

FCC Limits TCPA's Fax Broadcaster Exemption to... Fax Broadcasters

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In [denying a recent petition](#) for a declaratory ruling, the Federal Communication Commission recently clarified that the Telephone Consumer Protection Act's unique liability standard for fax broadcasters does not apply to broadcasters of text messages. In its petition, Club Texting, Inc. argued that "text broadcasters" – companies that provide a platform for others to broadcast text messages and calls using Internet-to-phone technology – are not "senders" of text messages, but just a conduit. The company claimed that its services are thus effectively identical to those of "fax broadcasters," who transmit messages to fax machines on behalf of another person or entity for a fee. Fax broadcasters must meet a higher standard to be held liable for violations of the TCPA – namely, demonstrating "a high degree of involvement in, or actual notice of, the unlawful activity" and failing to "take steps to prevent such facsimile transmission."

The FCC declined to apply this standard to text broadcasters, however, finding that text broadcasters can be liable for TCPA violations as a "sender" based on the fact-specific determination discussed in its [2015 Declaratory Ruling and Order](#). This determination involves analysis of several factors, including whether (1) the company took the steps necessary to physically send the message, (2) another person or entity was so involved as to be deemed to have initiated it, and (3) the company knowingly allowed clients to use its platform for unlawful purposes. The FCC confirmed that it is this standard, not the standard for fax broadcasters, that applies when determining text broadcaster liability.

TIP: This decision serves as a reminder of the significant activity surrounding the TCPA and communicating with consumers via their cell phone numbers.

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