

# Client Alert

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## FCC Seeks Comments on Request to Exempt Fraud and Identity Theft Notifications from TCPA's Coverage

By Tiffany Cheung and Maggie Mayo

The Federal Communications Commission (FCC) is seeking input on the American Bankers Association's (ABA) petition requesting that the FCC exempt certain time-sensitive informational notifications from the Telephone Consumer Protection Act (TCPA)'s restrictions on calls and text messages to cell phones.

The TCPA generally prohibits certain calls and text messages to cell phones that are made with an autodialer or an artificial or prerecorded voice, except calls made with the prior express consent of the called party.<sup>1</sup> The FCC, however, may exempt calls or text messages to a cell phone that are not charged to the called party, "subject to such conditions" as the FCC may prescribe to protect consumer privacy rights.<sup>2</sup> The ABA's petition points out that for certain types of informational calls, such as fraud alerts and data security breaches, automated communications to cell phones are the best way to provide quick and efficient notifications to customers in time-sensitive situations. Specifically, the ABA's petition seeks to exempt the following types of automated calls and text messages:

- notifications of transactions and events that suggest a risk of fraud or identity theft;
- notifications of possible breaches of the security of customers' personal information;
- notifications of steps consumers can take to prevent or remedy harm caused by data security breaches (collectively referred to as remediation messages); and
- money transfer notifications and notifications of actions needed to arrange for receipt of pending money transfers.

Earlier this year, the FCC granted an exemption for package delivery notifications to cell phones so long as the calls are not charged to the recipient, including not being counted against the consumer's plan limits on minutes or texts.<sup>3</sup> If granted by the FCC, the ABA's requested exemption will allow companies to make certain time-sensitive automated calls and text messages to customers' cell phones without the need to first obtain express consent from the customer. This exemption could significantly benefit consumers and maximize the ability to protect against fraud or identity theft without exposing the senders of such important notifications to potentially crippling liability under the TCPA.

The deadline to submit comments regarding this exemption is December 8, 2014.

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<sup>1</sup> 47 U.S.C. § 227(b)(1)(A)(iii); 47 C.F.R. § 64.1200(a)(1)(iii).

<sup>2</sup> 47 U.S.C. § 227(b)(2)(C).

<sup>3</sup> See FCC Order, No. 02-278 (March 27, 2014).

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