

TCPA Tracker - July 2019

July 16, 2019

Recent News

FCC to Vote on Rules Implementing Anti-Spoofing Amendments in RAY BAUM'S Act at Next Commission Meeting

At its August 1, 2019, Open Meeting, the Commission is expected to vote on a draft order that would implement two changes to the FCC's Truth in Caller ID rules. The changes are required by amendments to the Communications Act, made by the RAY BAUM'S Act of 2018, which strengthen the FCC's authority over spoofed calls. First, the draft order would revise the Commission's rules to prohibit persons or entities outside the United States—if the recipient is within the United States—from knowingly causing a caller ID service to transmit or display misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value. The current rules only apply to persons and entities within the United States. Second, the draft order would expand the scope of the communications covered by the rules beyond telecommunications services and interconnected VoIP services to any voice or text messaging service. The draft order would also revise several definitions in the rules to make them more consistent with the statutory language. The changes in the draft order would allow the law enforcement to seize the domestic assets of foreign illegal telemarketers and work with foreign governments to pursue international scammers.

FCC Holds Summit on Implementation of SHAKEN/STIR Call Authentication

On July 11, 2019, the FCC held a summit concerning the implementation by carriers of the SHAKEN/STIR call authentication framework. Summit participants including several major carriers and other stakeholders, as well as key FCC staff members, and remarks by Chairman Pai. The agenda for the summit included the following discussions:

- A panel discussion where major voice service providers discussed their progress toward deploying the SHAKEN/STIR framework by the end of this year and lessons they have learned from deploying call authentication technology in their own networks and from testing inter-provider call signing;
- A panel discussion regarding the use of caller ID authentication to reduce spoofed illegal calls and improve the consumer experience, particularly focusing on the role of SHAKEN/STIR in call analytics and how SHAKEN/STIR will impact what consumers see on their phones.
- A panel discussion concerning challenges and potential solutions to deployment of SHAKEN/STIR by smaller voice service providers; and
- A presentation on progress and next steps in SHAKEN/STIR governance.

FCC Petitions Tracker

Kelley Drye's Communications group prepares a comprehensive summary of pending petitions and FCC actions relating to the scope and interpretation of the TCPA.

Number of Petitions Pending

- 33 petitions pending
- 1 petition for reconsideration of the rules to implement the government debt collection exemption
- 1 application for review of the decision to deny a request for an exemption of the prior express consent requirement of the TCPA for "mortgage servicing calls"
- 1 request for reconsideration of the 10/14/16 waiver of the prior express written consent rule granted to 7 petitioners
- 10 applications for review of fax waiver orders under the Anda progeny (these applications for review were not addressed in the Nov. 14, 2018, Bureau order)
- 1 application for review of the CGB order issued on 11/14/18 eliminating the opt-out language rule for solicited faxes (and 2 oppositions to the application for review)

New Petitions Filed

- *Patrick Maupin* - Seeks clarification that the purchase of an automobile from a car dealer does not automatically create an established business relationship between the automobile purchaser and a third party provider of a radio subscription service. (Filed 6/21/19)

Upcoming Comments

- *Patrick Maupin* - Seeks clarification that the purchase of an automobile from a car dealer does not automatically create an established business relationship between the automobile purchaser and a third party provider of a radio subscription service. (Comments due 7/29/19; reply comments due 8/13/19)

Decisions Released

- *None since June 2019*

[Click here](#) to see the full FCC Petitions Tracker.

Cases of Note

[Ninth Circuit Finds TCPA Government Debt Exception to be Unconstitutional, Content-Based Regulation but, Severable from Remainder of Statute](#)

In *Duguid v. Facebook*, the United States Court of Appeals for the Ninth Circuit, addressing a challenge from Facebook to a TCPA allegation against it, found in favor of Facebook's argument

against the constitutionality of the TCPA's government-debt collection exception. The case involves a claim brought by Noah Duguid against Facebook for allegedly using an ATDS to send messages to customers about access to their account from an unfamiliar device or browser. Duguid said he received these security messages even though he is not a Facebook user and that Facebook failed to stop the alerts despite Duguid's requests. In response, Facebook challenged as a threshold matter the constitutionality of the TCPA's exception to the telemarketing rules for calls "made solely to collect a debt owed to or guaranteed by the United States" and the court concluded that the rule was in fact a content-based exception to the rule and the government's justification does not withstand strict scrutiny. In line with recent decisions in the Fourth and Eighth Circuits, the *Duguid* court found that while the recently added debt collection exception is unconstitutional, that provision can be severed and the remainder of the law kept intact. In the case, Facebook also sought to dismiss the claims as insufficient, asserting that the equipment it used to send messages is not an ATDS but the Ninth Circuit court disagreed, concluding that Duguid's allegations were plausible. The court adopted an expansive interpretation of the ATDS definition to include a device if it could "store numbers to be called."

Court Reaffirms Unconstitutionality Finding Regarding TCPA Debt Exception

On July 8, 2019, one month after its decision in *Duguid v. Facebook*, the Ninth Circuit reasserted its conclusion that the TCPA's exception for calls made for federal government debt collection purposes was unconstitutional. In *Gallion v. Charter Communications, Inc.*, the court affirmed a lower court's decision that denied Charter's motion for judgement on the pleadings that raised a challenge to the TCPA's constitutionality. Citing its decision in *Duguid*, the Ninth Circuit held that while the government debt collection exception is unconstitutional under the First Amendment, that portion was separated from the rest of the TCPA so it was appropriate for the lower court to deny Charter's constitutionality motion.

The Impact of *PDR Network LLC v. Carlton & Harris Chiropractic*

In case you missed June's coverage, [click here](#) to read Kelley Drye's analysis of the Supreme Court's decision in *PDR Network LLC v. Carlton & Harris Chiropractic*.

Podcast

Inside the TCPA, Episode 5: Call Blocking and Call Authentication

"Inside the TCPA" offers a deeper focus on TCPA issues and petitions pending before the FCC. Each episode tackles a single TCPA topic or petition that is in the news or affecting cases around the country. This episode discusses the FCC's efforts to reduce the volume of illegal robocalls. Steve refreshes the audience on illegally spoofed calls and discuss the FCC's efforts to urge carriers to implement call blocking and call authentication techniques, including the SHAKEN/STIR framework.

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