

FCC Publishes Final Robocall Rule, Impacts Text as Well

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The Federal Communications Commission published yesterday in the Federal Register its final rule on auto-dialed and pre-recorded calls under the Telephone Consumer Protection Act. As we reported earlier this year, the revised rule will require written consent to contact consumers using auto-dial technology, technology that is frequently used for sending text messages. It also requires such consent for pre-recorded marketing calls, mirroring a requirement enforced by the Federal Trade Commission under the Telemarketing Sales Rule. As with the FTC rule, consent under the amended FCC rule can be provided in any form (including, the FCC specifically noted, by text message), provided that potential recipients are clearly told that if they agree, they will get text messages (or marketing robocalls) and that the consumer after seeing this disclosure “unambiguously” agrees. The consent also cannot be conditioned on the requirement of payment. While portions of the amended rule will be effective 30 days from publication, namely July 11, 2012, effectiveness of the new written consent requirement is being delayed pending review by the Office of Management and Budget. Once approved, enforcement of the written consent requirement will begin 12 months after such approval.

TIP: While the written consent requirement is at least a year off, companies should keep in mind that the TCPA does require consent for text messages sent using platforms with “auto-dial” capabilities. Companies should thus already have consent procedures in place. But, in preparation for the new “written consent” requirement, they should ensure that those mechanisms include a clear notice of what messages will be sent, and an affirmative step equivalent to a writing that individuals take to grant consent.

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