

# UPDATE

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## Law Alert

### **Upcoming FCC Ruling - A Case of Clarity, Concern, or Both**

Over the past few years, there has been an increasing amount of litigation involving the Telephone Consumer Protection Act (TCPA). A lot of those disputes have centered on issues plaguing the industry, such as whether certain software is an automatic telephone dialing system (ATDS), whether calls were made with express consent, and how a consumer can revoke consent. Case law has developed on both sides of these types of issues which has resulted in numerous petitions to the Federal Communications Commission (FCC) for clarification and a revised declaratory ruling. Many of those petitions have been pending for over a year and some even longer. During this time, many companies have been faced with mounting litigation costs in defending (and settling) TCPA cases because of the uncertainty on many of these issues.

The FCC finally appears ready to issue a declaratory ruling. Chairman Wheeler has prepared a proposal which will be voted on at the open meeting on June 18, 2015. Instead of circulating the full proposed rulings, Chairman Wheeler issued a fact sheet which highlights several of the proposed rulings. Among them are rulings which would allow for the revocation of consent in any reasonable way at any time; close the loophole on reassigned cell phone numbers; and give further clarification to the definition of an ATDS given the changing technology.

Unfortunately, the details of the proposal are not contained in the fact sheet. Once presented and voted upon, the hope is that businesses will have clarity one way or the other. The ramifications are significant. Companies will have further clarification on how individuals can revoke consent for a call and also have clarification on how to evaluate changes in technology under the TCPA's definition of an auto-dialer. Additionally, on the issue of reassigned numbers, if a company calls a number for which it believed it had express consent but the number is reassigned to a new subscriber, the fact sheet suggests that a safe harbor may be created - "If a phone number has been reassigned, callers must stop

calling the number after one call." The concern is what does Chairman Wheeler mean by "one call." Does that mean one live call or one automated call? If the former, any ruling would provide protection for the unknowing company. If the latter, it does not provide much protection if the company is unaware of the reassignment. Plus, the fact sheet suggests that calls to land lines would be included.

The fact sheet is a good outline of the proposed ruling, but also serves as a cause for concern. We should know more on June 18, 2015.

For further information or any questions please contact Matthew Rosenkoff at [mrosenkoff@taylorenghish.com](mailto:mrosenkoff@taylorenghish.com) or 678.336.7280.



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