Lyft Gets Cited by FCC for Robo-Texting

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Companies that require customers to agree to receive autodialed marketing calls and text messages as a condition for using the companies’ services have been put on notice that they may be in violation of the Telephone Consumer Protection Act ("TCPA"). Last week, the Federal Communications Commission issued a Citation and Order to both the ride-sharing company Lyft and First National Bank, alleging that the companies’ terms and conditions of service violate the TCPA.

Under the TCPA and FCC rules, anyone wishing to make autodialed phone calls or text messages to consumers’ wireless phones or prerecorded calls to home phones for marketing purposes must first obtain the customer’s written consent. Those who make calls in violation of the TCPA and FCC rules face stiff financial forfeitures of up to $16,000 for each violation of the TCPA rules, and up to $112,500 for any single act or failure to act in conformity with FCC rules.

According to the FCC, Lyft requires customers seeking to use the company’s ride hailing application to consent to autodialed calls and texts as a condition of using the app. Customers who opt out of this consent lose the ability to hail rides.

The FCC’s Order was released Friday morning, and in an apparent reaction from Lyft, by Friday afternoon Lyft had revised its terms of service. The terms now offer instructions on how to unsubscribe from marketing messages but still receive other communications from the company.

In a one-paragraph statement explaining the changes to its terms, Lyft offered a denial that it sent unwanted promotional texts.

“Lyft has not been using promotional texts to spam users with unwanted communications,” the company said in a statement. “People choose Lyft because getting an on-demand ride through an app on their cell phone is convenient, reliable and affordable. In order to be as transparent as possible with consumers, we have updated our terms of service to include detailed information for users who wish to opt-out of promotional or marketing communications, but still wish to receive other text messages from Lyft.”

With respect to First National Bank, the FCC claims that customers must agree to receive autodialed marketing calls and texts if they wish to use the company’s online banking services or use bank cards with Apple Pay. Although the FCC granted an exception from TCPA consent requirements for financial institutions that use autodialed calls or text messages to alert customers of potential fraud in an Order issued earlier this year, the exception does not apply to general marketing calls and texts.

Lyft and First Bank have 30 days under FCC rules to respond to the allegations in the Citations and Orders. Among the options available to the companies are (1) to cease immediately from engaging in the conduct alleged in the Citation and Order, in which case they will face no financial penalties; or (2) to contest the FCC’s allegations, challenging the FCC’s interpretation of the TCPA.

Companies should review the terms and conditions under which they offer services to evaluate whether to update terms to avoid potential FCC liability, and should continue to monitor FCC Enforcement...
Bureau actions directed at conduct violating the TCPA.

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