

## FCC Clarifies Requirements for Marketing Calls and Texts to Consumers

JULY 6, 2015

The Federal Communication Commission recently clarified requirements under the Telephone Consumer Protection Act (TCPA) for certain calls and text messages to consumers. As noted in our prior posts, the TCPA requires prior express consent for autodialed, prerecorded, or artificial voice calls to wireless phone numbers and prerecorded telemarketing calls to residential lines. The recipient's consent must be in writing (and signed) if the autodialed call constitutes telemarketing or introduces advertising.

The FCC has now offered new guidance in the form of a series of “declaratory rulings” to provide clarity to companies on how the agency interprets the TCPA and to close what it perceives as loopholes (FCC 15-72). The FCC has not released the full text of these rulings, but the final order will likely be released soon. For now, the FCC has provided a press release summarizing several highlights, which include the following:

- *Affirming the Law's Definition of Autodialer* – “Autodialer” is defined in the Act as any technology with the capacity to dial random or sequential numbers. This definition ensures that callers cannot skirt consumer consent requirements through changes in calling technology design or by calling from a list of numbers.
- *Internet-to-Phone Text Messages* – Equipment used to send Internet-to-phone text messages is an autodialer, so the caller must have consumer consent before calling.
- *Empowering Consumers to Say ‘Stop’* – Consumers have the right to revoke their consent to receive calls and texts “in any reasonable way at any time,” suggesting that companies may need to be prepared to accept and process an opt-out request regardless of how it is received (in person at a retail establishment, by email, etc.).
- *Third-Party Consent* – According to the FCC, a consumer whose name is in the contacts list of an acquaintance's phone does not consent to receive calls from third-party applications downloaded by the acquaintance.

The FCC also reiterated that these requirements apply equally to both texts and voice calls to wireless numbers. In its press release, the FCC noted a few very limited and specific exemptions for urgent circumstances – for example, to alert consumers to possible fraud on their bank accounts, or to remind them of important medication refills. That said, other types of financial or healthcare calls, such as marketing or debt collection calls, do not qualify for these limited and specific exemptions. Moreover, the FCC noted, consumers must still be able to opt out from these exempt calls at any time.

**TIP:** Although the FCC ruling has not yet been released, the fact that it has issued a press release underscores the importance of getting familiar with how the agency will interpret the TCPA on these issues. Companies would be well served to review their current practices (or those of their vendors), especially with respect to auto-delivered text messages and calls.

2 Min Read

---

## Related Locations

Chicago

## Related Topics

Communications Privacy

## Related Capabilities

Privacy & Data Security

Advertising Litigation

## Related Regions

North America

*This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.*