

Telephone and Texting Compliance News: Litigation Update — Eleventh Circuit Knocks Out One-to-One Consent

January 31, 2025 | Article | By [Joshua Briones](#), [Esteban Morales](#), [Grecia A. Rivas-Rudra](#)

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Just one business day before the FCC's one-to-one consent rule was set to go into effect, the rule became no more following the Eleventh Circuit's decision in *Insurance Marketing Coalition v. FCC*.

Over the last year, the lead generation industry has spent significant time coming to grips with the FCC's anticipated one-to-one consent rule, designed to "close the lead generator loophole." In short, the new rule would have required (1) separate consent for each seller and (2) that calls be logically and topically associated with the interaction prompting consent. In practice, the rule was set to dramatically change lead generation practices and the industry. At the eleventh hour, the rule suffered two significant blows.

FCC Postpones Implementation of One-to-One Consent Rule

The first came from the FCC, which issued a new Order on January 24, 2025, delaying implementation of the rule. Under the Order, the rule would have been delayed to the earlier of "January 26, 2026, or until the date specified in a Public Notice following a decision" from the Eleventh Circuit in *Insurance Marketing Coalition v. FCC*.^[1] The FCC cited compliance burdens voiced by stakeholders during public comments and the outcome of the court's decision as reasons for the delay.

Eleventh Circuit Vacates the One-to-One Consent Rule

The knockout blow to the rule came shortly after the FCC's Order, when the Eleventh Circuit Court of Appeals issued its opinion in *Insurance Marketing Coalition v. FCC*, vacating the one-to-one consent rule.^[2] The court held that the agency exceeded its statutory authority by interpreting "prior express consent" under the TCPA to require separate consent for each seller and logical and topical association of calls to the interaction prompting consent.

The Eleventh Circuit found the first new restriction, mandating consent with one seller at a time, inconsistent with the TCPA's requirement for "prior express consent," which incorporates common-law principles of consent. The court cited prior cases where the court held that express consent could be granted broadly, including to multiple entities, provided it was clear and unmistakable via actions or words.

The court rejected the second component of the rule, requiring that any calls or texts be "logically and topically associated" with the interaction that prompted the consumer's consent, noting that the TCPA does not impose any such limitations. For example, the court highlighted scenarios where a consumer might consent to receive calls about arguably unrelated topics, such as loan consolidation, while interacting with a car loan comparison site. Under the FCC's rule, that consent would be invalid, even if clearly expressed by the consumer. The court found this restriction also exceeded the FCC's authority under the TCPA.

In rejecting both restrictions, the court emphasized that the FCC cannot redefine statutory terms or impose new duties not authorized by Congress, noting that callers must obtain prior express consent, not prior express consent *plus*.

Impact on Businesses

It remains to be seen how, if at all, the FCC will respond to this development under the new administration. The decision, however, undoes a substantial amount of work that the lead generation industry undertook over the last year. For the time being, businesses can continue to rely on pre-one-to-one consent standards when obtaining prior express written consent from consumers.

Endnotes

[1] Order, *In re Matter of Targeting and Eliminating Unlawful Text Messages, Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991, Advanced Methods to Target and Eliminate Unlawful Robocalls*, issued by Eduard Bartholme III, Acting Chief, Consumer and Government Affairs Bureau, FCC (Jan. 24, 2025).

[2] *Insurance Marketing Coalition, Ltd. v. Federal Communications Commissions*, No. 24-10277, 2025 WL 289152 (11th Cir. Jan. 24, 2025).

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