



## Telephone Consumer Protection Act (TCPA)

As a strict liability statute with uncapped statutory damages and no requirement to prove economic damages, the TCPA has proven to be very attractive to professional litigants and opportunistic class action plaintiffs' counsel. Inconsistent and overly broad interpretations adopted by the Federal Communications Commission (FCC), and correspondingly by courts, have made it even more difficult to conduct telephone, text, fax or prerecorded message campaigns without facing significant risks.

Many businesses assume – sometimes incorrectly – that they, as well as their vendors, operate in compliance with TCPA requirements. Failure to do so, however, exposes the business to significant financial risks that can cripple operations or bankrupt it completely. That's why our TCPA practice focuses as much on helping integrate compliance protocols into day-to-day operations as it does on providing aggressive defense in the event of litigation or a regulatory investigation.

Our work as General Counsel for the Professional Association for Customer Engagement (PACE)—the industry association dedicated exclusively to the contact center and customer engagement industry—places us squarely on the front line in handling TCPA litigation and policy matters with regulators. We are integrally involved in the pending appellate challenge to the FCC's 2015 Declaratory Ruling brought by PACE and nine other businesses and associations.

**We offer a full range of legal services that cover all facets of TCPA compliance and litigation, including the following:**

### **Defense of Class Action and Individual Lawsuits.**

We have defended numerous companies against class action and individual lawsuits involving the TCPA, achieving optimal outcomes for our clients. In several instances, we have been able to get the plaintiff to voluntarily dismiss the case or settle on an individual, rather than class-wide, basis.

**Compliance Programs.** We regularly help clients identify and mitigate internal and external sources of TCPA risk through the implementation of practical, cost-effective, compliance programs. Among other things, this includes drafting policies and procedures, training employees and establishing robust quality assurance protocols.

**Opinion Letters.** Given the prevalence of TCPA litigation, it is common for a company's prospective clients or business partners to request legal opinions related to a specific product, communications platform, campaign or other TCPA-related issue. We are often called upon to provide such opinions so our clients can document compliance with the TCPA and grow their businesses.

**Compliance Audits.** Unlike many law firms – even those with a TCPA practice – we regularly conduct on-site TCPA audits of our clients' contact centers or inside sales operations. Such audits are typically the best way to verify that a compliance program is working as designed



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and to assess the organization's risk exposure. Often times, these audits bring to light new campaigns or business practices that have not been fully vetted from a compliance perspective. By discovering these issues proactively, we've successfully helped our clients remediate noncompliant practices before they catch the attention of regulators or plaintiffs' attorneys.

### **Third Party Due Diligence and Contract Review.**

In addition to auditing our clients' internal compliance programs, we also help clients mitigate external risks by establishing robust due diligence programs for their vendors, dealers, marketing partners and/or merger and acquisition targets. Such programs might include pre-contract due diligence measures, contractual requirements/prohibitions, marketing guidelines, ongoing due diligence protocols and remediation measures.

**State and Federal Investigations.** We can help you navigate TCPA investigations brought by the FCC or state attorneys general, which are authorized to enforce the TCPA within their respective states.



**Regulatory Advocacy.** In addition to TCPA compliance and litigation services, we also advocate for clients' TCPA-related interests before the FCC. This includes filing petitions or comments on behalf of our clients and meeting with FCC staff and leadership regarding such issues.