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TCPA: Revisions to FCC Regulations Regarding Prerecorded Voice Message Calling

On December 27, 2022, the Federal Communications Commission (FCC) released an Order on Reconsideration and Declaratory Ruling that denied reconsideration on most aspects of the FCC's December 30, 2020 Report and Order, which made changes to certain FCC regulations under the Telephone Consumer Protection Act (TCPA). Before December 2020, the FCC had exempted artificial and prerecorded message calls (collectively, "prerecorded message calls") to residential lines for non-telemarketing informational purposes from any consent requirement under the TCPA. (Such calls to wireless lines have always required prior express consent from the called party). Also, before the December 2020 Report and Order, there was no requirement for automated opt-out mechanisms in prerecorded message calls for non-telemarketing informational purposes. The most significant amendments in the December 2020 Report and Order were to:

1. Impose a numerical limit (three calls in any 30-day period) on most types of informational prerecorded message calls to residential lines unless the called party had provided prior express *written* consent; and
2. Require that the messages for prerecorded message calls (whether to residential or wireless lines) contain an automated mechanism to enable the called party to opt out of receiving such calls.

Due to reconsideration petitions, the amendments in the December 2020 Report and Order were stayed. In the December 2022 Order on Reconsideration, the FCC changed the consent requirement in (1) above to prior express consent (as opposed to prior express *written* consent) but otherwise upheld the amendments in the December 2020 Report and Order. The amended rules are slated to go into effect six months after their publication in the *Federal Register*. When they do go into effect, a calling party must have prior express consent to make more than three informational prerecorded message calls to a residential line in a 30-day period. If there is prior express consent from the called party, then the numerical limits do not apply. Calling parties will have to include an automated opt-out capability in all informational non-emergency prerecorded message calls to both residential lines and wireless phones. The automated opt-out provision requires an automatic voice—or key—activated opt-out mechanism as part of the prerecorded message in addition to a phone number for the called party to call back to opt out of receiving such calls. These amendments to the TCPA regulations will affect entities that are engaged in prerecorded message calling campaigns. Those entities will have to include automated opt-out mechanisms in all such messages and track the number of calls to residential lines of parties from whom they do not have prior express consent. Entities that are engaged in these types of campaigns should take steps now so they are compliant with the regulations before they go into effect.

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