

The Effect of the FCC’s One-to-One Consent Rule on Real Estate Agents

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On January 27, 2025, the Federal Communications Commission’s (“FCC’s”) one-to-one consent rule (the “FCC Rule”) will take effect requiring changes to how real estate agents and their agencies obtain consent to call or text consumers *if* they use certain calling technology.

I. Scope of the FCC Rule

The FCC Rule only applies to telemarketing calls or texts to cell phones using an “automatic telephone dialing system” (“ATDS”) or an artificial or prerecorded voice. The FCC Rule does not apply to the live voice calls placed without an ATDS.

Prerecorded voice includes artificial intelligence (AI)-generated calls, prerecorded voicemail messages, or texts that include audio or video clips. These calls currently require prior express written consent.

For calls made using an ATDS or an artificial or prerecorded voice, the FCC Rule will require companies to: (1) obtain one-to-one consent; (2) with a clear and conspicuous disclosure including specific language; and (3) the calls must be logically and topically related to the consent provided by the consumer. The name of the seller must be listed in the consent language and the consumer must select to receive communications from that seller.

II. How the FCC Rule Affects Calls by Real Estate Agents

Understandably, real estate agents are concerned that they may not be able to contact prospective customers because of the FCC Rule. The FCC spoke directly to this scenario in response to a concern by Zillow:

Zillow contends that its process for connecting an agent to a prospective customer could be problematic under our revision to prior express written consent under the TCPA because Zillow would not have the name of the agent until after the customer consents to be so contacted However, based on Zillow’s description of the contact between the agent and the customer, it appears to be a live call (where Zillow adds the agent to the call), and not autodialed, or using a prerecorded or artificial voice, and therefore a process appropriate under the TCPA prior to and after the subsequent changes to the regulations contained in this Order, and thus our rule change would not be relevant to that interaction.

As noted by the FCC, the FCC Rule will not affect live calls that do not use an ATDS. If you do not make these types of calls, the FCC Rule will not apply.

III. The “Do-Not-Call” List Still Applies to Telemarketing Calls

The federal “do-not-call” list rules will still apply to telemarketing calls, i.e., calls made for the sale of goods or services. For those calls, companies must obtain “prior express invitation or permission” or have an “established business relationship” to call numbers on the federal “do-not-call” list. Otherwise, you must scrub those numbers against the federal and state “do-not-call” lists.

Calls and texts made by real estate agents to purchase a home from a consumer may be considered a telemarketing call depending on the content of the call or text. You should have counsel review these types of communications to ensure they are not “telemarketing”.

IV. Other Laws May Apply

This white paper does not address other federal and state laws that may apply to your calls and texts, including abandonment requirements, caller ID, calling time restrictions, disclosures, consent to call monitoring and recording, and restrictions on calls made using an “automated system” in certain states.

V. Conclusion

In short, the FCC Rule will not apply to live voice calls or texts made by a real estate agent if it does not use an ATDS or an artificial or prerecorded voice. The FCC Rule will apply *if* a real estate agent makes calls or texts using an ATDS or an artificial or prerecorded voice. The federal “do-not-call” list will still apply if you are making calls for the sale of goods or services.

This white paper summarizes those changes but is not intended to be specific legal advice. Please contact your attorney or Kellie Bubeck at kellie@bubecklaw.com for counsel on how the FCC Rule may affect you.