



June 21, 2012

FCC ISSUES FINAL TCPA AMENDMENTS

The Federal Communications Commission (FCC) recently issued final amendments to its existing Telephone Consumer Protection Act (TCPA) rules. *See* 77 Fed. Reg. 34233 (June 11, 2012). The issuance summarizes the FCC's 48-page Report and Order adopted and released on February 15, 2012.

The final amendments (i) require prior express written consent for autodialed or prerecorded telemarketing calls to wireless numbers and for prerecorded telemarketing calls to residential lines; (ii) eliminate the "established business relationship" exemption as it previously applied to prerecorded telemarketing calls to residential lines; (iii) require telemarketers to implement an automated, interactive opt-out mechanism for autodialed or prerecorded telemarketing calls to wireless numbers and for prerecorded telemarketing calls to residential lines, which would allow a consumer to opt out of receiving additional calls immediately during a telemarketing robo-call; (iv) require that the permissible 3% call abandonment rate be calculated for each calling campaign, so that telemarketers cannot shift more abandoned calls to certain campaigns, as is possible if calculation is made across multiple calling campaigns and (v) exempt from the TCPA rules prerecorded health-care related calls to residential lines, which are regulated by the federal Health Insurance Portability and Accountability Act.

With respect to Item (i) above, the FCC noted that while a few commenters argued that the FCC should require written consent for all autodialed or prerecorded calls (*i.e.*, not just those delivering marketing messages), the FCC concluded that such a requirement unnecessarily would restrict consumer access to information communicated through purely informational calls, such as, for example, credit card fraud alerts. The FCC also noted that a number of commenters expressed concern about obtaining written consent for certain types of autodialed or prerecorded calls, including, among others, debt collection calls. Such calls, the FCC said, to the extent that they do not contain telemarketing messages, would not require any consent when made to residential wire line consumers, but require either written or oral consent if made to wireless consumers and other specified recipients. The FCC also has concluded that consent obtained in compliance with the E-SIGN Act will satisfy the requirements of the amended rules, including permission obtained

via an email, website form, text message, telephone key press or voice recording.

The final amendments are effective July 11, 2012, but the FCC has established implementation periods to run upon publication in the Federal Register of OMB's approval of the written consent rule, as follows: 30 days for the revised abandoned call rule; 90 days for the automated, interactive opt-out mechanism for telemarketing calls; and 12 months for prior express written consent requirements and elimination of the existing business relationship exception. □

✧ *Judy Scheiderer and Margaret Stolar*

CFPB REPORTS ON CREDIT CARD COMPLAINTS

In conjunction with the release by the Bureau of Consumer Financial Protection (CFPB) of consumer credit card complaint data on its website, the CFPB issued a report summarizing complaints it has received since July 21, 2011. *See* CFPB Consumer Response: A Snapshot of Complaints Received (June 19, 2012). The report details the process by which the CFPB's Consumer Response team receives and handles consumer complaints and the types of complaints received to date, including complaints regarding credit cards, mortgages, bank products and services and private student loans.

As of June 1, 2012, the CFPB received approximately 16,840 credit card complaints. Billing disputes topped the list as the most common type of complaint, with consumers reporting confusion and frustration with the process for and limits to challenging billing disputes. Other common complaints concern APRs or interest rates, identity theft, fraud and embezzlement.

The CFPB reports that 84% of the credit card complaints have been sent to companies for review and response, and that the companies already have responded to 94% of the referred complaints. The remaining 16% of complaints have been referred to other regulatory agencies (6%), found to be incomplete (7%) or are pending with the consumer or the CFPB (3%). The median amount of relief, if any, was approximately \$130 with \$25 being the most common amount. □

✧ *Judy Scheiderer and Margaret Stolar*

Darrell L. Dreher
ddreher@dltlaw.com

Judith M. Scheiderer
jscheiderer@dltlaw.com

Elizabeth L. Anstaett
eanstaett@dltlaw.com

Charles V. Gall
cgall@dltlaw.com

Susan L. Ostrander
sostrander@dltlaw.com

DREHER TOMKIES SCHEIDERER LLP

2750 Huntington Center

41 S. High Street

Columbus, Ohio 43215

Telephone: (614) 628-8000 Facsimile: (614) 628-1600

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Michael C. Tomkies
mtomkies@dltlaw.com

Margaret M. Stolar
mstolar@dltlaw.com

Robin R. De Leo
robin@dreher-la.com

Vanessa A. Nelson
vnelson@dltlaw.com

Kathleen L. Caress
kcaress@dltlaw.com