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Client Alert: D.C. Circuit Narrows FCC's Broad 2015 TCPA Order

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Friday, 17 months after hearing oral arguments, the U.S. Court of Appeals for the D.C. Circuit issued its long-awaited decision in *ACA International v. FCC*, which challenged key portions of the FCC's 2015 TCPA Declaratory Ruling and Order (the Order). The Court's decision, particularly regarding the FCC's expansive definition of an autodialer and its one call safe harbor rule for reassigned numbers, is welcome news for businesses seeking to comply with the statute.

Since its implementation in 2015, the FCC's Order has been of particular importance because, while purportedly providing clarification on the law, the Order has served to broaden liability under the statute, giving rise to increased consumer lawsuits. The decision follows a challenge to the Order from a large number of petitioners, ranging from businesses to industry groups such as the National Retail Federation.

The Court found that the FCC's broad interpretation of an autodialer strayed from the TCPA's statutory language so far as to be arbitrary and unreasonable. In coming to this conclusion, that Court noted that the FCC's Order would extend TCPA coverage to any phone call placed with a smart phone. While rejecting the FCC's expansive definition, the Court did not provide clarity in terms of what dialing-assistive technology would implicate TCPA coverage, and instead leaves in place the TCPA statutory language that the FCC Order was originally intended to clarify, which defines an autodialer as a system that has the capacity to make telephone calls using a random or sequential number generator.

In addition, the Court rejected the FCC's draconian one-call safe harbor for reassigned numbers, which instituted a rule that businesses could place no more than one call to a number that was reassigned from a consenting consumer. The Court found that imposing liability in this fashion, regardless of whether the business knew or should have known that the phone number was reassigned, is an unreasonably expansive interpretation of the statute.

While these developments are unquestionably beneficial for businesses seeking to comply with the TCPA, the Court's rejection of these aspects of the FCC Order leaves an unclear landscape going forward. The task of setting the definition of an autodialer and determining liability for phone calls placed to reassigned phone numbers will be an open question to be decided going forward by courts and potentially the FCC, which has developed a more business-friendly tilt since the Order, including the appointment of Chairman Pai who issued a strong dissent to the Order in 2015.

Vorys will continue to monitor these important issues as they work their way through the FCC. Please contact John Landolfi, Heather Enlow-Novitsky, Christopher Wager, Christopher LaRocco or your Vorys attorney if you have questions surrounding the TCPA or the impact of Friday's decision.