

Federal Communications Commission Opines on TCPA Consent Requirements

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In response to inquiries from companies about how to obtain consent to send text messages, the Federal Communications Commission (FCC) recently issued interpretive orders responding to two of 24 inquiries it has received about how to apply the revised TCPA regulations.

The first order was the FCC's response to an inquiry from Cargo Airlines about how to obtain prior express consent for delivery notification texts. The FCC indicated that these types of texts and calls are beneficial to consumers and, in its opinion, should be exempt from the TCPA prior consent requirement *so long as* such messages are sent to the consumer without any charge whatsoever (i.e. a premium or standard charge), delivery companies limit notifications to one per package, the message is concise, and the message is sent only to the telephone number for the package recipient.

In the second order, the FCC responded to a petition for clarity on the TCPA prior consent requirements when a company wants to send an informational message. GroupMe is a social media group text messaging service that allows users to create groups consisting of up to 50 friends with whom they can share text messages. The company's terms of use require that each GroupMe group creator obtain consent from all individuals in his/her group to receive informational text messages from GroupMe. The FCC in its order indicated that obtaining consent for a program like this was still necessary, however neither the TCPA nor the FCC's rules prohibit a company from relying on an intermediary to convey a consumer's consent to receive informational calls and text messages to their mobile device. In other words, it was possible under the TCPA for a third party to provide consent on behalf of the text recipient. The FCC did, however, "strongly urge" GroupMe "to ensure that group organizers do in fact obtain the requisite consent" and "encouraged" GroupMe to take adequate steps to make sure organizers were aware of the requirement to get consent as contained within the program terms.

Tip: These orders suggest that the FCC recognizes the concerns that are being raised by companies with respect to complying with TCPA consent requirements for sending certain types of informational text messages. However, companies may want to proceed with caution before changing any consent procedures as a result of these orders, as FCC opinions are not necessarily dispositive in litigation. Moreover, the FCC stressed that these opinions were specific to the facts presented to them in each inquiry.

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