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January 2025

Reminder: FCC's One-to-One TCPA Consent Rule Takes Effect January 27

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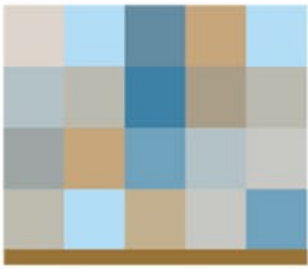
Are you ready? On January 27, 2025, the Federal Communication Commission's (FCC) One-to-One Consent Rule goes into effect, which could raise enforcement and litigation risks. If this applies to your business, hopefully your first reaction isn't "what One-to-One Consent Rule?"

The new Rule modifies consent requirements under the Telephone Consumer Protection Act (TCPA). As most businesses that do telemarketing are likely aware, the TCPA is a federal law that requires prior express written consent in order to send telemarketing messages using an automatic telephone dialing system (ATDS) or an artificial prerecorded voice (robocalls). This includes both calls and text messages. Once effective, the new Rule imposes new standards for obtaining prior express written consent, which will particularly impact the operations of lead generators and companies that use them.

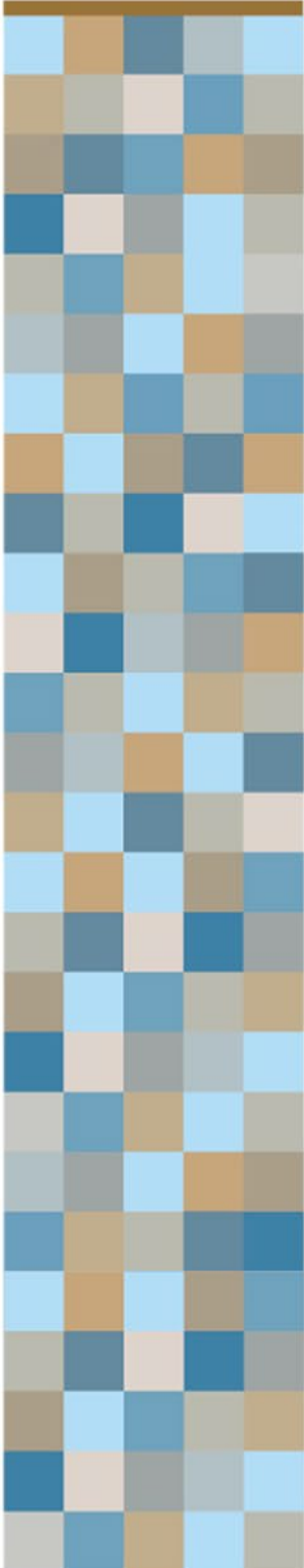
Summary of the One-to-One Consent Rule

The new one-to-one consent requirement obligates parties who make marketing calls using an ATDS or robocall to obtain prior express written consent "one seller at a time." Put another way, a single consent must only apply to a single seller. As a practical matter, this means that companies can no longer validly acquire consent for multiple sellers, such as "ABC Company and its marketing partners" or "ABC Company, its affiliates and subsidiaries." Instead, consent will be required for each individual seller that wants to contact consumers. According to the FCC, the intent behind this change is to ensure that consumers give consent only to sellers they wish to hear from and to stop abuses by lead generators that obtain bulk consents. By way of example, the FCC referenced a case where the websites at issue included TCPA consent disclosures asking the consumer to consent to the receipt of robocalls from "marketing partners." These "marketing partners" were only disclosed to the consumer if they clicked on a specific hyperlink to a second website that contained the names of 5,329 entities.

The Rule also requires that the consent must be in response to a clear and conspicuous disclosure to the consumer and the content of the marketing call/text must be "logically and topically related" to the interaction that prompted the obtained consent. For example,



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a consumer giving consent on a car loan comparison shopping website does not consent to get calls about loan consolidation.

Why is Compliance Important?

Compliance with the TCPA is critical as the law has a private right of action and statutory damages. Every call/text is a separate violation with potential damages of \$500 per violation or treble damages for intentional violations. As the TCPA has been a notorious source of litigation for years, it would not be surprising if this new Rule creates an uptick. If you are a seller that conducts telemarketing and have not already ensured compliance with the new Rule, it would be prudent to take heed and review and update your TCPA consent policies and procedures as soon as possible.

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