

FCC Robo Call Revision Heightens “Consent” for Sending Texts

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In new rules approved by the FCC on February 15, companies that want to contact consumers through auto-dialed or pre-recorded calls or texts will need to get prior express written consent. For text messages, it appears that obtaining consent can be done through a text from the consumer, provided that the consumer is clearly told what will happen if he or she sends in a text to provide consent in this manner. Consent can also be obtained online (for example, in situations where the company is collecting text message numbers on a website), provided that the consumer is clearly told what will happen if he or she gives consent and unambiguously agrees. Companies will have twelve months from when the rules are published to implement and obtain prior express written consent. During this time, the mobile industry will likely be looking at the revised rules and modifying industry guidance accordingly. The impact the rule change will have on text messages is not the main purpose of the revision, which was intended to bring the rule –as it applies to phone calls- into alignment with the FTC requirements. However, text messages are impacted, since they are interpreted as “calls” under the TCPA, and the FCC notes in its comments to the revised regulation that text messages are covered by the changes. The revision could prove helpful for some, since it will provide clarification on how to obtain “consent,” something that is required under the existing rule (just not specifically defined).

TIP: Examine your current practices for getting consent to send text messages. If your company has a process in place where it clearly explains what messages will be sent to consumers, and has consumers take an affirmative step that could constitute writing under the E-SIGN Act (including sending an electronic writing like a text message) it will likely be prepared for the implementation of the revised rule.

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