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# FRANCHISE MODEL IN JEOPARDY?: New FCC Ruling May Be Even Tougher on Franchisees than Other Small Businesses

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So lots of coverage of the FCC's new ruling.

Again, the Commission held express consent can only be obtained by a consumer for ONE SPECIFIC provider of goods or services.

While this is certain to be a small business killer, it is starting to sink in that the ruling will have even broader consequences.

For one thing it appears first party leads may also be effected in that calls by a brand must now be "topically and logically" related to the transaction leading to consent–and that work unforeseen restrictions on companies that might sell multiple related items. And then there's the issue of who the "seller" is when a conglomerate is involved. Does a general consent to the parent company encompass consent to be contacted by subsidiaries? Lots to unpackage still in the first party context. separate blog on that coming.

In the third-party context, however, the issues are myriad.

We were discussing these on stage yesterday at the Summit–day 2 is on now!–and there were a lot of questions around *whose* name needs to be on the form in the context of independent third-parties that sell a product.

Let's take insurance as an example.

Insurance *agents* –whether they are independent or captive–are seemingly pretty safe here. Because the "seller"–i.e. the company providing the good or service to the customer–is the insurer (think Allstate) it seems pretty safe to assume that only Allstate needs to be on a form and not any specific insurance agency. This is true even if the agency is a third-party: the "seller" is Allstate and the calls made by the agency are "on behalf" of Allstate.

Things get trickier in the broker context, however. The broker is independent AND sales insurance for multiple insurance companies. So a lead that says "Allstate" *might* be transferable to an independent broker but *only* if the broker sells Allstate and ONLY Allstate to the consumer. If they sell a different

insurance product because, let's say, Allstate is too expensive or doesn't provide coverage that would exceed the consumer's consent–even if the alternate policy is "logically and topically" related to the consumer's request to hear from Allstate. It is unclear (to me at least) whether this means brokers can *never* rely on third-party consent naming the insurer, or can only do so when they will sell only the specific insurer.

That leaves open the question, of course, of whether the BROKERs name can be on the form. This is tough because if the consumer is looking for INSURANCE then the "seller" is the insurer and *only* the insurer. But if the consumer is looking for LOW INSURANCE RATES, then PERHAPS the "seller" is the broker who is providing the "service" of connecting consumers with a low rate. REALLY tough to say how this is going to play out. I will probably do a blog diving into this issue more deeply another time.

For now though I want to focus on the FRANCHISE model.

Let's take real estate for example.

In a franchise model each individual franchise has its own brokerage license, but they use a franchise name–say Coldwell Banker.

In this model it seems to me it is NOT ok for the mother ship's name to be on the form. Unlike Allstate, Coldwell banker isn't providing *any* services directly to the consumer. (Just like McDonald's isn't selling you a hamburger when you visit your local McDonald's franchise.) Instead it is the local franchise–be it an LLC, solo or corp-so THAT name needs to be on the form. That suggests that small businesses who are franchisees are really in trouble–they have to find leads that specifically mention their brokerages, and not just the brand name. Huge huge shift.

Seems to be another unforeseen consequence here– franchisees losing leads disproportionately to non-franchise model organizations. Virtually certain that is not what the FCC intended but, here we are.

More coverage on this soon.



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