addition to a private right of action under the TCPA, "the FCC can initiate enforcement actions for violations," Lieberman said. "The FCC is aware and monitoring political robocalls," he said.

The Clinton and Trump campaigns didn't immediately respond to Bloomberg BNA's e-mail requests for comments.

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