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FCC: COVID-19 is an 'Emergency' Under TCPA

The FCC's Consumer and Governmental Affairs Bureau released a declaratory ruling this afternoon clarifying that the COVID-19 pandemic constitutes an "emergency" under the Telephone Consumer Protection Act (TCPA) and thus automated calls and texts to wireless numbers about the crisis from authorities don't require prior consent.

"With this Declaratory Ruling, we ensure that public health authorities can efficiently and effectively communicate vital health and safety information to the American people," the bureau said in the item in CG docket 02-278. "Specifically, we confirm that the COVID-19 pandemic constitutes an 'emergency' under the Telephone Consumer Protection Act (TCPA) and that consequently hospitals, health care providers, state and local health officials, and other government officials may lawfully communicate information about the novel coronavirus as well as mitigation measures without violating federal law."

"On our own motion, we confirm that certain callers may lawfully make automated calls and send automated text messages to wireless telephone numbers when such calls are necessary to protect the health and safety of citizens pursuant to the TCPA's 'emergency purposes' exception," the order added. "In the Blackboard-Edison Declaratory Ruling, the Commission made clear that automated calls to wireless numbers made necessary by incidents of imminent danger including 'health risks' affecting health and safety are made for an emergency purpose and do not require prior express consent to be lawful.

"We find that the current pandemic constitutes such an imminent health risk to the public," the bureau said. "In determining whether a call relating to the COVID-19 pandemic qualifies as a call made for an emergency purpose, we look to the identity of the caller and content of the call. First, the caller must be from a hospital, or be a health care provider, state or local health official, or other government official as well as a person under the express direction of such an organization and acting on its behalf. Second, the content of the call must be solely informational, made necessary because of the COVID-19 outbreak, and directly related to the imminent health or safety risk arising out of the COVID-19 outbreak.

"Thus, a call originating from a hospital that provides vital and time-sensitive health and safety information that citizens welcome, expect, and rely upon to make decisions to slow the spread of the COVID-19 disease would fall squarely within an emergency purpose. An informational call designed to inform and update the public regarding measures to address the current pandemic made on behalf of, and at the express direction of, a health care provider would be made in a situation that 'affect[s] the health and safety of consumers' and would thus be exempt," the item added. "In turn, a call made by a county official to inform citizens of shelter-in-place requirements, quarantines, medically administered

testing information, or school closures necessitated by the national emergency would be made for an emergency purpose as such measures are designed to inhibit the spread of the disease.”

The bureau stressed that “calls that contain advertising or telemarketing of services do not constitute calls made for an ‘emergency purpose’ (e.g., advertising a commercial grocery delivery service, or selling or promoting health insurance, cleaning services, or home test kits). Calls made to collect debt, even if such debt arises from related health care treatment, are not made for an ‘emergency purpose,’ as those calls are not time-sensitive, do not ‘affect the health and safety of consumers,’ and are not directly related to an imminent health or safety risk. Such debt collection, advertising, or telemarketing automated calls require the prior express consent of the called party.

“Unscrupulous callers should not view the relief we provide here as a retreat from our aggressive work to combat illegal robocalls,” the bureau warned. “As the COVID-19 pandemic continues to impact the United States, phone scammers have seized the opportunity to prey upon consumers. We are aware that some consumers have already received telemarketing and fraudulent robocalls related to the pandemic. For example, we have received reports of scam and hoax text messages and automated calls offering free home testing kits, promoting bogus cures, and preying on virus-related fears [see separate story]. We will be vigilant in monitoring complaints about these calls and will not hesitate to enforce our rules when appropriate.” - Paul Kirby, paul.kirby@wolterskluwer.com

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