CLIENT ALERTS & INSIGHTS

The Eleventh Circuit Scrutinizes the FCC's One-to-One Consent Rule

JANUARY 6, 2025

Authors: Mark S. Eisen, Ruddy S. Abam

On December 18, 2024, the United States Court of Appeals for the Eleventh Circuit heard oral argument in Insurance Marketing Coalition Limited v. Federal Communications Commission, et al., a crucial case challenging the Federal Communications Commission's ("FCC") "one-to-one" consent rule. The rule, which is presently set to go into effect on January 27, 2025, adopts new consent restrictions for marketing calls that essentially curtail the ways in which consumers can consent to receive telephonic outreach from multiple companies simultaneously, commonly done through comparison shopping websites.

The one-to-one rule consists primarily of two elements: (i) it provides that "prior express written consent can only be given directly from a consumer to a single seller-caller at a time" and (ii) it requires that a consumer's consent must be "logically and topically related" to the website on which consent is given. The one-to-one consent rule fundamentally upends the way in which myriad companies had operated and obtained consent for more than a decade, and has been hotly contested and closely watched ever since it was first promulgated.

The December 18, 2024 oral argument exposed many of the perceived weaknesses in the FCC's rule. One member of the Court expressed concern about the statutory bases for the rule and the logic behind it-namely, how the FCC could restrict a consumer's ability to expressly consent. Skepticism was likewise expressed toward the FCC's rationale that additional consumer protection was needed to prevent consumers from unintentionally consenting.

Some action-be it a stay or a ruling-could be forthcoming in relative short order. While many companies have taken steps to prepare for the upcoming one-to-one effective date, it is critical to remember that this situation remains fluid. It will be important to consult with counsel once the Eleventh Circuit acts.

Mark Eisen is a Partner and Co-Chair of Benesch's Privacy Litigation & Compliance Group. He can be reached at 312.212.4956 or meisen@beneschlaw.com.

David Krueger is a Partner and Co-Chair of Benesch's Privacy Litigation & Compliance Group. He can be reached at 216.363.4683 or dkrueger@beneschlaw.com.

Ruddy Abam is a Managing Associate in the Litigation Practice Group. She can be reached at 312.212.4949 or rabam@beneschlaw.com.