



Catching a Break: Eleventh Circuit Vacates the FCC's "One-to-One" TCPA Consent Rule

Apr 01, 2025

Categories:

[Class Action Defense](#)

[Gibbons](#)

Authors:

[Julia E. Browning](#)

In recent years, the Federal Communications Commission (FCC) has adopted various Reports and Orders containing new rules aimed at thwarting rampant abuse of robocalling and robotexting, especially in light of emerging technologies that make such illegal calls easier to place and more dangerous to consumers, as scammers are using this technology to trick individuals into divulging personal information such as Social Security numbers, credit card details, and financial account information. The volume of new rules coming out of the FCC regarding this ever-changing landscape makes it challenging for companies that have to deploy compliant consent mechanisms to continue their marketing and advertising activities.

The latest of these rules was set to take effect on January 27, 2025, based on the [FCC's Second Report and Order](#) (R&O) that imposed new standards under the Telephone Consumer Protection Act (TCPA) for obtaining prior written consent to receive certain marketing calls and text messages. Part III.D of the R&O states that a consumer cannot consent to a telemarketing or advertising robocall unless the consumer: (1) consents to calls from only one seller at a time; (2) receives a clear and conspicuous disclosure from the seller that the consumer will receive telemarketing calls or texts using an automatic telephone dialing system or an artificial or prerecorded voice; and (3) consents only to calls for which the subject matter is "logically and topically associated with the interaction that prompted the consent." This "one-to-one" consent rule would most prominently affect entities that use various marketing strategies to identify sales leads with the goal of converting those leads into paying customers, because the R&O was aimed at preventing such lead generators from using single consumer consent to bombard consumers with unwanted robocalls when consumers visit comparison shopping websites.

The Insurance Marketing Coalition Limited (IMC) filed a petition for review of the R&O challenging the validity of the "one-to-one"

consent rule in the Eleventh Circuit. On [January 24, 2025](#), the court unanimously vacated the “one-to-one” consent rule, finding that “the FCC exceeded its statutory authority under the TCPA because the [R&O’s] ‘prior express consent’ restrictions impermissibly conflict with the ordinary statutory meaning of ‘prior express consent.’”

In its [opinion](#), the Eleventh Circuit relied on common law principles of consent because the TCPA does not define “prior express consent.” Applying the common law, consent must be voluntary, clearly and unmistakably stated, and given before receiving the call. The court determined that the R&O’s restrictions conflict with these common-law principles because the common law does not require that an individual give consent to calls from one entity at a time. The court also noted that the FCC appeared to take a different position in its brief than in the R&O. Therefore, the court held that “[b]ecause the one-to-one-consent restriction attempts to alter what we have said is the ordinary common law meaning of ‘prior express consent,’ the restriction falls outside the scope of the FCC’s statutory authority to ‘implement’ the TCPA.”

The court also found that the “logically and topically related” restriction on consent was unlawful because it alters what it means to give prior express consent. IMC argued, for instance, that a consumer could clearly and unmistakably give consent to receive calls about loan consolidation while shopping online for auto loans, and yet the R&O purports to ban such consent. The court held that “[a]s long as a consumer clearly and unmistakably states, before receiving the robocall, that he is willing to receive the robocall, he has given ‘prior express consent’ under the TCPA.”

The vacatur of Part III.D of the R&O now forces the FCC to decide whether it will pursue further action to revive the “one-to-one” consent rule in the wake of the Eleventh Circuit’s ruling, abandon the rule altogether, or refresh the record and embark on a new notice and comment cycle. For now though, businesses can breathe easy knowing that the “one-to-one” consent rule will not be going into effect.

This win for businesses serves as an important reminder that TCPA-related litigation has yielded a substantial body of law interpreting its various provisions, even where the statute is silent. Court intervention likely will continue as more challenges to the bounds of the FCC's authority to develop regulations implementing the TCPA inevitably follow.

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.