



WHY WAS NO ONE FOCUSED ON THIS?

And the FCC Did a Head Fake on CFR Change

(f)(9) The term prior express written consent means an agreement, in writing, bearing the signature of the person called that clearly authorizes the seller to deliver or cause to be delivered to the person called advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice, and the telephone number to which the signatory authorizes such advertisements or telemarketing messages to be delivered. Prior express written consent for a call or text **may be to a single entity, or to multiple entities logically and topically associated.** If the prior express written **consent is to multiple entities,** the entire list of entities to which the consumer is giving consent must be clearly and conspicuously displayed to the consumer at the time consent is requested. To be clearly and conspicuously displayed, the list must, at a minimum, be displayed on the same web page where the consumer gives consent.

FAKE PROPOSED RULE





FCC INTENTIONLLY FAKED YOU ALL OUT?

ACTUAL RULE

(f)(9) The term prior express written consent means an agreement, in writing, that bears the signature of the person called that clearly and conspicuously authorizes **no more than one identified seller** to deliver or cause to be delivered to the person called advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice. Calls must be **logically and topically associated with the interaction** that prompted the consent and the agreement must identify the telephone number to which the signatory authorizes such advertisements or telemarketing messages to be delivered.

(i) The written agreement shall include a clear; and conspicuous disclosure informing the person signing that:

(A) By executing the agreement, such person authorizes **the seller** to deliver or cause to be delivered to the signatory telemarketing calls using an automatic telephone dialing system or an artificial or prerecorded voice; and

(B) The person is not required to sign the agreement (directly or indirectly), or agree to enter into such an agreement as a condition of purchasing any property, goods, or services. The term “signature” shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

ACTUAL RULE



FCC'S HEAD FAKE MIGHT BE A BASIS TO CHALLENGE RULE BUT...



- Current challenge does not address this issue.



R.E.A.C.H. MAKES BIG IMPACT—FCC RULING COURT HAVE BEEN MUCH WORSE



- R.E.A.C.H. Had 7 separate meetings with the FCC on the NPRM— OVER 1/3 of all meetings the FCC took
- COMPLETE SHUT DOWN of Lead Generation Was on the Table
- FCC found: “We recognize the value that comparison shopping offers to consumers who seek specific goods and services, and the value that lead generators offer to businesses, including small businesses, seeking new customers”— citing REACH!
- Fn 96: REACH Comments at 4 (lead generators can be “an engine that drives a huge number of small and independent companies that do not have their own robust marketing team”)

Note:
Troutman
Amin, LLP did it
all for free!



PROBABLY ONLY APPLIES TO CALLS MADE W/ REGULATED TECHNOLOGY



- FCC only modified definition of express written consent and not express prior permission
- This likely means it only applies to calls made using ATDS or prerecorded/artificial/AI voice
- Human selection systems (NOT HUMAN INTERVENTION) are likely safe
- BIG LOOPHOLE FOR THOSE USING SAFE SELECT OR DRIPS INITIATE PRODUCTS





1-TO-1 REQUIRED FOR DNC CALLS?

Footnote 71

We did not seek comment on, and we are not revising, section 64.1200(c)(2)(ii). We disagree with the assertion made by IMC that requiring one-to-one consent is a content-based restriction on speech subject to strict scrutiny. IMC Dec. 6 *ex parte* at 7-9. **On the contrary, the rule we adopt here (and the requirements of section 64.1200(c)(2)(ii), which we are not revising) are clear that consent must be between the consumer and seller; we are making it unequivocal that such consent for TCPA purposes must be one-to-one between the consumer and seller.** This is also consistent with the FTC's Telemarketing Sales Rule which requires one-to-one consent. Requiring that a consumer consent to be contacted by each seller (if applicable) is not a content-based restriction on IMC's speech, but a logical and consistent measure of consumer protection.



THE TROUTMAN AMIN FIFTEEN!!!!



The Troutman Amin Fifteen

Provide your phone number and choose who you want to hear from to get started!

By clicking **Select and Agree** below I am providing my ESIGN signature and express written consent agreement to permit the company, or companies selected below and parties calling on their behalf to contact me at the number provided below for marketing purposes including through the use of automated technology SMS/MMS messages. All generative voice and prerecorded and/or artificial voice messages. I acknowledge my consent is not required to obtain any good or service and to be connected with sellers that can fit my needs without providing content (can call 888- xxx xxx).

Select as many companies or you'd like to hear from Or **Select All**

Awesome company one
 Awesome company two
 Awesome company three
 Awesome company four

My phone number where these companies may contact me is:

SELECT AND AGREE!

TROUTMAN AMIN, LLP
— DESERVE TO WIN —

1. Disclosure must reference language on button;
2. Disclosure must reference SMS/MMS is those will be used in campaign;
3. Disclosure must reference AI generative voice if will be used in campaign;
4. Disclosure must reference marketing;
5. Disclosure must be ABOVE companies to be selected and accept button;
6. Disclosure must reference ESIGN Act;
7. Disclosure must advise companies may call on seller's behalf;
8. Disclosure must reference use of automated technology;
9. Disclosure must allow consumer to select good/service providers individually;
10. Disclosure must advise consent is not required to obtain any good/service/credit;
11. A small "select all" option CAN be provided but must not be forced on consumer;
12. Consumer must be able to obtain service without providing consent;
13. Disclosure must mention prerecorded or artificial voice messages, if applicable;
14. Only a reasonable number of companies should be displayed to consumer;
15. Phone number should be supplied on same page as consent is provided.





NEW R.E.A.C.H. STANDARDS ADOPTING ONE-TO-ONE RULING OUT AUGUST 5, 2024!!

22 APR 2024

THE BOLD AND THE BEAUTIFUL: Phonexa Joins R.E.A.C.H. And The Industry's Compliance Momentum is HOT!!!

ADD A COMMENT

14 AUG 2023


SPEAKING UP!: R.E.A.C.H. Asks FCC to Give Businesses More Time To Process Revocations– Seeks Rules to Deter Litigators

1 COMMENT

10 JUL 2024

SUCCESS!!: Robocalls Down 15% In June Over Last Year As R.E.A.C.H.'s Efforts Stop Unwanted Calls!


1 COMMENT



8 SEP 2023

READ!:. R.E.A.C.H. APPROVES NEW STANDARDS–INSTALLS TWO NEW BOARD MEMBERS–AS INDUSTRY MOVES TOWARD UNITY (AND COMPLIANCE!)

1 COMMENT



REACH Responsible Enterprises Against Consumer Harassment
A MUTUAL BENEFIT CORPORATION

This website meets the high standards of R.E.A.C.H.—a mutual benefit corporation— designed to prevent unwanted robocalls and fully inform you of your rights in submitting online forms.

The website operator warrants that you will only be contacted regarding the products or services you are inquiring about on this website. Your information will not be sold for other purposes. You do NOT have to provide this consent as a condition of purchasing any good or service, but you may not be able to take advantage of the free services and features offered by this website unless you provide your consent.

By clicking "Accept and Continue" below you agree to receive prerecorded and automated calls and texts from up to _____ entities for marketing and promotional purposes. Each of these entities may attempt to contact you more than once to provide the information you are seeking.


The entities that may call me can be found [here](#), and they include the service providers that can be found [here](#).

If you wish to stop calls arising out of this consent, you may contact _____ Submitting such a request constitutes express consent for the website operator to share your request not to be contacted with others in an effort to effectuate your request.

5 APR 2024

JUST IN TIME FOR LEADSCON: R.E.A.C.H. Seals are now available— look for them on a website near you

1 COMMENT




Published by Eric J. Troutman
The Czar of TCPA/World Eric Troutman is

The R.E.A.C.H. seal is out and no other emblem epitomizes the highest standards in consumer-friendly practices.

2 OCT 2023

FIGHTING HARD: R.E.A.C.H. Meets with FCC Again–This Time Assisting Consumer and Governmental Affairs Bureau Understand NPRM Impact on Lead Gen

ADD A COMMENT




And this is just the beginning!!!



KEY TCPA SUBSTANTIVE ISSUES

- For 227(b) Claims:
 - What is regulated technology?
 - Whose consent is needed?
 - What level of consent is needed?
 - What is express written consent and how can it be captured properly?
 - **How can consent be revoked and how must revocation be honored?**
- For 227 (c) Claims:
 - Is the call a telephone solicitation?
 - Is the phone being called residential?
 - What is prior express invitation or permission?
 - What is an Established Business Relationship?
 - How can consent be revoked and how must revocation be honored?





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TELEPHONE SOLICITATION (47 CFR 64.1200(F))

- (c) No person or entity **shall initiate any telephone solicitation** to:
 - (2) A **residential** telephone subscriber **who has registered his or her telephone number on the national do-not-call registry...** [BUT] **[[a]ny person or entity** making telephone solicitations (or on whose behalf telephone solicitations are made) **will not be liable** for violating this requirement if:
 - (ii) It has **obtained the subscriber's prior express invitation or permission....**
 - (15) The **term telephone solicitation** means the initiation of a telephone call or **message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services**, which is transmitted to any person, but such term **does not include a call or message:**
 - (i) To any person with that **person's prior express invitation or permission;**
 - (ii) To any person with whom the **caller has an established business relationship;** or
 - (iii) By or on behalf of a tax-exempt nonprofit organization.



LINE BETWEEN MARKETING AND INFORMATIONAL VERY FUZZY



- Dual purpose calls treated as marketing
 - Not every call by a for-profit business qualifies
 - But pretty extreme examples out there (Fed Ex knows..)
- Offers to buy generally NOT marketing
 - But can be marketing where service is attached:
 - Real estate brokers calling to offer services IS marketing
 - Calls to buy houses MIGHT BE marketing if ancillary fees or services provided

Puja will give you more examples!





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