



FCC's Declaratory Ruling on TCPA

Issue

On July 10, 2015, the Federal Communications Commission (FCC) released a Declaratory Ruling and Order related to the Telephone Consumer Protection Act (TCPA). While the Ruling was intended to provide clarity with respect to the rules that govern the making of wireless calls and sending of wireless texts pursuant to the TCPA, it fails to recognize the distinction between abusive telemarketing practices and legitimate business seeking to contact their customers. Rather than providing clarity to businesses wanting to remain compliant to the TCPA, the language of the Ruling is frequently vague and highly convoluted, benefitting only the class action plaintiffs' attorneys and professional litigants, who find it easier than ever to file abusive class action lawsuits.

Impact

One of the most problematic aspects of the Ruling is that it deems any equipment that has the future potential or "capacity" to be an Automatic Telephone Dialing System (ATDS) as constituting an ATDS. This definition would allow the argument to be made that every Smartphone, tablet, VoIP phone, calling app, texting app, or essentially any phone that is not a rotary dial phone is an ATDS. This unlawful interpretation of the TCPA affects every modern organization that makes phone calls or sends text messages, as even routine phone calls or texts from smartphones and ordinary office phones would be subjected to liability under the TCPA.

The FCC's interpretation of "called party" is also highly problematic to businesses, as its corresponding one call "safe harbor" for calls unintentionally made to reassigned or wrong numbers is unworkable as, among other things, there is no authoritative database for reassigned numbers, making it impossible to be in compliance with TCPA.

ARDA Position

ARDA's Federal Affairs team is working together closely in a coalition being led by the Professional Association for Customer Engagement (PACE), who are one of the petitioners that have filed a petition for review with the U.S. Court of Appeals for the D.C. Circuit. In the petition, we ask that these unlawful aspects of the Commission's order be set aside, as the misguided rulings jeopardize communications that Congress never intended to restrict and, in turn, encourage wasteful class action lawsuits that seek crippling statutory penalties. The matter is on schedule to be taken up by the courts sometime this summer. While we are hopeful that the courts will rule favorably as to the issues that are problematic for businesses, we have also begun our outreach on the Hill to see if there is an appetite to address these issues legislatively.