

# State AGs Support Effort to Revive TCPA 1:1 Consent Rule

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On March 17, a bipartisan group of attorneys general from 27 states and the District of Columbia filed an amicus brief in the Eleventh Circuit Court of Appeals in support of the National Consumer Law Center’s proposed petition for rehearing en banc of the court’s decision to [overturn](#) the FCC’s so-called “one-to-one” consent rule for telemarketing calls and texts under the Telephone Consumer Protection Act (TCPA). [The rule](#), intended to address what the FCC called the “lead generator loophole,” would have amended the definition of “prior express written consent” by requiring a consent agreement to be specific to “no more than one identified seller” and be “logically and topically associated with the interaction that prompted the consent.”

Just days before the rule was scheduled to take effect in January, a three-judge panel for the Eleventh Circuit unanimously concluded that “the FCC exceeded its statutory authority under the TCPA because the [FCC order announcing the 1:1 consent rule] new consent restrictions impermissibly conflict with the ordinary statutory meaning of ‘prior express consent.’” The NCLC requested leave to intervene and seek a rehearing en banc, suggesting that “the Government is unlikely to seek additional review of the panel’s decision,” and arguing that the following issues merit en banc reconsideration:

1. Whether, post-*Loper Bright*, a court evaluating if an agency exceeded its statutory authority in promulgating a rule can entirely ignore *Skidmore* deference where the agency’s interpretation of the statute is supported by thorough reasoning, well-supported factual findings, and agency expertise.
2. Whether a court evaluating if the FCC exceeded its statutory authority in promulgating a rule can disregard the TCPA’s broad mandate authorizing and requiring the FCC to implement the statute’s protection of telephone subscribers from unwanted robocalls.
3. Whether the FCC exceeded its statutory authority under the TCPA by requiring consent to receive telemarketing robocalls be made on an entity-by-entity basis.

In the amicus brief, the states assert, “the rule prevents lead generators from exploiting a single point of contact with a consumer to subject that consumer to an unending stream of robocalls. The rule also protects consumers’ ability to meaningfully revoke consent—and thereby stop receiving robocalls—when calls are no longer welcome.” The states argue that the 1:1 consent rule “is a critical nationwide enforcement tool – complementing state enforcement efforts – that aims to shut off the spigot of illegal robocalls.” They also argue “[t]he panel’s decision invalidating this commonsense rule threatens Amici states’ interest in protecting consumers, families, and businesses from the deluge of invasive robocalls.”

The state AGs' support for the 1:1 consent rule is unsurprising, given the continued prevalence of "robocall" complaints by consumers. We note, however, that in the lead-up to the FCC's adoption of the rule, a bipartisan group of 28 state AGs (including several of the states that signed onto the amicus brief) had argued that the existing definition of "prior express written consent" in the FCC's rules "makes clear that the Commission already intended for consent under the TCPA to be directly between a specific consumer and a specific seller." The amicus brief did not explicitly restate this position but did argue that the 1:1 consent rule "clarifies that 'prior express written consent' to a robocall under the TCPA is limited to between one specific consumer and one specific seller."

It is unclear when and how the court will respond to the request to intervene. But the AG amicus brief underscores that "robocalls" continue to be an enforcement priority for blue and red states, as we have [previously reported](#).