

ALERT

FCC Adopts Declaratory Ruling and Order Clarifying and Expanding TCPA

June 19, 2015

On June 18th, the Federal Communications Commission (FCC or Commission) adopted a Declaratory Ruling and Order which purports to clarify—but greatly expands the reach of—the Telephone Consumer Protection Act of 1991 (TCPA). This item addresses twenty-one petitions and requests made to the FCC since its 2012 TCPA Order. Specifically, the FCC made clear that:

- An autodialer is any technology that has the capacity to dial random or sequential numbers. Specifically, if the dialing equipment has the capacity—even with some modification—to dial numbers randomly or sequentially, the equipment falls into the autodialer definition, and therefore, the very broad scope of the TCPA. Any caller using such equipment must comply with the consent requirements, even if the caller is not dialing numbers randomly or sequentially. Despite this broad definition, the FCC stated in yesterday's meeting that there were limits to autodialer definition—but did not explain what those limits were at the meeting. The Commission was careful to note that it believes that this definition is consistent with its prior precedent.
- The TCPA requires the consent of the actual called party, not the intended recipient. With this ruling, callers will be open to liability for calling reassigned numbers. The FCC allows for the caller to make one call to the reassigned number free of liability; after the first call, however, callers are subject to strict liability.
- Consumers have the right to revoke consent to being called at any time in any reasonable way.

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- Nothing in the TCPA or the FCC's rules prohibits carriers from offering robocall-blocking technologies to consumers.

Additionally, the new Declaratory Ruling and Order defines many previously undefined terms, including "capacity" and "caller," and confirms that texts are calls, consumers are protected from both telemarketing and non-telemarketing calls, and Internet-to-phone messages are covered under the TCPA. Finally, the item creates exceptions to a limited number of calls and texts. First, the Commission exempted fraud and medical alerts. The Commission made clear that these exceptions are very narrow, and the alerts must follow strict parameters: the calls cannot contain any telemarketing and cannot be used for debt collection. Second, the Commission created an exemption for one-time, on-demand texts in response to consumer requests.

Because the item was described in general terms at the open meeting, no further detail on these issues is currently available, and we will need to see the full text of the item to determine the scope of some of these holdings. Please contact us if you would like to receive a copy of the Declaratory Ruling and Order once it is released. In the meantime, please do not hesitate to call or email with any questions.