

Web-Based Company Fined \$2.8 Million after FCC Determines it is the “Initiator” of Robocalls in Violation of TCPA

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The Federal Communications Commission recently imposed a penalty of \$2,880,000 against Dialing Services, LLC for violating the Telephone Consumer Protection Act. Dialing Services offers robocalling services to third-party clients—its clients pay on a per-call basis to make artificial or pre-recorded voice calls to telephone numbers that the client chooses. For example, Dialing Services assists clients in structuring a message by recording and storing messages for its clients and playing the sound recording to the party it calls. The calling party’s number is blocked or “spoofed,” meaning it displays a number other than the originating number, unless the client designates otherwise. The basis of the penalty is FCC’s allegation that Dialing Services made robocalls to wireless phones using artificial or prerecorded voice messages without prior express consent of the called parties. Over a three-month period in 2012 alone, Dialing Services was responsible for more than 4.7 million non-emergency calls to wireless numbers without consent.

Dialing Services argued that the TCPA does not apply to it because it is a web-based company. Namely, Dialing Services argued that the TCPA did not anticipate that pre-recorded calls would migrate away from call center and move onto Internet services; therefore, web-based dialing companies such as itself should not be viewed as responsible under the TCPA. The FCC disagreed, arguing that both the TCPA and its implementing regulations apply broadly to any “person” who makes a call using an autodialer, an artificial voice, or a prerecorded voice. According to the FCC, there is no suggestion that “person” was intended to be limited only to persons who use certain technology platforms. In other words, under the TCPA, the only thing that is relevant with respect to persons is whether a person “makes” or “initiates” a covered call.

Dialing Services then argued that it did not “initiate” the robocalls as the term “initiate” is defined by the dictionary, but instead acted merely as a conduit for the calls through its clients, who truly “caused the beginning” or “initiated” the calls. The FCC disagreed with this argument as well, citing precedent in support of the position that a caller may be found to have made or initiated by first taking the steps necessary to physically place a call, and second by being so involved in the placing of a specific telephone call as to be directly liable for making it. The FCC found that even if Dialing Series does not take the steps to physically place the telephone calls, the totality of the circumstances indicate that Dialing Services is so involved in the making of the calls that it can be deemed to have made them. These material circumstances included providing the number block and spoofing services, being directly involved in the creation of the content of the campaigns, providing its services unchanged even after the FCC informed it that it

was violating the TCPA, and advertising its ability to reach “thousands, hundreds of thousands, or even millions of customers...”

TIP: This case is a reminder that the FCC takes a broad approach to TCPA, and that companies that provide support in this space should think about TCPA compliance.

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Author

[Mary Katherine Kulback](#)

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