



TROUTMAN AMIN, LLP
— DESERVE TO WIN —

DEEP DIVE INTO FCC ONE-TO-ONE RULE

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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!

EXPRESS WRITTEN CONSENT EFFECTIVE JAN. 27, 2025



(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

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

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!

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.

KEY TAKE AWAYS FROM NEW RULING



1. Consent to use regulated technology must be provided to a single “seller” at a time
 - SELLER is the ultimate good or service provider– NOT a lead seller. (47 CFR 64.1200(f)(10).)
 - Multiple names can be on one form but consumer must be able to choose each separately.
 - *We require consent to one seller at a time, but this requirement does not specify how many sellers can be listed on the web page; if the web page seeks to obtain prior express written consent from multiple sellers, the webpage must obtain express consent separately for each seller*
 - CANNOT use name of lead generator and then get the consumer on the phone and agree to transfer to seller.
2. Call must be “logically and topically” related to “interaction” that prompted the consent.
 - Multi-vertical leads dead:
 - *Thus, for example, a consumer giving consent on a car loan comparison shopping website does not consent to get robotexts or robocalls about loan consolidation.*
 - Using leads by a single entity for multiple products is not allowed.
3. FCC imposes new record-keeping requirements on callers– CANNOT just rely on lead supplier to maintain consent: *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.*
4. Effective January 26, 2025.

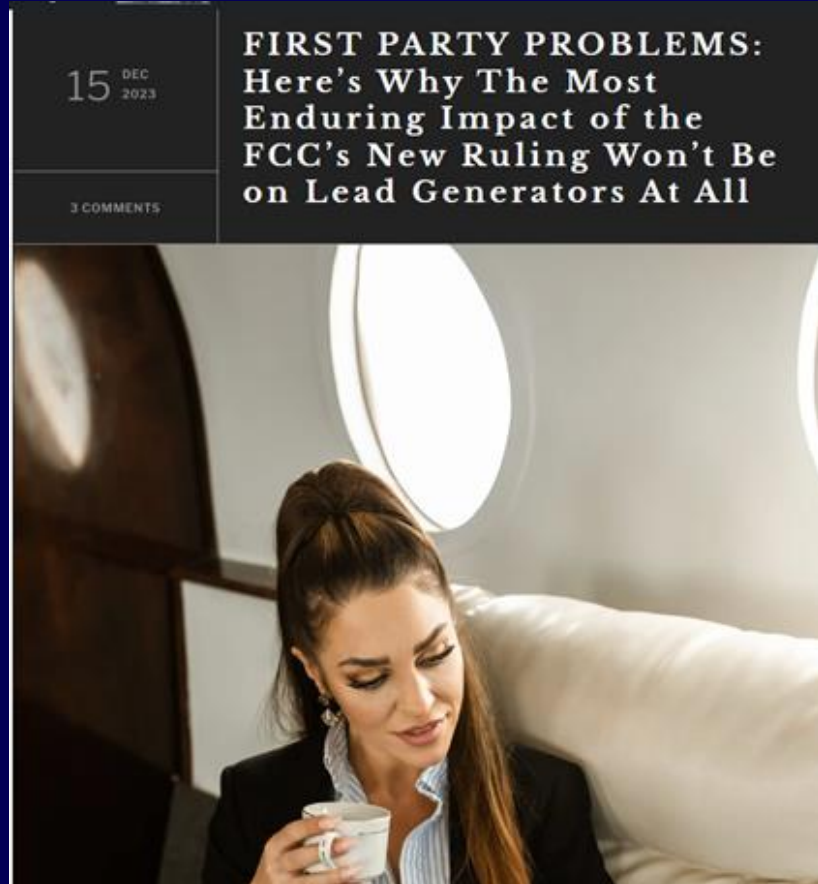


WHO IS THE SELLER?

The term ***seller*** means the person or entity on whose behalf a telephone call or message is initiated for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

- NOT the lead seller
- NOT a marketer

FIRST PARTY “ONE TO ONE” ISSUES



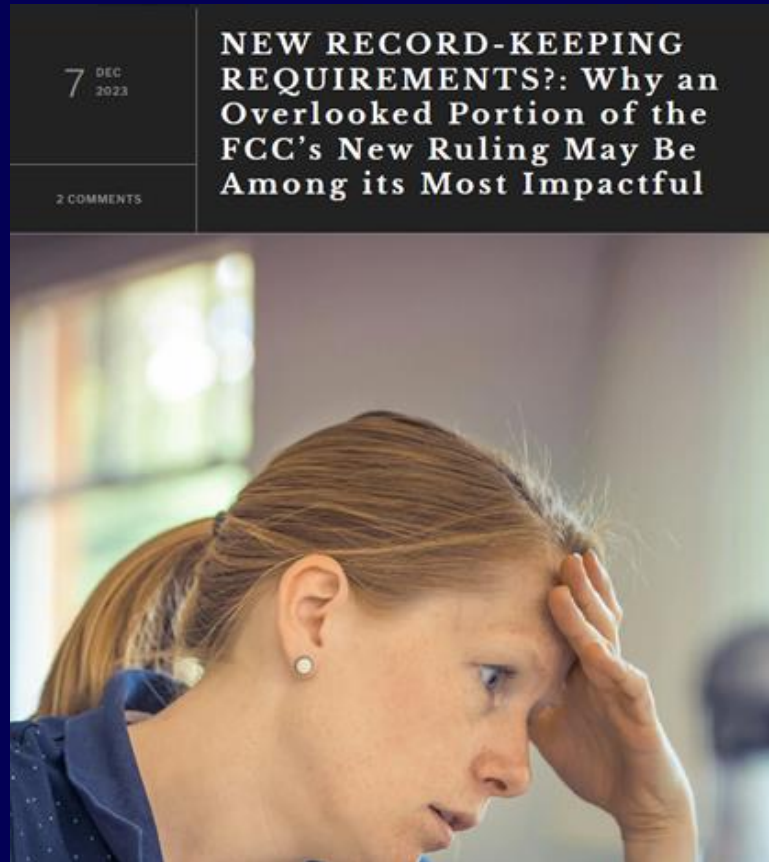
- “Seller” is defined as the SINGLE legal entity providing a good or service
- Brands that have many corporate subsidiaries can no longer use disclosures that grant consent to “parent company and its affiliates” – consent only to a specific entity is sufficient

“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.

ALTERNATIVES THIRD-PARTY LEAD GEN STRATEGIES



- Drive to site campaigns
- White labeling websites
- Absorption of publishers/networks
- BPO!
- Inbound



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