



NEWS

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See *MCI v. FCC*, 515 F.2d 385 (D.C. Cir. 1974).

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FCC PROPOSES TOUGHER RESTRICTIONS ON “ROBOCALLS” *New Rules Would Conform FCC and FTC Telemarketing Rules*

Washington, DC -- The FCC has proposed revisions to its rules under the Telephone Consumer Protection Act (TCPA) to further empower residential telephone subscribers to avoid unwanted telephone solicitations. The proposals would require sellers and telemarketers to obtain written consent from recipients before making prerecorded telemarketing calls, commonly referred to as “robocalls,” even when the caller has an established business relationship with the consumer. Additionally, the FCC proposes to make it easier to opt out of receiving robocalls.

These new restrictions would harmonize the FCC’s rules with the Federal Trade Commission’s (FTC’s) recent amendments to its Telemarketing Sales Rule. Because the majority of entities that use prerecorded telemarketing calls are subject to both agencies’ telemarketing regulations, most regulated entities must comply with the FTC’s current, more restrictive standards. However, entities outside the FTC’s jurisdiction, such as telephone companies, airlines, banks, and insurance companies, are currently subject to less restrictive standards.

Key revisions proposed by the FCC today include:

1. Requiring sellers and telemarketers to obtain telephone subscribers’ express written consent (including electronic methods of consent) to receive prerecorded telemarketing calls, even when there exists an established business relationship between the caller and the consumer;
2. Requiring that prerecorded telemarketing calls include an automated, interactive mechanism by which a consumer may “opt out” of receiving future prerecorded messages from a seller or telemarketer; and,
3. Exempting certain federally regulated healthcare-related calls from the general prohibition on prerecorded telemarketing calls to residential telephone lines. (These calls are currently not specifically exempted from the prerecorded message rules.)

The Commission asked for comments on whether these proposed revisions would benefit consumers and industry by creating greater symmetry between the FCC and FTC regulations and by extending the FTC’s standards to regulated entities that are not currently subject to FTC rules.

The Commission noted that the proposed rule changes would not affect categories of prerecorded message calls that are not currently covered by its TCPA rules. Those categories include calls by or on behalf of tax-exempt non-profit organizations; calls for political purposes, such as those made by politicians or political campaigns; calls for other noncommercial purposes; and commercial calls that do not contain unsolicited advertisements, for example, calls that deliver purely “informational” messages notifying recipients of a flight cancellation. Furthermore, because the TCPA’s restrictions on prerecorded messages do not apply to calls initiated for emergency purposes, the proposed rule revisions would not affect messages sent to consumers to alert them to emergency situations.

Action by the Commission January 20, 2010, by Notice of Proposed Rulemaking (FCC 10-18). Chairman Genachowski, Commissioners Copps, McDowell, Clyburn, and Baker. Separate statements issued by Chairman Genachowski, Commissioners Copps, McDowell, Clyburn, and Baker.

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