

TO THE POINT: TCPA

Revised for 2015

Complimentary Preview

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Preview

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Introduction

The Telephone Consumer Protection Act was designed to restrict telephone solicitations (i.e.: telemarketing) and regulate the use of automated telephone technologies. Specifically, without express prior consent, the TCPA prohibits, among other things, calls made to telephone numbers assigned to paging services, cellular telephone services, specialized mobile radio services or other radio common carrier services. It also regulates any service for which the called party is charged for the call when using either an automatic telephone dialing systems, or artificial/prerecorded voices.

Party Rules

Does the TCPA pertain to first-party collection as well, with regard to cell phone communication?

The TCPA is a nondenominational statute; it doesn't distinguish among the types of company calling the consumer. It is instead focused specifically on the *technology* the company uses to make those calls. Remember, the TCPA was originally passed by Congress to curb abusive telemarketing calls, not debt collectors. Over time, the TCPA's reach expanded as other industries adopted automated dialing technology. So if a collection agency uses dialing equipment that falls into the purview of the TCPA, and it doesn't have consent to call a consumer's cell phone or leave a pre-recorded message, then it doesn't matter if the collector is first- or third-party. There's still a risk.

"The statute says that in order to incur liability, **you have to be using an automatic telephone dialing system or employ an artificial or pre-recorded voice.** The statutory definition of a dialer requires storage of numbers and random and sequential number generation. To complicate matters further, in addition to the statute's dialer definition, along comes the FCC in its 2008 Declaratory Ruling and rules that an automatic telephone dialing system includes technology which can dial numbers without human intervention. Due to the breadth of the FCC ruling, it potentially brings into the fold all types of dialing technology. And, the interpretation by various federal courts as to what the statutory definition of a dialer means, and what the FCC's dialer definition means, varies from jurisdiction to jurisdiction. This makes it very difficult for companies to defend dialer claims"

David Kaminski
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