



TROUTMAN AMIN, LLP
— DESERVE TO WIN —

MASSIVE CHANGE— FCC OVERHAULS TCPA CONSENT PROVISIONS AND PROVIDES NEW AI REGULATIONS

(NOW LET'S GET TO WORK)

ERIC J. TROUTMAN ("THE CZAR")

ROBOCALLS ARE DOWN BIG



2023



June 2023	4,858,343,400
May 2023	5,083,647,300
April 2023	4,547,759,800
March 2023	4,995,388,400
February 2023	4,329,348,100
January 2023	4,509,688,500

2024

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Responsible Enterprises
Against Consumer
Harassment

BUT TCPA LAWSUITS UP HUGE IN 2024!



- **TCPA Filings Already Up 32.8% from last year!!!**
- **66.9% of all TCPA suits were filed as class actions. The highest percentage in history.**
- **TCPA class actions are up 65% compared to last May.**

The TCPA is the LARGEST Litigation CASHCOW In American History

- More multi-million dollar class action settlements under TCPA than any other statute (40 in 2019 alone!)
- \$500-\$1,500 per call violation.
- Private right of action.
- Uncapped statutory damages—can be **BILLIONS in exposure**.
- Four-year statute of limitations.
- Difficult to decipher terms—creates perfect litigation storm requiring a powerful defense.



The Sharks in These Waters are Well Fed...

BOUTIQUE LAW FIRMS

Litigation Boutique Offers Bonuses Of Up To \$575K To Hardworking Associates

Holy moly. Talk about an eye-popping bonus!

By STACI ZARETSKY on December 13, 2022 at 2:44 PM

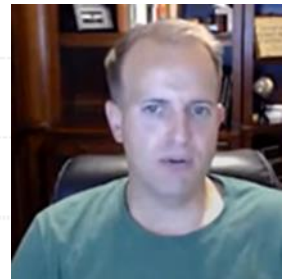


BOUTIQUE LAW FIRMS

Elite Firm Ramps Up Its Compensation, Offering Higher Salaries To Associates

Associates can really rake in the dough at this firm.

Class	Annual Salary
1 st year	\$225,000
2 nd year	\$235,000
3 rd year	\$260,000
4 th year	\$295,000
5 th year	\$345,000
6 th year	\$370,000



If you like these salaries, you should see the firm's bonuses, which are directly tied to the firm's success. Dovel & Luner's bonuses typically beat Biglaw's market scale bonuses by multiples – sometimes rising to amounts as high as \$700,000.

Huge Verdicts and Settlements



- \$660BB (reduced to \$280MM), \$1.6BB (reduced to \$32MM), \$975MM, \$265MM judgments
- Dish Network faced *trillions* in penalties
- Courts are split on whether this is constitutional
- \$76MM max TCPA settlement—just last year
- \$40MM settlement—Keller Williams in 2023
- Dozens of settlements between \$10-\$50MM



AND IT ALL STEMS FROM THIS...

- (1) Thou shalt not use regulated technology to contact a cellular phone without the appropriate level of consent.
- (2) Thou shalt not make unsolicited calls to residential numbers on the DNCR.



WHAT MAKES THE TCPA SO SCARY?

- **Private Class Actions**
 - Every call made by an entity can be at issue in a case if there is even a single violation;
 - Four year statute of limitations;
 - \$500.00 per call minimum up to \$1,500.00;
 - Billions of dollars on the line in these cases often over simple mistakes (or difficulties understanding the law)
- **Personal Liability**
 - Individuals involved can be sued personally!

WHAT IS EXPRESS WRITTEN CONSENT? (TODAY 47 CFR 64.1200(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.

(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.



THREE BIG CONSENT ISSUES ADVERTISTERS MUST KNOW!

- 1. Change in lead generation rules (Eff. Jan 27, 2025)**
 - Requires ENTITY SPECIFIC consent on a “one to one” basis that is “topically and logically” related;
 - MASSIVE first-party and third-party issues.
- 2. Dangers of SMS call-to-action efforts**
 - Popular methods of capturing consent invalid
- 3. New FCC Revocation Rules (Eff. April 11, 2025)**
 - Extremely broad interpretation of revocation across channel and purpose;
 - Only limited opportunity to “clarify” scope of revocation.



THIRD-PARTY LEAD GENERATION TODAY

HOME PURCHASE

What's your phone number?

Phone Number

[View My Rates](#)

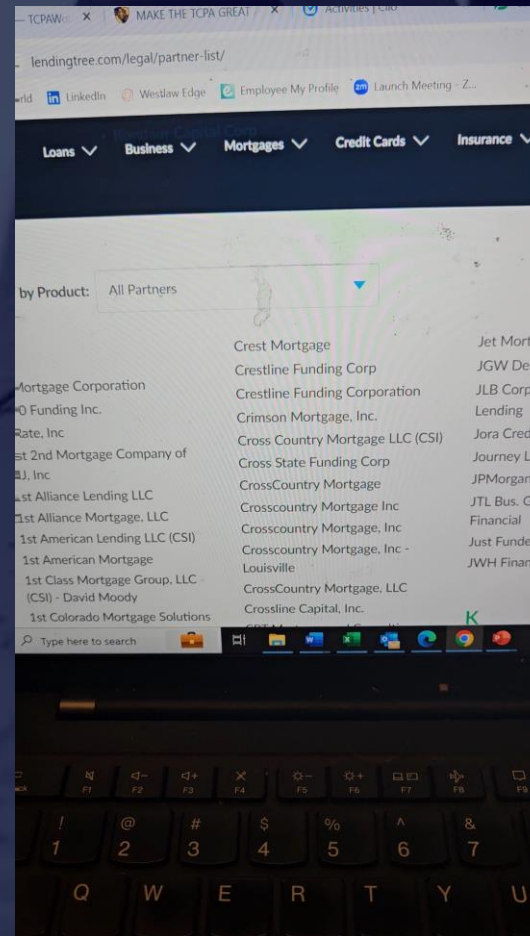
By clicking "View My Rates" above, I understand and agree to the following terms and conditions

- I provide my express written consent to receive calls and text messages at the phone number entered or listed above, including for marketing purposes, from LendingTree and any party calling or texting on LendingTree's behalf, including calls and texts made through automated means such as autodialers, selection systems, robocalls, and prerecorded or artificial voice recordings, even if my number is listed on any company-specific, state, or federal Do-Not-Call list. Such calls and texts may relate to my inquiry and other financial products and services that may be of interest to me. Message and data rates may apply. Message frequency varies. Text "STOP" to cancel. Consent is not required as a condition of any purchase.
- I authorize LendingTree to obtain my consumer report, credit profile, or other credit information associated with me from any consumer reporting agency for purposes of my inquiry, as well as for marketing purposes and to provide me with information and recommendations on financial products and services that may be of interest to me.
- I authorize LendingTree to share my information with its [Network Partners](#), and they may further share my information with their partners. LendingTree and its [Network Partners](#) may exchange information about me, including my loan terms and account.
- I have received, reviewed, and agreed to the [Mortgage Broker Disclosures](#) for my state.

[Lendingtree.com](https://www.lendingtree.com)



LEAD GENERATION TODAY



Lendingtree.com



FIRST-PARTY LEAD GENERATION TODAY

Current address ZIP code Gross annual income ?

Have you owned a home in the last three years?

Yes No

To continue, please confirm that you've read and agree to the [consent for contact](#):

I consent to be contacted by Wells Fargo Bank, N.A. at the phone number and email address I provided.

i A prequalification isn't the same as completing a full loan application. **Get a call back** from a home mortgage consultant to complete an application or discuss options.

Contact Consent

By providing your consent, you agree Wells Fargo Home Mortgage may contact you about mortgage rates, products, or offers by:

- Calling or texting you at the phone number you provided using autodialer/automatic telephone dialing technology and/or prerecorded/artificial voice messages. If the phone number you provide is registered to a mobile device, you agree that you own or are authorized to provide the phone number and you acknowledge your mobile carrier's message and data rates may apply. Your consent is not a condition of purchase and may be withdrawn at any time at your request.
- Contacting you at any email address you provide during this online session. You can opt out of these subscription-based messages at any time. Your mobile

POWERFUL FORCES ADVOCATING FCC LIMIT CONSENT



- Special interest group Public Knowledge was first to make request that consent not be transferrable in December, 2022
- National Consumer Law Center jumped on board shortly after NPRM was issued;
- 28 state attorneys general joined in the request in May, 2023
- Just this month 12 Democratic Senators have joined in and made the same request



MEANWHILE THESE GUYS ARE ON THE TAKE!



16 AUG 2023

ADD A COMMENT

IT PAYS TO BE CY PRES: NCLC Among Consumer Groups Set to Collect \$16MM Windfall from Dish Judgment

The Court will enter a separate order disbursing unclaimed funds as follows:

Organization Name	Recommendation	Cy Pres Distribution
Attorneys General/National Association of Attorneys General	2,000,000	2,000,000
National Legal Aid and Defender Association	3,454,238	2,961,567
National Consumer Law Center, Inc.	1,708,810	1,708,810
San Francisco Consumer Action	675,000	675,000
Columbia University – Technical Research	254,223	254,223
National Association of Consumer Advocates Charitable Fund, Inc.	450,000	450,000
Electronic Privacy Information Center	700,000	700,000
Public Justice Foundation	369,000	369,000
United States Public Interest Research Group Education Fund	250,000	250,000
Public Knowledge	102,400	102,400
Consumer Reports, Inc.	1,000,000	1,000,000
Consumer Federation of America, Inc.	79,000	79,000
Total Distribution	\$11,042,671	\$10,550,000



NEW RULE COME JANUARY 26, 2025!

New “One-to-One” Consent 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

THIS IS WHAT I PREDICTED WOULD HAPPEN



From **“Directly Disputed” Blog on TCPAWorld.com**– March 22, 2023



So let me make this absolutely crystal clear so there can be no further mistake about it (and if you hear anyone else speak on this subject without addressing this issue–call them out as a phony and tell them to hush up and stop misleading people.)

*The issue in the NPRM is the Public Knowledge proposal **“that prior express consent to receive calls or texts must be made directly to one entity at a time.”***



WHY WAS NO ONE FOCUSED ON THIS?

FCC Buried the Lead

60. We propose to ban the practice of obtaining a single consumer consent as grounds for delivering calls and text messages from multiple marketers on subjects beyond the scope of the original consent.

+++

63. We seek comment on amending our TCPA consent requirements to require that such consent be considered granted only to callers logically and topically associated with the website that solicits consent and whose names are clearly disclosed on the same web page.¹⁷⁵ The Commission has not addressed this aspect of consent in the past. Would our proposal better protect consumers from receiving large numbers of calls and texts they do not wish to receive when they visit websites such as comparison shopping websites? Consumers may find comparison shopping websites helpful; how can we ensure that they can consent to obtain further information from the site without receiving numerous calls and texts from unrelated companies? Commenters should discuss whether our proposal would limit the value of comparison-shopping sites to consumers. Are there alternatives to our proposal that would better protect consumers from the harms we have identified? We also seek comment on Public Knowledge's request that prior express consent to receive calls or texts must be made directly to one entity at a time



WHY WAS NO ONE FOCUSED ON THIS?

FAKE PROPOSED RULE

(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.

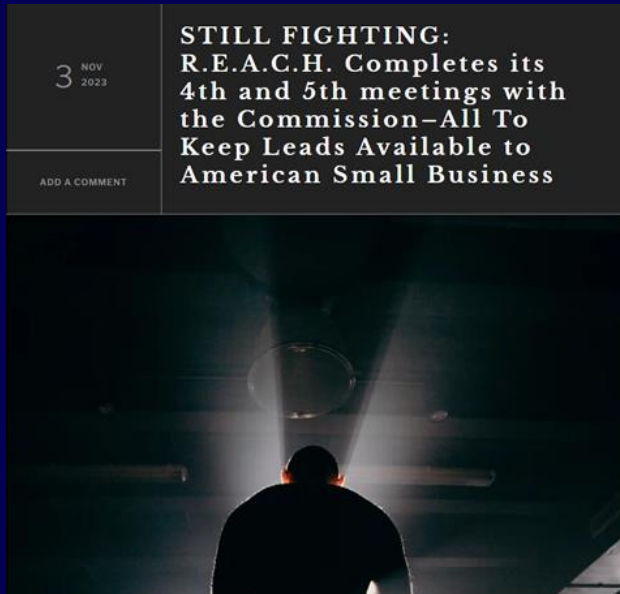
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ACTUAL RULE

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**



What is REGULATED TECHNOLOGY?

Good question!

- AUTOMATIC TELEPHONE DIALING SYSTEMS (ATDS); or
- ARTIFICIAL OR PRERECORDED VOICE CALLS
- Could write a book on ATDS law. Maybe I will.
 - Statute specifically defines what an ATDS is. But as we're about to see, it's not so simple— even with the Supreme Court's help
 - Calls include TEXT MESSAGES (let's just get that out of the way)
- Prerecorded/artificial voice calls include: i) **AI VOICE!!!!**; ii) IVR; iii) Ringless Voicemail; iv) Voicemail; v) Soundboard/Avatar; vi) Wait queue messages; vii) Abandoned message recordings... more

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, AI 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.



BEFORE I FORGET...

1. Connect with us on LinkedIn (Eric J. Troutman & Puja J. Amin);
2. Subscribe to TCPAWorld.com;
3. Follow YouTube channel (@deservetowin);
4. Subscribe to *Deserve to Win* magazine (free for attendees!);
5. Get a copy of TCPA annual review!



ALSO BEFORE I FORGET...



1. Trump
2. *Loper Bright*
3. *McLaughlin Chiropractic Association*

FIRST PARTY “ONE TO ONE” ISSUES



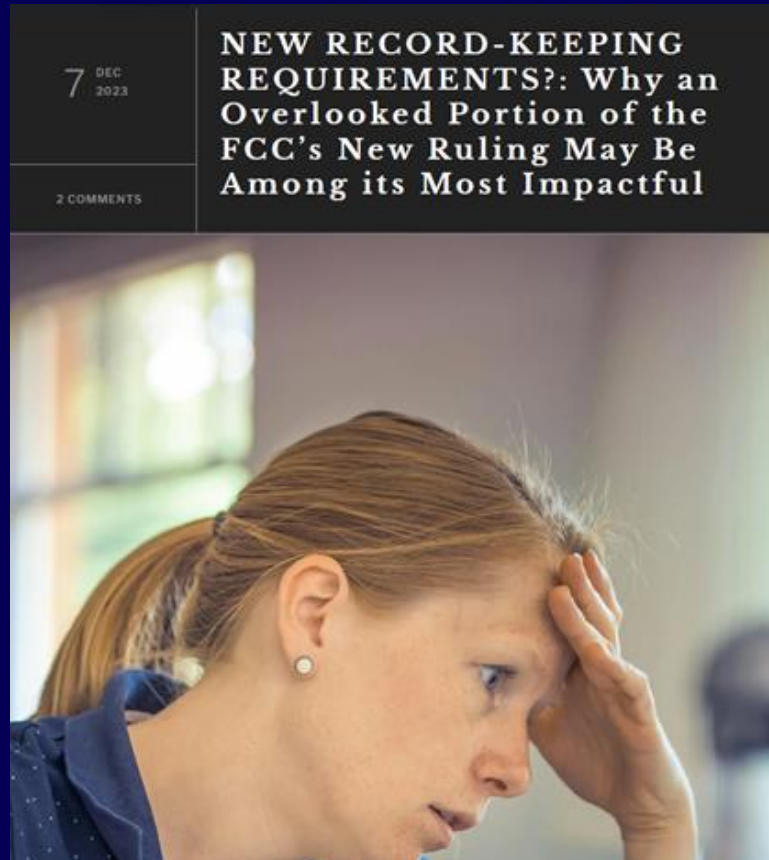
- **“Seller” is defined as the SINGLE legal entity providing a good or service**
- **Brands that have many corporate subsidiaries can no longer use disclosures that grant consent to “parent company and its affiliates” – consent only to a specific entity is sufficient**

“LOGICALLY AND TOPICALLY” ISSUES



- Looks at the topic of calls vs. the “transaction” that lead to consent
- The more specific the call to action the more limited the resulting consent
- Example– Quotes re: ACA vs. Medciare

RECORD KEEPING ISSUES



49. Burden of Proof for Valid Consent. We take this opportunity to reiterate that the TCPA and our existing rules already place the burden of proof on the texter or caller to prove that they have obtained consent that satisfies federal laws and regulations. They may not, for example, rely on comparison websites or other types of lead generators to retain proof of consent for calls the seller makes. And, in all cases, the consent must be from the consumer. “Fake leads” that fabricate consumer consent do not satisfy the TCPA or our rules.



BEWARE CALL TO ACTION DISPLAYS!



- SMS has same rules as calls
- FCC has permitted carve out for real time offer tied to a in-store call to action providing specific request
- But does NOT apply to broader efforts to generate consent via a call-to-action
- Consider the disastrous case of Weisbien v Allergan...



STATIC ADS OF LIMITED VALUE— MOVE TO SOCIAL MEDIA AND CONSUMER INITIATED

- Drive consumer initiated contact!
- Best for voice channel but also works for text messages because one-to-one communication
- Also evades CTIA non-Consumer guidelines





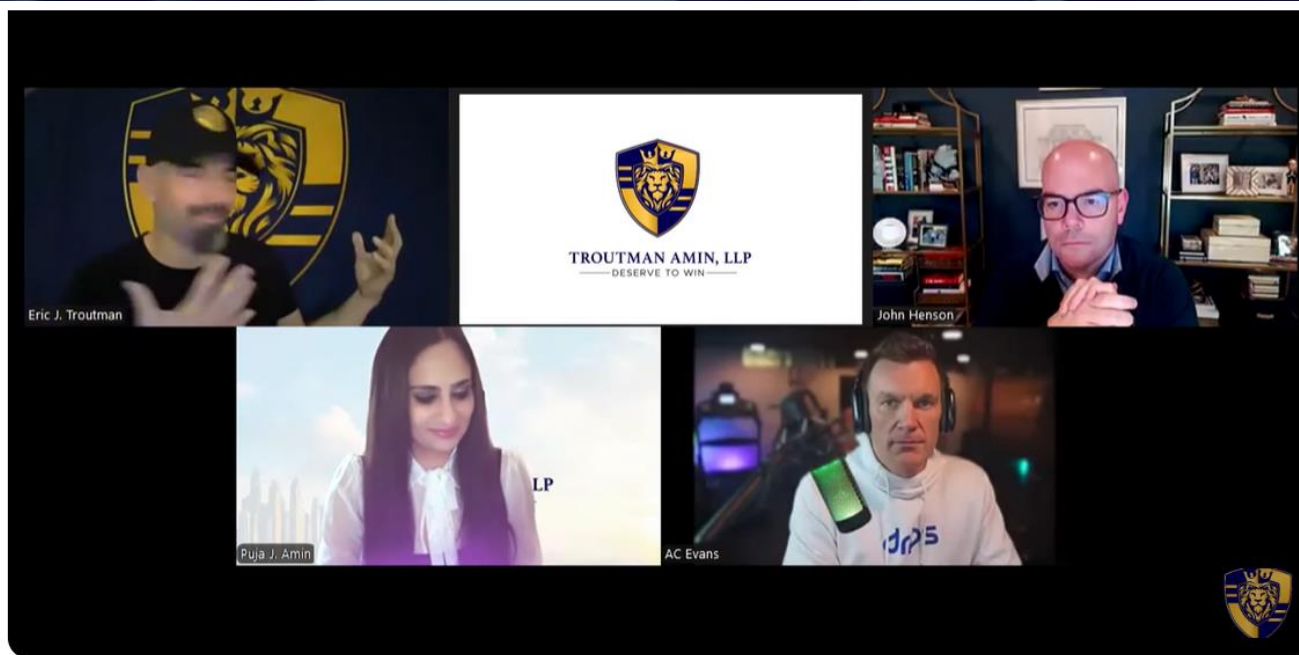
NEW REVOCATION RULES (APRIL, 2025!)

- **Revocation now must be honored across all channels for all purposes;**
- **ONE chance for rebuttal message;**
- **10 business days to honor (thanks to R.E.A.C.H.);**
- **HUGE HEADACHE FOR ENTERPRISE!!!!**





NEW REVOCATION RULES (APRIL, 2025!)



HERE IT IS! THAT MASSIVE TCPA FCC REVOCATION RULE WEBINAR YOU ALL NEED TO SEE! (Sorry we sold out!)



Troutman A...
588 subscribers

Analytics

Edit video

13



Share



639 views 2 weeks ago

So this is the webinar that lead to so many of you being left out today. Hundreds of you were left out when the webinar completely sold out and people couldn't get in.

Youtube Chanel
@deservetowin



FCC MOVES TO REGULATE AI!

3 OCT 2024	“WHEN A.I. IS BEING USED YOU DESERVE TO KNOW”: FCC Chairwoman Speaks to Berkeley Law AI Institute While R.E.A.C.H. Technology Committee
1 COMMENT	Readies Comment and Standards



- Taking the lead on AI regulation
- Already subject to TCPA via declaratory ruling
- Remarks by Chairwoman to Berkeley AI state FCC looking to create consumer expectation of disclosure
- NPRM Seeking Comment on VERY broad definition of AI outreach



R.E.A.C.H. RESPONDS TO FCC AI NPRM!

11 OCT 2024	“THE COMMISSION IS NO LUDDITE.”: R.E.A.C.H. Submits Comment Urging Commission Not to Stifle Growth of Emerging Communication Technology in Response to FCC A.I. NPRM
5 COMMENTS	

- **Pushes back against broad definition of A.I.**
- **Urges Commission not to adopt rules encouraging consumers to distrust A.I.**
- **Seeks to identify specific misuses of A.I. to be banned**



MASSIVE FCC PETITION COMING TO STOP CARRIER CALL/TEXT BLOCKING!

- Carrier call/text blocking out of control
- Content-based restrictions increasingly used (e.g. “free” or “loan” are blocked) even if legal
- Carrier mislabeling of “scam” or “spam” also massive issue
- R.E.A.C.H. set to seek FCC intervention to ban these practices!

4 NOV 2024

ADD A COMMENT

**WORLD CHANGING:
R.E.A.C.H. BOARD VOTES
UNANIMOUSLY TO
PURUSE PETITION TO
STOP CARRIER
CALL/TEXT BLOCKING
AND MISLABELING**

REACH Responsible Enterprises
Against Consumer
Harassment
A MUTUAL BENEFIT CORPORATION

Published by Eric J. Troutman
The Czar of
TCPAWorld Eric Troutman is
one of the country's prominent
class action defense lawyers

The political process may not work the way it was supposed to in this country but, for now at least, we still have the freedom of speech.

One of the key components of First Amendment protection is that prior



CONTACT US AND JOIN NEXT SESSION!!



**BREAKOUT 8C: COMPLYING WITH THE NEW FCC
TCPA ONE-TO-ONE LEAD GENERATION RULING RIGHT
NOW!!!!!!**