

TCPA Regulatory Update — FCC Clarifies Ruling on Application of TCPA's Emergency Purposes Exception to COVID-19 Communications; Petition Seeks Reconsideration of the P2P Alliance Declaratory Ruling

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Consumer and Governmental Affairs Bureau Releases Further Clarification on Emergency COVID-19–Related Calls

On July 28, the Consumer and Governmental Affairs Bureau released a [Public Notice](#) expanding on a March 20 FCC [Declaratory Ruling](#), which clarified that the COVID-19 pandemic qualifies as an “emergency” under the TCPA’s emergency purposes exception. The March 20 Declaratory Ruling means that health care providers sending certain COVID-19–related texts do not need the prior express consent of the called parties, as they ordinarily would. We reported on that ruling in greater detail [here](#).

The recent Public Notice confirmed that calls and text messages made by or on behalf of commercial labs, health insurers, physicians, and pharmacies (health care entities) that, pursuant to guidance from federal, state, or local government officials, communicate with individuals who have tested positive for COVID-19 to provide them with information regarding donating their plasma after recovering, also fall within the “emergency purposes” exception to the TCPA. As a result, during the ongoing pandemic, those calls also do not require prior express consent to be lawful.

The Bureau found that such calls or texts serve the same purposes as those permitted by the March 20 Declaratory Ruling, i.e., they are made necessary in a situation that “affect[s] the health and safety of consumers,” and as such, these calls are critical to inform their recipients of the need for them to participate in an effort to mitigate the devastating effects of COVID-19.

The Bureau reiterated that automated calls that contain advertising or telemarketing of services or that attempt to collect debt, even if such debt arises from related health care treatment, do not constitute calls made for an “emergency purpose,” and thus, continue to require the prior express consent of the called party.

Parties Seek Reconsideration of Late-June P2P Alliance Declaratory Ruling

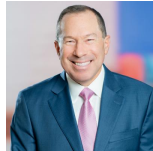
On July 24, the National Consumer Law Center, Consumer Federation of America, Consumer Action, EPIC, Public Knowledge, and the National Association of Consumer Advocates filed a joint Application for Review of a [Declaratory Ruling](#) issued by the FCC’s Consumer and Governmental Affairs Bureau that had partially granted a petition from the Peer-to-Peer Alliance (“P2P Alliance”). As we wrote in our [July TCPA Digest](#), that June 25 Declaratory Ruling clarified that the fact that a calling platform or other equipment used to make calls or send texts to a large volume of telephone numbers is not probative of whether that equipment constitutes an autodialer under the TCPA. It granted the P2P Alliance’s Petition to the extent that its platform, as described in its Petition, requires human intervention to make each call.

The July 24 filing urges the Bureau to reverse its decision, and argues that the ruling “repeatedly characterizes the statutory definition of” an automated telephone dialing system (“ATDS”) “in ways that deviate from the statutory language, and conflict with each other, with the Commission’s rulings, and with

prevailing case law.” It also says that the decision “fails to reconcile its interpretation of an ATDS with recent decisions in the Second and Ninth Circuits Courts of Appeal.” The Application for Review further argues that the ruling mischaracterizes the degree of automation in the P2P platform and the actual capacity of the P2P systems. The P2P Alliance opposed the Application for Review. PACE, the Professional Association for Consumer Engagement also responded to the Application for Review, asking the FCC defer any reconsideration of the P2P Declaratory Ruling until after a decision is issued by the U.S. Supreme Court in *Facebook, Inc. v. Noah Duguid, et al.*

The FCC has not yet released a Public Notice or any other decision on the Application for Review.

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