

# FCC Votes to Enact Proposed Rule to Close the Lead Generator Loophole

## The Bottom Line

- The FCC enacted a notice of proposed rulemaking that closes an often exploited loophole that allowed certain callers to inundate consumers with unwanted robocalls and robotexts.
- The new rule puts stringent new restrictions on lead generators – businesses that collect contact information provided by consumers and sell it to companies looking for new customers.
- Requiring one-to-one consent is aimed at slashing unwanted calls and text messages and could dramatically increase lawsuits against companies that communicate with consumers based on indirectly obtained consent.

The Federal Communications Commission (FCC) [adopted a rule](#) that is designed to close the lead generator loophole related to robocalls and robotexts. The FCC's 4-1 vote on December 13, 2023, resulted in a change that could dramatically increase the potential for lawsuits against entities that make unwanted phone calls or send unwanted text messages.

## Rule Changes TCPA's Express Consent Requirements

With this change to the Telephone Consumer Protection Act's (TCPA) express consent rules, phone calls and text messages made using regulated technology, like autodialers, now require "one-to-one" consent. This means that individual sellers must obtain a consumer's prior express written consent to be contacted by that specific seller.

The new rule also requires that all regulated calls and text messages from sellers be "topically and logically" related to the "transaction" that gave rise to the consent. [The FCC's order](#) gives the example of a consumer giving consent on a car loan comparison shopping website, which does not translate to consenting to receiving calls or messages about loan consolidation.

Lead generators, like those that connect consumers with comparison shopping websites, mortgage quotes, insurance brokers and home improvement businesses, obtain a consumer's consent to being contacted, then sell

the consumer's contact information to interested businesses. This often results in the consumer receiving calls and messages from countless businesses that they never expected or wanted to hear from, all based on their original consent.

## Businesses Should Prepare by Reviewing Consumer Contact Consent Practices

In the current environment of advertising and marketing, even companies that are not lead generators, but have previously obtained consent for multiple entities to contact consumers, should consider revisiting consent practices.

The new rule provides some flexibility for businesses, so consumers can provide consent to be contacted by multiple sellers in one page, but each consent must be individually selected. For example, a business can offer consumers a check box list that allows them to specifically choose each individual seller that they wish to receive calls and messages from. Alternatively, a website may offer consumers a clickthrough link to a specific business so that the business itself may gather express written consent from the consumer directly.

Companies have 12 months once the rule takes effect to make the necessary changes to ensure compliance. The restrictions in the new rule create a broad new pathway for individuals who receive unwanted calls and text messages, including robocalls and robotexts, to bring TCPA claims.

Given that the TCPA includes a private right of action whereby individuals (and thereby class action attorneys) can bring claims for damages of \$500 to \$1,500 per violation, compliance by businesses will be critical to reduce risk. So, even small businesses should use the 12-month implementation period to develop a compliance program.

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### For More Information

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