



February 2010

**PRIVACY & INFORMATION
SECURITY UPDATE****FCC Seeks Comment on Requiring Written Consent for Prerecorded Telemarketing Calls**

The Federal Communications Commission (FCC) on January 22, 2010 released a Notice of Proposed Rulemaking seeking comment on proposed revisions to its rules under the Telephone Consumer Protection Act (TCPA) that would harmonize the FCC's restrictions on prerecorded telemarketing with the Federal Trade Commission's (FTC) Telemarketing Sales Rule. Currently, the FCC rules permit such calls in the case of an "established business relationship" or with prior express written consent. The FTC now requires prior express written consent. Some entities are only subject to the FCC's regulations (such as telephone companies and airlines, banks and insurance companies) and thus currently may follow the FCC's less restrictive standards.

The FCC's Notice of Proposed Rulemaking asks whether the FCC should require sellers and telemarketers to obtain telephone subscribers' express written consent (which may be electronic) to receive prerecorded telemarketing calls even when there exists an established business relationship between the caller and the consumer; exempt certain federally regulated health care-related calls from the general prohibition on prerecorded telemarketing calls to residential telephone lines (as the FTC does); require that prerecorded telemarketing calls include an automated, interactive mechanism by which a consumer may "opt out" of receiving future prerecorded messages from a seller or telemarketer; and adopt a "per campaign" standard for measuring the maximum percentage of live telemarketing sales calls that a telemarketer lawfully may drop or "abandon" as a result of the use of automated dialing software or other automated dialing equipment.

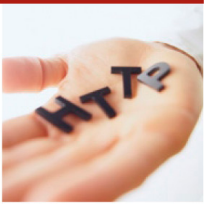
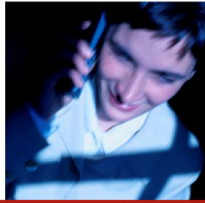
The FCC's proposed changes would leave undisturbed existing categories of calls that are *not* covered by the rules, including calls by or on behalf of tax-exempt nonprofit organizations, calls for political purposes and calls for other noncommercial purposes, including those delivering informational messages, such as notification of upcoming deliveries or workplace or school closings. Existing restrictions on placing calls to persons on the federal "do not call" list remain in effect.

FOR MORE INFORMATION

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