

FCC Order Increases Risks for Political Calls and Texts

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In June, the Federal Communications Commission (FCC) adopted an Order that expands the scope of and the liability under the Telephone Consumer Protection Act (TCPA), the federal statute that governs automated calling. The TCPA was already a broad statute: it governs not only telemarketing calls, but other calls—like political and grassroots lobbying calls—as well. With the new Order, the FCC has made it more difficult to reach consumers, constituents, and voters alike via calls or texts.

The TCPA does not allow automated calls or texts—like robocalls and robotexts—to wireless phones without proper consent. For political or grassroots calls, that consent can be either oral or written, but it must be obtained from the voter before the call is made. Calls made in violation of the TCPA come with large risks: the penalty can be as much as \$1500 per violation.

The new Order expands the reach of the TCPA by taking a very broad view of what constitutes an autodialer. The Commission clarified that if the calling equipment has the *capacity* to store or produce, and dial random or sequential numbers, then it is an autodialer under the TCPA. Further, the Commission highlighted that even if the equipment is not being used as an autodialer, the potential ability for it to be used in such a way can make it fall under the TCPA's strict rules.

The TCPA applies equally to texts and calls. The new Order reaffirms that text messages are treated the same as traditional voice calls under the law.

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The bottom line for campaigns, PACs, Super PACs, trade associations, 501(c)(4)s, and other political or grassroots speakers is: know the rules before you robocall or robotext (including using autodialers). The TCPA could apply and in some instances state law as well. The combination of Wiley Rein's preeminent election law practice group with its legendary communications practice group will help you navigate this minefield.