

FCC Declares Ringless Voicemails Are Subject to TCPA's Robocall Restrictions

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In a recently issued [ruling](#), the Federal Communications Commission (FCC) declared that “ringless voicemails” are “calls” subject to the requirements of the Telephone Consumer Protection Act (TCPA). Ringless voicemail technology delivers messages directly to wireless users’ voicemail boxes without ringing their devices. The FCC’s new ruling clarifies that ringless voicemails are treated no differently than text messages or voice calls for purposes of the TCPA, notably meaning that they require the prior express consent of the called party. We [previously wrote about](#) the potential of this ruling earlier this year, noting that the FCC was leaning in this direction.

The FCC’s new ringless voicemail ruling stems from a 2017 petition that asked the FCC to declare that delivery of a voicemail message directly to a consumer’s cell phone voicemail is not covered by the TCPA and does not require prior consumer consent for the messages. In rejecting the petition, the FCC relied on two past decisions relating to text messages. First, in a 2003 ruling, the FCC made clear that text messages are considered “calls” for purposes of the TCPA. Then, in 2015, the FCC reiterated that finding in its infamous *TCPA Declaratory Ruling and Order* and extended it to Internet-to-phone text messages.

In the latest ruling, the FCC found that ringless voicemails are “identical in function to the Internet-to-phone texting,” which the FCC had already declared constitute “calls” in the 2015 ruling. Just like with Internet-to-phone texting, the FCC found here that ringless voicemails meet the common definition of a “call” by “directing the messages by means of a wireless phone number and by depending on the transmission of a voicemail notification alert to the consumer’s phone (causing the consumer to retrieve the voicemail message).” The FCC also supported its finding by noting that it received over 8,000 comments on the petition, almost all of which supported this ruling.

While the FCC didn’t directly answer the question of whether this ruling would apply retroactively, it did deny the petitioner’s request for a retroactive waiver of the rule. In support of its decision to deny the retroactive waiver, the FCC simply noted that the goals of the TCPA — to protect consumers from intrusive and unsolicited messages — would not be furthered by a retroactive waiver. In the past, the FCC has applied clarifications of existing rules retroactively, which may fit the bill here. This part of the ruling is concerning for entities that have previously employed ringless voicemail technology,

especially with the TCPA's relatively lengthy four-year statute of limitations. The FCC's ringless voicemail ruling presents a substantial liability risk, both in the form of FCC enforcement actions and consumer litigation, and particularly for class-action litigation. Though several courts have already ruled that ringless voicemails are calls for purposes of the TCPA, the FCC's ruling provides additional support for this proposition, which may result in increased litigation raising this issue nationwide. Companies that have used in the past or are currently using ringless voicemail technology to contact consumers should take note and evaluate their practices quickly to get ahead of the potential fallout from this ruling.

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