

Political Campaigns: Consider Yourself Warned

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If you had not noticed, the fall election campaign season is in full swing. The FCC's Enforcement Bureau certainly has noticed, and reacted by releasing an unusual "[Enforcement Advisory](#)" this week, **reminding campaigns and campaign promoters** that there are **TCPA limits on permissible uses of prerecorded voice message and autodialed calls** in election campaigns. Restrictions on acceptable modes of communication vary depending upon whether a campaign or campaign promoter is delivering a call to a residential landline phone or a cell phone, which can be difficult to tell if a phone number has been recycled. Nevertheless, the Enforcement Advisory highlights a \$2.9 million proposed fine levied against **Dialing Services, LLC** earlier this year for its alleged infractions of FCC requirements and warns all entities engaged in campaign calling and texting that they ignore FCC rules and restrictions at their peril of becoming subject to possible FCC enforcement scrutiny and fines. Fines for violations can go as high as \$16,000 per violation, which is computed by call or text rather than by telemarketing campaign found to be impermissible by the Enforcement Bureau. While courts are the favored venue of the plaintiffs' bar for seeking damages, the FCC's Enforcement Bureau is aggressively staking out its own regulatory turf as the gubernatorial and congressional campaigns use as many tools as possible to galvanize potential voters.

When contacting a cell phone without prior express consent of the called party, an electoral campaign call generally must not use prerecorded messages or autodial

these calls, even if the political calls in question are made by a nonprofit or political organization. The FCC Advisory admonishes callers relying upon prior consent to make these types of calls will have to demonstrate, if questioned, that they in fact obtained appropriate consent. To the extent any campaign caller might suggest that such calls might fall within a statutory “emergency purpose” exemption, the Enforcement Advisory states that that would not be the agency’s view.

For landline residential phones, while prerecorded and autodialed campaign calls are not generally prohibited, there are nearly absolute prohibitions on making these types of calls to emergency phone lines, hospitals and nursing homes, or toll free lines without consent. Even so, all prerecorded voice messages that are otherwise allowed to be placed to landline phones must contain appropriate identification given at the beginning of the recording, and must include the name of the business or other entity responsible for the call and the phone number where calls can be received as well. Also, any autodialers used to deliver pre-recorded messages must release the called party’s phone line within five seconds of receiving notification that the called party has hung up so that a called party’s line is not unable to receive new calls promptly.

While there are no TCPA rule restrictions on manually dialed political campaign calls, such calls are not nearly as cost effective as autodialed calls. Similarly, the Enforcement Advisory notes that manually placed text messages to cell phones are permissible under the FCC’s TCPA rules, while autodialed texts without prior consent are not. Thus, political campaigns and their promoters are faced with the choice of using less efficient techniques to call or text potential voters or becoming well versed in the many nuances of FCC rule requirements that make some autodialed or prerecorded calls permissible and others not depending upon the wired or wireless nature of the call itself. You can take an aspirin and take your chances, or you can find competent FCC counsel to wend through the maze. Your choice, but you have been warned.

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