

FCC Rules that Informational Automated Messages Sent by Schools to Parent Cell Phones Do Not Violate the Federal Telephone Consumer Protection Act

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In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 (Petition of Blackboard, Inc.), CG Docket No. 02-278 (August 2016). The FCC confirms that schools may send informational messages “closely related to the school’s mission” via automated calls and text messages to parent cell phones absent instructions to the contrary from the parent.

SUMMARY AND DISCUSSION

The federal Telecommunications Consumer Protection Act (TCPA), 47 U.S.C § 227, regulates telemarketing calls, auto-dialed calls, prerecorded calls and text messages to non-commercial wireless phones. Generally, the TCPA prohibits solicitations using prerecorded messages or “robocalls” absent prior express consent and establishes a private cause of action for violations. The act applies to communications from schools to parents, but provides exceptions to the general prohibition.

In particular, the TCPA allows prerecorded calls and text messages to be placed by schools to cell phones for “emergency” calls which regulations define as “calls made necessary in any situation affecting the health and safety of consumers.” While the act also allows informational calls to land lines from public schools, it is increasingly common that families rely only on cell phones and do not maintain a land line home phone. Consequently, informational calls or messages, such as announcements of school activities, delivered by schools to cell phones could be construed as violating the TCPA. Thus, in guidance, the Federal Communications Commission had opined that informational calls from school to parent cell phones require prior express consent.

Seeking clarification of the FCC’s position on the use by schools of informational robocalls, in 2015, Blackboard, Inc., a company that provides notification services to schools, filed a petition with the FCC. In that matter, the FCC recently issued a declaratory ruling confirming that (1) schools can lawfully place certain types of robocalls to members of their school communities pursuant to the “emergency purpose” exception in the TCPA; and (2) schools are deemed to have the requisite “prior express consent” to place other types of robocalls that are not emergencies, but are “closely related to the school’s mission” to numbers that recipients have provided to the schools.

The FCC determined that the “emergency purpose” exception in the TCPA allows schools to place robocalls concerning weather closures, incidents of threats and/or imminent danger due to fires, dangerous persons, or health risks, and unexcused absences of students. Further, the FCC ruled that informational calls that are not emergencies but are “closely related to the school’s mission,” such as notifications of upcoming teacher conferences and general school activities, are considered to be made with “prior express consent” when the parents have provided their cell phone numbers to the school. The FCC reasoned that persons who knowingly release their telephone numbers have in effect given their invitation or permission to be called at the number which they have given, absent instructions to the contrary.

PRACTICAL ADVICE

This FCC ruling effectively eliminates the risk of claims of violations of the TPCA for most types of prerecorded messages delivered by schools. To ensure compliance with the “prior express consent” requirement for receipt of informational calls, school districts should consider including a statement on registration forms indicating that, absent contrary instructions, emergency and informational messages will be placed to cell phone numbers provided by parents.

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