FCC Accuses Lyft of Violating TCPA

The FCC's Enforcement Bureau recently issued a citation to Lyft – a San Francisco-based company that pairs passengers with drivers via its smartphone app – accusing the company of violating the agency's rules protecting consumers from unwanted autodialed marketing texts and robocalls.

According to the FCC, while Lyft's terms and conditions state that consumers can opt out of receiving autodialed prerecorded calls or marketing texts, the company does not actually provide any links to unsubscribe options for such calls and/or texts. The FCC further alleges that consumers who locate the opt-out mechanism and unsubscribe from Lyft's calls and texts are no longer able to utilize Lyft's services until they opt back in to receiving such messages. The FCC asserts that this practice violates its Telephone Consumer Protection Act rules, which expressly prohibit companies from requiring consumers to accept marketing text messages and/or robocalls as a condition of service.

The FCC is required to issue a citation as a first step, but the agency has stated clearly that any further violations by Lyft will result in sanctions, which can include monetary penalties. The FCC also issued a citation to First National Bank alleging similar TCPA violations for autodialed texts to the bank's customers.

So what can companies learn from these recent FCC citations?

- First, remember that companies must have express written consent from a consumer to send autodialed marketing texts or prerecorded phone calls to the consumer's mobile phone. The practice of sending autodialed marketing texts or prerecorded calls to consumers' mobile phones without the consumers' express written consent violates TCPA rules, and could trigger a government investigation of the company's practices.
- Second, keep in mind that companies cannot require consumers to consent to autodialed marketing text messages or prerecorded calls as part of another transaction. This requirement means, for example, that a company cannot suspend access to its services when a customer opts out of its marketing texts.

Both of the elements outlined above are expressly required by the FCC's regulations.

The Lyft and First National Bank citations serve as cautionary tales for all companies who engage in autodialed marketing texts and/or prerecorded calls as part of their marketing practices. Such companies should take a close look at their terms and conditions as well as their current marketing practices to confirm that they are in compliance with FCC regulations. A careful review of the company's practices on these issues will reduce the risk of future regulatory scrutiny and possible monetary penalties.

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