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Eleventh Circuit Vacates FCC's 'One-to-One' Consent Rule

The U.S. Court of Appeals for the Eleventh Circuit recently vacated the Federal Communications Commission's (FCC) "one-to-one" consent rule under the Telephone Consumer Protection Act (TCPA). The court found that the FCC exceeded its statutory authority. The principal impact of this decision is on businesses involved in lead generation or telemarketing.

Background

The background of the one-to-one consent rule is the practice of some entities (often called "lead generators") to obtain consent to be contacted for telemarketing purposes on behalf of multiple parties at one time. In 2023, the FCC issued an order establishing a one-to-one consent rule, which provided that consumers cannot provide prior express written consent under the TCPA for more than one entity at a time. The FCC rule also required the prior express written consent for the telemarketing calls to be logically and topically related to the interaction that prompted the consent.

On January 24, the Eleventh Circuit determined that the FCC's rule went beyond the TCPA's ordinary meaning of "prior express consent" and vacated both aspects of the rule, stating in relevant part: "As 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."[1] Although the rule has been vacated, businesses engaged in telemarketing should remain vigilant in complying with the TCPA and ensuring consent practices align with the law's requirements.

Key Takeaways for Businesses Navigating TCPA Compliance

1. **Proactive Consent Management:** Despite the decision, businesses should continue to maintain robust records of consumer consent to minimize risks of noncompliance and potential litigation.
2. **Enhanced Compliance Practices:** Adopting strong compliance measures, including regular audits of telemarketing campaigns and maintaining up-to-date do-not-call lists, remains critical to reducing exposure to TCPA claims.
3. **Monitoring Regulatory Developments:** With the vacatur of the one-to-one consent rule, businesses should monitor FCC and judicial updates for any changes to TCPA rules or interpretations.

The TCPA compliance landscape is continuously evolving. Businesses should consult with experienced counsel to assess and adjust their telemarketing practices to mitigate liability.

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[1] *Ins. Mktg. Coal. Ltd. v. Fed. Commc'ns Comm'n*, No. 24-10277, 2025 WL 289152, at *9 (11th Cir. Jan. 24, 2025).

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