

FCC Announces MOU with Canadian Counterpart to Combat Robocalls, Issues Enforcement Advisory on Automated Texts

November 22, 2016

Heading into the holiday season, the FCC shows no signs of slowing down in its consumer-focused initiatives, in particular those related to the Telephone Consumer Protection Act (TCPA). Earlier this month, for instance, the Commission sponsored a [Twitter town hall](#) to clarify TCPA restrictions, and announced that on December 14th, it will host a [webinar](#) for consumers entitled “How to Deal with Robocalls.” This post addresses two recent FCC notices designed to enhance its enforcement of the TCPA.

FCC-CRTC Memorandum of Understanding on Robocalls and Spoofing

On November 17, 2016, the FCC announced that it had signed a [Memorandum of Understanding](#) (MOU) with the Canadian Radio-Television and Telecommunications Commission (CRTC) that would allow the agencies to collaborate on matters related to robocalls and caller ID spoofing. While the MOU does not have any legally binding effects, the two agencies made a number of commitments, including to exchange information about investigations and complaints, to coordinate enforcement against cross-border violations of relevant laws, and to collaborate on initiatives to promote technically and commercially viable solutions for robocalls and caller ID spoofing. Enforcement Bureau Chief Travis LeBlanc signed the MOU on the FCC’s behalf, and in a subsequent blog post highlighted the CRTC agreement as one of several initiatives undertaken by the FCC to work with other agencies both within and outside the U.S. on these issues. The MOU is similar to an agreement reached earlier this year between the CRTC and Federal Trade Commission to collaborate on efforts to address allegedly unlawful commercial email and telemarketing campaigns.

“Robotext” Enforcement Advisory

On November 18, 2016, the FCC’s Enforcement Bureau issued a four-page [enforcement advisory](#) regarding the “limits of use of autodialed text messages” (so-called “robotexts”). The FCC has long held that the TCPA applies to both voice calls and text messages. As such, according to the advisory, the statute’s restrictions on autodialed calls without prior express consent of the recipient apply equally to autodialed text messages.

The advisory notes that “[t]hose contending that they have prior express consent to make robotexts to mobile devices have the burden of proving that they obtained such consent.” Interestingly, the advisory states that this requirement would include “text messages from text messaging apps and Internet-to-phone text messaging where the technology meets the statutory definition of an autodialer.” Citing back to the FCC’s 2015 Omnibus TCPA Order (currently under appeal), the

advisory comments that “[t]he fact that a consumer’s wireless number is in the contact list of another person’s wireless phone does not, by itself, demonstrate consent to receive robotexts.”

The advisory also clarifies that the one-wrong-call safeguard against liability for calls to reassigned numbers adopted in the 2015 Order likewise applies to autodialed text messages.

Finally, the advisory warns that autodialed text messages sent in violation of the TCPA can result in forfeiture penalties from the FCC of up to nearly \$19,000 per violation. However, a footnote in the advisory clarifies that if the person or entity that allegedly violates the TCPA does not hold an FCC license or other authorization, the FCC must first issue a warning citation before it can attempt to impose or enforce any monetary penalties.