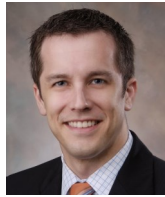


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CHANGES IN ROBO-CALL LAW AFFECTING SCHOOL DISTRICTS

On July 10, 2015 the FCC issued an omnibus ruling clarifying some of the regulations of the Telephone Consumer Protection Act (TCPA), which addresses robo-calls and auto-dialed calls and text messages. This ruling has significant potential implications for school districts.

The law allows auto-dialed calls and pre-recorded calls to landline phones that are merely informational in nature (not solicitations or advertisements) if made by a tax-exempt non-profit, but requires express consent from the recipient if the call has some commercial purpose or advertisement. Calls due to emergencies are also permitted without express consent. For calls to cellular phones, auto-dialed calls and pre-recorded calls are permissible, so long as the person being called has provided prior express consent. Though written consent is not required for such calls to cellular numbers, it is recommended as an effective form of documentation of express consent.

The new ruling by the FCC makes the following additional clarifications:

Revocation of Consent

The FCC has now clarified that when a person wants to revoke the express consent that they previously provided, revocation of consent may be provided by “using any reasonable method” and “in any manner that clearly expresses a desire not to receive further messages.” A school district cannot require an exclusive mechanism to revoke consent, but rather must accept revocation in any reasonable way.

School districts and IUs should ensure that they have provided a simple and prominent mechanism to revoke consent for automated calls, and administrative staff should be made aware that if they receive a request to be removed from the call list, that such a request should be immediately acted upon.

Safe Harbor For Re-Assigned Numbers

The FCC ruling clarifies that where prior express consent is required, it is required of the person who is actually called, not merely of the intended recipient. The ruling clarifies that callers are permitted one call without penalty to a number that has been changed (and thus to which the district does not have express consent). However, after one call, the FCC now presumes that the caller has constructive notice that the recipient of the call has changed. The burden is on the calling party (i.e. the district) to show that it had express consent when it contacted the party who received the call.

This change will cause consternation both for public entities and for private businesses. In the past, the FCC has levied substantial penalties for unauthorized robo-calls, including an \$18,000 fine against an advertising company for four unsolicited advertising messages (\$4,500 per call). The statutory maximum fine is \$10,000 per call. Although we have not seen this type of enforcement action taken against public or non-profit entities, the financial risk is significant in an area where mis-dialed calls are not only possible but likely.

School districts should undoubtedly tighten up processes for ensuring that the district is notified when a mobile phone number is changed, and for ensuring that the district makes it easy for parents and students to change their contact

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numbers with the district. There are a number of logistical ways to ensure such notifications, such as when districts acquire express consent to call mobile phone numbers, ensuring that the recipient acknowledges that they are *required* to notify the district immediately if their number changes. Although more cumbersome, we also recommend that all recorded messages and text messages include information about how to remove one's number from the contact list if we have reached the recipient in error. School districts may also want to consider how often they require recipients to re-subscribe to district alerts – thus ensuring that those whose numbers have changed are periodically removed from the system.

Auto-dialed Text Messages

The FCC ruling clarifies that both SMS text messages and internet to phone text messages are also subject to the TCPA rules, and thus prior express consent would be required for texts from school districts to cellular phones, including emergency alerts. The only exception is a one-time text message sent in response to a consumer's specific request for information (such as when a bank provides a verification code).

Overall, while we don't think this ruling necessarily requires school districts to move away from auto-dialed calls and text messages, it does provide a strong incentive to reduce reliance on such systems and instead move toward an approach centered on traditional and social media.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.

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