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FCC Concludes Ringless Voicemails Are 'Calls' Subject to the TCPA

On November 21, 2022, the Federal Communications Commission (FCC) released a declaratory ruling and order finding that "ringless voicemails" (i.e., voicemails delivered without the recipient's phone first ringing) are "calls" subject to 47 U.S.C. § 227(b)(1)(A)(iii). In doing so, the FCC rejected the argument that ringless voicemails should be excluded from Telephone Consumer Protection Act (TCPA) recasting, as they do not "pass through consumers' phone lines." The FCC's decision confirms that any company utilizing ringless voicemails to contact consumers should first obtain each recipient's prior express consent as part of ensuring TCPA compliance.

A notable part of the FCC's ruling is the conclusion that "consumers experience an intrusion on their time and their privacy by being forced to spend time reviewing unwanted messages in order to delete them." This finding appears to acknowledge that, as is the case with most TCPA cases, a technical violation of the TCPA alone is insufficient to establish liability. Rather, a claimant must suffer a harm contemplated by Congress in enacting the TCPA, such as invasion of privacy or annoyance resulting from the call(s).

Depending on the facts, Defendants may be able to create strong Article III standing defenses to both liability and class certification.

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