

Client Alert

Reminder: New TCPA Regulations Requiring 'Prior Express Written Consent' From Consumers Effective on October 16, 2013

October 4, 2013

The clock is ticking towards the deadline for complying with the new Telephone Consumer Protection Act (TCPA) regulations. In 2012, the Federal Communications Commission promulgated new rules governing the circumstances under which telemarketers can contact consumers. In less than two weeks—on October 16, 2013—the rules become effective, putting telemarketers and those companies that they act "on behalf of" at potential risk if they do not comply. As of October 16, 2013, companies that utilize mass marketing through auto-dialers, predictive dialers, and pre-records (commonly known as "telemarketing robocalls") must obtain "prior express written consent" before calling residential and mobile phones. The new rule applies to both text messages and voice calls. Prior to this change, telemarketers could contact residential lines based on an "established business relationship" with the consumer, which did not necessarily need to be documented by written agreement. The new rule eliminates the "established business relationship" exemption. Accordingly, both new and current customers must provide "prior express written consent" before receiving telemarketing robocalls.

"Prior express written consent" requires:

- a written agreement, signed by the individual authorizing telephone solicitations to a specific phone (agreement can be effectuated by text, e-mail, or in compliance with the E-SIGN Act), and
- clear and conspicuous disclosure that the signed agreement is not a condition of purchasing any good or service.

The new rule also requires telemarketers to implement an interactive automated opt-out mechanism to permit consumers to opt out of receiving additional calls during a telephone solicitation.

Failure to comply could result in stiff penalties. The TCPA permits private causes of action and provides for damages ranging from \$500 to \$1,500, per communication, with no cap on total damages. Class action complaints for TCPA violations are common as are settlements and judgments in the tens of millions of dollars.

Please contact us if you have questions regarding compliance with these new standards.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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