

**ALERT**

# UPDATE: 11th Circuit Vacates FCC's One-to-One TCPA Consent Rule

January 27, 2025

While today was the original compliance deadline for the Federal Communications Commission's (FCC or Commission) new one-to-one consent requirement under its Telephone Consumer Protection Act (TCPA) regulations, a decision late last week has put that rule on hold indefinitely. Specifically, on Friday, January 24, 2025, the Eleventh Circuit issued its decision in *Insurance Marketing Coalition v. FCC*,<sup>[1]</sup> vacating the FCC's one-to-one consent rule and remanding it to the agency after finding that the rule exceeded the FCC's statutory authority under the TCPA. Because the rule would have imposed significant new consent requirements for marketing calls, the Eleventh Circuit's decision offers a major reprieve for calling parties.

Below, we recap the one-to-one consent rule, provide a summary of the Eleventh Circuit's decision, and preview what might be next.

**The rule would have had major operational impacts for marketers obtaining TCPA consent.**

As we explained here, the one-to-one consent rule would have: (1) obligated parties making marketing calls using an automatic telephone dialing system or an artificial or prerecorded voice to obtain prior express written consent "one seller at a time"; (2) required consent to be "clear and conspicuous"; and (3) required calls and texts to be "logically and topically associated with the interaction that prompted the consent."<sup>[2]</sup>

**The Eleventh Circuit found the one-to-one consent rule inconsistent with the TCPA's "prior express consent" definition.**

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Telecom, Media & Technology  
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After the one-to-one consent rule was adopted, an industry coalition filed a petition for review with the Eleventh Circuit, arguing that the rule, *inter alia*, exceeded the FCC's statutory authority under the TCPA. The Eleventh Circuit agreed with the industry coalition, finding that the one-to-one consent rule impermissibly conflicts with "the ordinary statutory meaning of 'prior express consent.'"[3]

In arriving at this decision, the Eleventh Circuit reasoned that, because the phrase "prior express consent" is undefined in the TCPA, the phrase must be given its "plain and ordinary meaning." [4] To assess the "plain and ordinary meaning" of prior express consent, the Eleventh Circuit turned to the common law understanding of "consent," finding that "to give 'prior express consent' to receive a robocall, one need only 'clearly and unmistakably' state, before receiving the robocall, that he is willing to receive the robocall." [5] The Eleventh Circuit thus rejected the FCC's rule because it purported to apply requirements *beyond* the clear-and-unmistakable consent required by the TCPA. That is, the TCPA does not purport to employ a "one-to-one-consent restriction" or a "logically-and-topically-related restriction," and the FCC has no authority to mandate requirements that do not appear in the statute. [6]

### **What's next for the one-to-one consent rule?**

The Eleventh Circuit vacated the one-to-one consent rule and remanded the case back to the FCC for further proceedings. [7]

So, what happens now?

In the immediate term, the one-to-one consent rule has been voided and will not take effect.

In the longer term, the FCC could petition the Eleventh Circuit to rehear the case, or it could ask the U.S. Supreme Court to grant certiorari and reverse the Eleventh Circuit's decision. Alternatively, if the FCC does not wish to fight the ruling in court, it could establish a pleading cycle to refresh the public record regarding the one-to-one consent rule. In doing so, the agency would seek comment on the legal issues identified in the Eleventh Circuit's case, and if the FCC chooses to promulgate a new rule, it will have to engage in a new notice-and-comment rulemaking proceeding and abide by the statutory limits identified by the Eleventh Circuit. However, there is no mandatory timeline on remand, and the agency may elect to either commence a new rulemaking, or to abandon the one-to-one consent rule altogether. Interested parties should pay close attention to this space in the event of either further litigation or a new pleading cycle on remand.

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Wiley has a deep and experienced TCPA/Robocalling and Privacy Litigation & Investigations bench that can help navigate these evolving issues. This TCPA update is one of a number of privacy-related developments to watch in 2025, as we discussed here. For more information about the Eleventh Circuit's vacatur and remand of the one-to-one consent rule, please contact one of the authors listed on this alert.

[1] *Insurance Marketing Coalition v. FCC*, No. 24-10277 (11th Cir. Jan. 24, 2025).

[2] 47 C.F.R. § 64.1200(f)(9).

[3] *Insurance Marketing Coalition v. FCC*, No. 24-10277, at 4.

[4] *Id.* at 15.

[5] *Id.* at 15-17.

[6] *Id.* at 17-24.

[7] *Id.* at 25.