



# PUBLIC NOTICE

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## ROBOCALL ENFORCEMENT NOTICE TO ALL U.S.-BASED VOICE SERVICE PROVIDERS

### FCC Enforcement Bureau Notifies All U.S.-Based Providers of Apparently Illegal Robocall Traffic from PhoneBurner Inc. and MV Realty PBC, LLC

File No. EB-TCD-22-00033721

By the Chief, Enforcement Bureau:

The Enforcement Bureau (Bureau) of the Federal Communications Commission (FCC or Commission) issues this Public Notice to notify all U.S.-based voice service providers about substantial amounts of apparently unlawful telephone solicitation calls to phone numbers on the National Do Not Call (DNC) Registry<sup>1</sup> from PhoneBurner Inc. (PhoneBurner) and MV Realty PBC, LLC. (MV Realty). In these calls, MV Realty operators offered cash to homeowners in a purported exchange for giving MV Realty an exclusive right to list the homeowner's property for sale. **Pursuant to section 64.1200(n)(2) of the Commission's rules, we hereby provide written notice to all U.S.-based voice service providers<sup>2</sup> to take steps to effectively mitigate apparently illegal traffic<sup>3</sup> from PhoneBurner and MV Realty.<sup>4</sup> We consider blocking the traffic to be an example of effective mitigation.**

*Purpose.* Protecting individuals and entities from the dangers of unwanted and illegal robocalls is the Commission's top consumer protection priority. As part of the Commission's multi-pronged approach to combatting illegal robocalls, the Commission has taken steps to encourage voice service providers to

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<sup>1</sup> Federal Trade Commission, National Do Not Call Registry, <https://www.donotcall.gov/>.

<sup>2</sup> For the purposes of this document, the term "voice service provider" has a broad meaning that includes any entity originating, carrying, or terminating voice calls through time-division multiplexing (TDM), Voice over Internet Protocol (VoIP), or commercial mobile radio service (CMRS). See *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Third Report and Order, Order on Reconsideration, and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 7614, 7615 n.3 (2020).

<sup>3</sup> The Bureau believes that PhoneBurner and MV Realty engaged in the following illegal conduct: Making unlawful "telephone solicitations" in violation of 47 CFR § 64.1200(f)(15); leaving prerecorded voicemail telemarketing messages to consumers without consent in violation of 47 U.S.C. § 227(b) and 47 CFR § 64.1200(a); making calls to phone numbers on the DNC Registry in violation of 47 U.S.C. § 227(c) and 47 CFR § 64.1200(c)(2); knowingly transmitting misleading or inaccurate caller identification information in violation of 47 U.S.C § 227(e)(1).

<sup>4</sup> 47 CFR § 64.1200(n)(2). Each notified provider must promptly investigate the identified traffic. Each notified provider must then promptly report the results of its investigation to the Enforcement Bureau, including any steps the provider has taken to effectively mitigate the identified traffic or an explanation as to why the provider has reasonably concluded that the identified calls were not illegal and what steps it took to reach that conclusion.

mitigate suspected illegal robocalls.<sup>5</sup> The Commission permits voice service providers to block traffic from other voice service providers that the Bureau has warned are transmitting suspected illegal robocalls.<sup>6</sup> Additionally, section 64.1200(n)(2) of the Commission’s rules requires voice service providers to effectively mitigate robocall traffic when notified by the Bureau of ongoing unlawful call activity.<sup>7</sup>

*Background.* The USTelecom’s Industry Traceback Group (Traceback Consortium)<sup>8</sup> traced a substantial volume of apparently unlawful telephone solicitation<sup>9</sup> calls to PhoneBurner and MV Realty; the calls were placed to homeowners whose phone numbers were on the DNC Registry. In these calls, MV Realty operators offered homeowners one-time cash payments, purportedly in exchange for the homeowner granting MV Realty exclusive listing rights to sell the homeowner’s home at some future date.<sup>10</sup> This traffic is identified in Attachment A.

PhoneBurner is “a cloud-based power dialer and outreach solution”<sup>11</sup> headquartered in California.<sup>12</sup> PhoneBurner employs software and a virtual portal that enables its clients to place robocalls, leave

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<sup>5</sup> See 47 CFR § 64.1200(k); *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Third Report and Order, Order on Reconsideration, and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 7614, 7622, para. 19 (2020) (*July 2020 Call Blocking Order*) (establishing safe harbor for blocking traffic from bad-actor upstream voice service providers); *Advanced Methods to Target and Eliminate Unlawful Robocalls; Call Authentication Trust Anchor*, CG Docket No 17-59, WC Docket No. 17-97, Declaratory Ruling and Third Further Notice of Proposed Rulemaking, 34 FCC Rcd 4876, 4887-88, paras. 34-46 (2019) (*2019 Call Blocking Order*) (blocking based on reasonable analytics with consumer opt-out and consumer whitelists); *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9706, 9709, para. 9 (2017) (*2017 Call Blocking Order*) (blocking of certain categories of calls highly likely to be illegal).

<sup>6</sup> *July 2020 Call Blocking Order*, 35 FCC Rcd at 7628-29, para. 36-39; see 47 CFR § 64.1200(k)(4).

<sup>7</sup> 47 CFR § 64.1200(n)(2).

<sup>8</sup> USTelecom’s Industry Traceback Group is the registered industry consortium selected pursuant to the TRACED Act, to conduct tracebacks to identify suspected bad actors. *Implementing Section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)*, EB Docket No. 20-22, Report and Order, DA 22-870 (EB 2022) (*2022 Consortium Selection Order*); see also TRACED Act § 13(d).

<sup>9</sup> A “telephone solicitation” refers to the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message: (i) To any person with that person’s prior express invitation or permission; (ii) To any person with whom the caller has an established business relationship; or (iii) By or on behalf of a tax-exempt nonprofit organization.” 47 CFR § 64.1200(f)(15).

<sup>10</sup> Consistent with the Commission’s goals of preventing unlawful robocalls, the Commission collaborated with the Office of the Attorney General of Florida pursuant to a memorandum of understanding. On November 29, 2022, the Office of the Attorney General of Florida filed a complaint against MV Realty and its corporate leadership for operating the “complex and deceptive scheme that attempts to skirt existing Florida law with the goal of swindling consumers out of their home equity.” *Office of the Attorney General, State of Florida, Department of Legal Affairs v. MV Realty PBC, LLC, Et al.* (Fla. 13<sup>th</sup> Cir. Ct. Nov. 29, 2022), [http://www.myfloridalegal.com/newsrel\\_nsf/newsreleases/E9E4A2F7281415CE85258909007259EC](http://www.myfloridalegal.com/newsrel_nsf/newsreleases/E9E4A2F7281415CE85258909007259EC).

<sup>11</sup> See PhoneBurner website, Frequently Asked Questions about PhoneBurner, <https://www.phoneburner.com/homepage/faq> (last visited Dec. 15, 2022).

<sup>12</sup> See California Secretary of State business record search listing PhoneBurner’s principal address as 42 Foliate Way Ladera Ranch, CA 92694, and mailing address as 1968 S. Coast Hwy. Ste. 1800 Laguna Beach, CA 92651, <https://bizfileonline.sos.ca.gov/search/business>

prerecorded voicemails, and send text messages to thousands of consumers each day.<sup>13</sup> PhoneBurner’s customers hire operators to place calls through a portal that PhoneBurner owns and operates. Once logged into PhoneBurner’s software, these operators can call the numbers that PhoneBurner’s customers specify—in this instance, calls to homeowners. PhoneBurner’s software offers several options. Here, if a homeowner answers the call, PhoneBurner’s portal connects the MV Realty operators to the homeowner. If there is no response, PhoneBurner’s software leaves a prerecorded message and/or a text message using MV Realty’s preselected script.<sup>14</sup> PhoneBurner’s software also enables its customers to make robocalls that include false or misleading caller ID<sup>15</sup>—for example, by allowing its customers to match outbound calling number area codes to those of the recipients of their robocalls.<sup>16</sup>

MV Realty is a realtor based out of Delray Beach, Florida.<sup>17</sup> MV Realty’s robocalls and prerecorded voicemails to phone numbers on the DNC Registry included messages offering homeowners several hundred to several thousands of dollars in exchange for signing a 40-year exclusive listing agreement with MV Realty. At least three states have filed complaints against MV Realty alleging violations of consumer protection laws.<sup>18</sup> The Commission also received a complaint from a homeowner who stated that they received three to five unsolicited voicemails from MV Realty each day.<sup>19</sup> We consider blocking the traffic to be an example of effective mitigation. The Bureau identified an additional 26 complaints

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<sup>13</sup> See PhoneBurner website, Frequently Asked Questions about PhoneBurner, <https://www.phoneburner.com/homepage/faq> (last visited Dec. 15, 2022).

<sup>14</sup> The Commission has previously clarified that the caller must obtain the called party’s prior express consent to be called with an artificial or prerecorded voice message even if a live agent controls the initial artificial or prerecorded voice message using soundboard technology. See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14640 (18) (2020).

<sup>15</sup> The Truth in Caller ID Act prohibits “caus[ing] any caller identification service” in connection with any voice service or text messaging service to “knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value.” 47 U.S.C § 227(e)(1).

<sup>16</sup> See Declaration of {{ }}; Declaration of {{ }} [hereinafter Declarations] (on file at EB-TCD-22-00033721).

<sup>17</sup> See Florida Department of State, Division of Corporations, business record search listing MV Realty’s principal address as 219 N. Dixie Blvd. Delray Beach, FL 33444. <http://dos.sunbiz.org/scripts/ficidet.exe?action=DETREG&docnum=G16000100245&rdocnum=G16000100245>

<sup>18</sup> The Florida complaint alleges that the calls deceived consumers by hiding the terms of MV Realty’s “Homeowner Benefit Program,” Consumers were led to enter a misleading contract under which MV Realty filed a 40-year lien on their property that would require the consumer to pay three percent of the property’s value to MV Realty if the property is sold or the consumer wished to cancel the contract. See Press Release, Fla. Office of the Att’y Gen., Attorney General Moody Takes Legal Action Against MV Realty for Swindling Florida Homeowners (Nov. 29, 2022), [http://www.myfloridalegal.com/newsrel\\_nsf/newsreleases/E9E4A2F7281415CE85258909007259EC](http://www.myfloridalegal.com/newsrel_nsf/newsreleases/E9E4A2F7281415CE85258909007259EC)); see also Press Release, Mass. Office of the Att’y Gen., AG Healey Sues Florida Company for Scamming Financially Struggling Residents Into Mortgaging Their Homes in Exchange for Small Cash Payments (Dec. 14, 2022), <https://www.mass.gov/news/ag-healey-sues-florida-company-for-scamming-financially-struggling-residents-into-mortgaging-their-homes-in-exchange-for-small-cash-payments>); Press Release, Pa. Office of Att’y Gen., AG Shapiro Sues Real Estate Brokerage Firm MV Realty Over Misleading Homeowner Benefit Program (Dec. 14, 2022), <https://www.attorneygeneral.gov/taking-action/ag-shapiro-sues-real-estate-brokerage-firm-mv-realty-over-misleading-homeowner-benefit-program/>).

<sup>19</sup> FCC Complaint # 5450806 (Apr. 29, 2022) “I spoke with someone at the number and they said they are from a company called MV Realty. MV Realty group has been calling me and leaving 30 seconds voicemails 3-5 times a day for 3 weeks.”

alleging calls to phone numbers on the DNC Registry which were made to the Federal Trade Commission.<sup>20</sup>

*MV Realty placed thousands of calls to numbers on the DNC registry.* A significant portion of MV Realty's calls were placed to consumers who had their phones actively listed on the DNC registry. The Enforcement Bureau's investigation identified 11,949,374 calls made to DNC registered numbers by PhoneBurner and MV Realty.<sup>21</sup> The Bureau found that 10,926,635 calls were placed to wireless numbers and 1,022,739 calls were placed to landline phone numbers actively listed on the DNC Registry.<sup>22</sup>

The evidence indicates that MV Realty's calls were telephone solicitations. As discussed above, the MV Realty operators offered homeowners cash in exchange for a listing agreement with the company—essentially encouraging homeowners Purchase the company's services. Further, the homeowners' complaints about MV Realty's calls indicate that they did not give consent to be called and did not have an established business relationship with MV Realty.<sup>23</sup> The Bureau's investigation revealed that MV Realty frequently called consumers who repeatedly and affirmatively asked MV Realty to stop calling them.<sup>24</sup> The Bureau spoke to former MV Realty employees who described how they were repeatedly asked by consumers to stop calling. In response to these requests, these employees marked the phone numbers as belonging to consumers who did not wish to be called.<sup>25</sup> MV Realty failed to remove these homeowners from its calling list despite being notified by MV Realty's own employees.<sup>26</sup> As a result, MV Realty called the same consumers repeatedly.<sup>27</sup> These repeated calls appear to violate the Commission's telephone solicitation rules.<sup>28</sup>

Further, PhoneBurner's software left prerecorded voicemail messages with the scripted solicitation when homeowners did not answer MV Realty's calls.<sup>29</sup> These messages independently appear to violate the Telephone Consumer Protection Act of 1991 (TCPA) and the Commission's rules, as they are prerecorded voice telemarketing messages sent to consumers without consent.<sup>30</sup>

*Steps that Voice Service Providers Must Take Following this Public Notice.* Upon receiving this *Public Notice*, voice service providers must promptly investigate the traffic identified in Attachment A.<sup>31</sup> Within 14 days, each provider must report the results of its investigation to the Bureau including any steps that

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<sup>20</sup> FTC Consumer Sentinel report (on file at EB-TCD-22-00033721).

<sup>21</sup> See Call Detail Records (on file at EB-TCD-22-00033721).

<sup>22</sup> Call Detail Record analysis (on file at EB-TCD-22-00033721).

<sup>23</sup> MV Realty also is not a tax-exempt nonprofit organization. See Internal Revenue Service, Tax Exempt Organization Search (Jan. 22, 2023) <https://apps.irs.gov/app/eos/>; see also 47 CFR § 64.1200(f)(15).

<sup>24</sup> See Declarations *supra* note 15.

<sup>25</sup> *Id.* (describing how employees listed the calls' disposition as do not call and how they notified their leadership of the consumers' request.)

<sup>26</sup> See Declaration of {{ }} (on file at EB-TCD-22-00033721).

<sup>27</sup> *Id.*

<sup>28</sup> 47 CFR § 64.1200(c)(2); see also 47 U.S.C. § 227(c) (directing the Commission to adopt regulations concerning telephone solicitations and the DNC Registry).

<sup>29</sup> See Call Detail Records (on file at EB-TCD-22-00033721).

<sup>30</sup> 47 U.S.C. § 227(b); 47 CFR § 64.1200(a) (prerecorded voice calls to wireless numbers, and prerecorded voice calls to residential numbers that constitute telemarketing, are unlawful). Calls that are telephone solicitations are also telemarketing calls. Compare 47 CFR § 64.1200(f)(15) with 47 CFR § 64.1200(f)(12).

<sup>31</sup> 47 CFR § 64.1200(n)(2).

the provider has taken to effectively mitigate the identified traffic or explain why the provider has reasonably concluded that the identified calls were not illegal and what steps it took to reach that conclusion.<sup>32</sup> **In the event that any voice service provider fails to mitigate this traffic from PhoneBurner and MV Realty or fails to explain to the Bureau why it reasonably concluded this traffic to be legal, the Bureau may take additional enforcement action.**<sup>33</sup>

*Partial Waiver of Reporting Obligation.* Pursuant to section 1.3 of the Commission's rules,<sup>34</sup> the Bureau finds that good cause exists in this instance to waive in part the reporting obligations otherwise required by section 64.1200(n)(2) of the rules. In particular, the Bureau concludes that obligating all U.S.-based voice service providers to generate a written report documenting their investigation of the suspected illegal robocall traffic identified in this *Public Notice* would result in an excessively voluminous record. Accordingly, a voice service provider shall not be required to file a report with the Commission if the provider determines that PhoneBurner or MV Realty are not customers of its services.

Any provider filing a report in response to the aforementioned requirements must do so within 14 days of this *Public Notice* and shall demonstrate its ongoing efforts to mitigate the traffic associated with PhoneBurner or MV Realty. Reports must be filed electronically by email sent to Kristi Thompson, Division Chief, Enforcement Bureau, Telecommunications Consumers Division, at [Kristi.Thompson@fcc.gov](mailto:Kristi.Thompson@fcc.gov); with copies sent to Lisa Zaina, Asst. Chief, Enforcement Bureau, Telecommunications Consumers Division, at [Lisa.Zaina@fcc.gov](mailto:Lisa.Zaina@fcc.gov); and Raul Rojo, Enforcement Bureau, Telecommunications Consumers Division, at 202-418-1336 or by email at [Raul.Rojo@fcc.gov](mailto:Raul.Rojo@fcc.gov). Reports and/or supporting documentation that exceed 5MB must be transmitted by an alternative mechanism; providers must contact Raul Rojo for alternative filing instructions.

*Contact Information.* For further information, please contact Kristi Thompson, Division Chief, Enforcement Bureau, Telecommunications Consumers Division, at 202-418-1318 or by email at [Kristi.Thompson@fcc.gov](mailto:Kristi.Thompson@fcc.gov); Lisa Zaina, Asst. Chief, Enforcement Bureau, Telecommunications Consumers Division, at 202-418-2803 or by email at [Lisa.Zaina@fcc.gov](mailto:Lisa.Zaina@fcc.gov); or Raul Rojo, Enforcement Bureau, Telecommunications Consumers Division, at 202-418-1336 or by email at [Raul.Rojo@fcc.gov](mailto:Raul.Rojo@fcc.gov).

ENFORCEMENT BUREAU  
Loyaan A. Egal  
Chief

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<sup>32</sup> *Id.* We consider blocking the traffic to be an example of effective mitigation.

<sup>33</sup> 47 CFR § 64.1200(n)(2); *see also* 47 CFR § 64.1200(f)(18); *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Fourth Report and Order, 35 FCC Rcd 15221, 15231, paras. 26-27 (2020).

<sup>34</sup> 47 CFR § 1.3 (“The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”).