

ClientAlert

February 2010

Proposed changes to the Telephone Consumer Protection Act

On January 22, 2010, the Federal Communications Commission (the "Commission") proposed various changes to the Telephone Consumer Protection Act ("TCPA") to further empower residential telephone subscribers to avoid unwanted telephone solicitations. The Commission is seeking to conform the Commission's rules with the Federal Trade Commission's ("FTC") Telemarketing Sales Rule because the majority of (but not all) sellers and telemarketers that employ prerecorded telemarketing technology are subject to regulation by both entities. Currently, the Commission's rules are less restrictive than the FTC's but this is of no consequence for those sellers and telemarketers that must comply with both sets of rules, as they must follow the more restrictive FTC rules. Therefore, the Commission's proposed revisions will have the greatest impact on those entities that are not within the FTC's jurisdiction, examples of which are: telephone companies, airlines, banks and insurance companies, all of which are currently subject to the FCC's less restrictive standards.

In general, the proposed changes are as follows:

- Impose a requirement that sellers and telemarketers obtain written consent from recipients before making prerecorded telemarketing calls, otherwise known as "robocalls," even when the caller has an established business relationship with the consumer;
- Impose a requirement to make it easier for recipients to opt out of receiving such robocalls by mandating that an automated, interactive mechanism by which a consumer may "opt out" of receiving future prerecorded messages from a seller or telemarketer be utilized by sellers and telemarketers; and
- Provide a exemption from the general prohibition on prerecorded telemarketing calls to residential telephone lines for certain federally regulated healthcare-related calls. (Currently, these calls are not exempted from the Commission's prerecorded message rules.)

In the Commission's Notice of Proposed Rulemaking, it noted that the proposed rule changes would not affect categories of prerecorded message calls that are not currently covered by its TCPA rules, including: (i) calls by or on behalf of tax-exempt non-profit organizations; (ii) calls for political purposes, such as those made by politicians or political campaigns; (iii) calls for other noncommercial purposes; (iv) commercial calls that do not contain unsolicited advertisements, for example, calls that deliver purely "informational" messages notifying recipients of a flight cancellation; and (v) calls initiated for emergency purposes, for example, messages sent to consumers to alert them to emergency situations.

The Commission has requested that interested parties file comments regarding the proposed revisions to the TCPA. These proposed changes should be of particular importance to any clients who own or operate telephone companies, airlines, banks and insurance companies. Therefore, these businesses should (i) be made aware of the proposed revisions, (ii) evaluate whether such changes would be detrimental to their existing or future marketing strategies and (iii) timely file appropriate comments with the Commission by late March 2010.

Our client alerts are for general informational purposes and should not be regarded as legal advice. If you would like additional information or have any questions, please contact:

Washington, DC

Dana Frix
+1 (202) 974-5691
dfrix@chadbourne.com

Christopher A. Bugel
+1 (202) 974-5689
cbugel@chadbourne.com

www.chadbourne.com

New York Washington Los Angeles Mexico City

London (an affiliated partnership) Moscow

St. Petersburg Warsaw Kyiv Almaty Dubai Beijing

CHADBOURNE
& PARKE LLP