

FCC Issues Enforcement Advisory Reminding Political Campaigns about Calling and Texting Restrictions under the TCPA

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By D. Mark Renaud and Kathleen E. Scott

On March 14, the Federal Communications Commission (FCC) issued an Enforcement Advisory (Advisory) to remind political campaigns of the “clear limits” on autodialed and prerecorded voice calls and texts under the Telephone Consumer Protection Act (TCPA), the federal statute that governs automated calling. With this Advisory, the FCC made clear that TCPA restrictions cover calls and texts made by political campaigns and other organizations involved in the 2016 election.

The Advisory summarizes TCPA restrictions as they apply to political calls. While manually-dialed political calls and texts are not subject to TCPA restrictions, calls and texts to wireless numbers made with an autodialer or that deliver a prerecorded artificial voice are prohibited unless the campaign has received prior express consent from the called party. The burden of proof is on the campaign to show that it has obtained consent, and the called party may revoke that consent either orally or in writing. Additionally, all prerecorded voice messages must contain specific identifications—like the name of the person or entity responsible for the call.

The FCC also made clear with this Advisory that it will “vigorously enforce” the TCPA. Each violation of the TCPA carries with it a possible \$16,000 fine from the FCC.

As we have said before, the bottom line for campaigns, PACs, Super PACs, trade associations, 501(c)(4)s, and other political or grassroots callers/texters is: know the rules before you robocall or robotext

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(including using autodialers). This includes federal law as well as state rules. The combination of Wiley Rein's preeminent election law practice group with its legendary communications practice group will help you navigate this minefield.