

D.C. Circuit calls 2015 FCC TCPA autodialer decision “utterly unreasonable”; Strikes down reassigned numbers framework

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The United States Court of Appeals for the District of Columbia Circuit issued its long-awaited decision in *ACA International, et al, v. FCC*, a case involving multiple petitions for review of the Federal Communications Commission’s (FCC) omnibus 2015 ruling interpreting provisions of the Telephone Consumer Protection Act (the TCPA or Act). The FCC decision created a series of TCPA compliance challenges and a plaintiff-friendly environment that spurred substantial class-action litigation over the last few years.

The D.C. Circuit resolved four TCPA issues on appeal: (1) the meaning of “automatic telephone dialing system” (ATDS or autodialer); (2) the legal framework applicable to calls to reassigned wireless numbers; (3) the extent to which consumers may revoke their TCPA consent; and (4) whether the FCC’s limited exemption for certain healthcare calls was arbitrary and capricious.

1. Definition of an autodialer: the court rejected the FCC’s interpretation as overly broad, arbitrarily vague, and “utterly unreasonable.”

- During the underlying FCC proceeding, there was significant debate about which technologies qualify as autodialers subject to the TCPA’s key consent requirements.
- The court found impermissible the FCC’s answer to both sets of questions that the statutory definition of autodialer raises: (1) when does a device have the “capacity” to perform the functions of an autodialer; and (2) what precisely are those functions?
- While the court did not articulate an affirmative definition of “capacity,” it suggested, at a minimum, that any interpretation that sweeps in all smartphones would be an unreasonable and impermissibly broad reading of the TCPA’s statutory text. The court also suggested that the TCPA’s decades-old autodialer restrictions may be “increasingly inapplicable” to “modern telephone equipment.”
- In addition, the court concluded that the FCC’s construction of autodialer fell short of reasoned decisionmaking because it offered no meaningful guidance to affected parties whether their equipment was subject to the TCPA’s autodialer restrictions.

2. Reassigned wireless numbers. The court struck down the entirety of the FCC decision as it related to reassigned wireless numbers.

- The court affirmed the FCC’s interpretation that “called party” means “current subscriber” but found arbitrary and capricious the FCC’s safe harbor that exempts callers from liability for the first – and only the first – inadvertent call to a reassigned wireless number.
- The court invalidated the entirety of the reassigned numbers rule because the court could not sever the “called party” and safe harbor issues.

3. Revocation of consent.

- The court upheld the FCC’s clarification that call recipients may revoke their TCPA consent at any time through any reasonable means.

4. The limited healthcare calls exemption.

- The court held that the FCC’s limited exemption for certain healthcare calls did not conflict with Health Insurance Portability and Accountability Act and was neither arbitrary nor capricious.

Next Steps

We expect the FCC to take up the autodialer and reassigned numbers issues in the near future, along with other TCPA issues pending at the agency. The FCC could also provide additional clarifications regarding revocation of consent notwithstanding the court’s approval, as Commissioner O’Rielly recognized in his [statement](#) on the decision.

We recommend reviewing any guidance materials or business decisions implemented since June 18, 2015 (the date the FCC adopted the 2015 Order) in light of the D.C. Circuit’s decision.

Our [TCPA Working Group](#) brings together more than 25 attorneys in our litigation, communications, commercial, and privacy practice areas. We provide regular TCPA counseling to clients from a broad range of industries, including technology, healthcare, communications, transportation, and financial services. We have secured dismissals and nominal settlements for clients in TCPA actions and have worked with the FCC to clarify rules addressing a number of key TCPA issues. We also have significant experience in TCPA appeals.

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