

# The Telephone Consumer Protection Act (TCPA)

Wiley has extensive experience in all aspects of the Telephone Consumer Protection Act (TCPA) and the Telemarketing Sales Rule (TSR), having advised clients on federal telemarketing laws since they first came into effect in the 1990s. The firm has litigated major TCPA cases for both large corporations and small businesses. The firm's TCPA experience also includes compliance and regulatory matters as well as legislative monitoring and lobbying services. Because of the firm's Federal Communications Commission (FCC) expertise, we offer a unique capacity to address TCPA and TSR issues on multiple fronts to achieve the desired result.

## **Our services include:**

### TCPA Litigation

State and federal telemarketing regulations pose a significant threat of legal action. Regulators continue to see political advantage in an aggressive enforcement stance, while plaintiffs are lured by the statutory damages possible in a class action suit. Wiley is familiar with and sensitive to the unique concerns of businesses faced with consumer class action litigation under the TCPA. By virtue of our experience in the courts and at the FCC, the firm is able to devise creative defenses and map out multiple paths to victory. And when the facts counsel in favor of it, we can protect our clients' businesses and budgets by negotiating a settlement at the optimal time on optimal terms.

The firm has litigated TCPA cases in the federal and state courts and at the trial and appellate levels. We have defended TCPA lawsuits by successfully obtaining a primary jurisdiction referral to the FCC, effectively derailing the litigation. The firm also has successfully challenged federal and state powers under the TCPA, including actions arguing for partial state preemption.

Wiley's TCPA litigation experience includes successfully defending:

- A national wireless carrier in a putative nationwide class action involving text messaging;
- A large government contractor facing class action litigation for a text and calling program undertaken on behalf of a government agency;
- A major retailer in class action litigation involving its faxing activities; and

- A mobile marketing firm alleged to have violated the TCPA.

## TCPA Compliance and Regulation

The firm counsels clients about potential TCPA-related exposure and develops compliance programs to minimize their risk. Based on our understanding of the regulatory landscape and familiarity with the legal requirements, our comprehensive compliance counseling includes: (1) identifying how businesses can manage ever-tightening restrictions on solicitations via phone, text, and fax, as well as limitations on “robocalling” and autodialers for both telemarketing and non-telemarketing calls; (2) developing technical, marketing, organizational, and employee training programs in order to meet legal requirements and qualify for “safe harbors”; (3) drafting and negotiating agreements with third parties like data processors and calling companies that participate in telemarketing campaigns, in order to limit the risks to our clients; and (4) assisting multiple broadcasters and media companies with the development of calling and texting programs to connect with audiences.

Wiley also represents clients in enforcement proceedings before administrative agencies and in advocating modifications to their telemarketing rules and policies. The firm has obtained favorable clarification from the FCC and the Federal Trade Commission (FTC) concerning the application of the telemarketing regulations to particular business models, and successfully advocated for sensible approaches that support legitimate commercial contacts. The firm also has defended against FCC, FTC, and state enforcement actions alleging telemarketing violations, often prevailing on the basis of “safe harbor” defenses and regulatory exceptions.

Wiley’s TCPA regulatory experience includes representing:

- A major online financial services firm subject to simultaneous FCC, FTC, and state AG investigations;
- Consumer financial firms and trade associations in an FCC proceeding on TCPA debt collection rules and related litigation;
- Multiple insurance companies facing TCPA enforcement actions before the FCC;
- Multiple trade associations, political organizations, and other nonprofit entities facing enforcement actions under the TSR; and
- Multiple clients facing liability based on the actions of their sales force of independent contractors, including in the insurance, home security, and business-to-business products industries.

## TCPA Legislative / Lobbying

On behalf of our clients, we routinely monitor the landscape of TCPA reform and help determine how to best engage and drive their agendas. Our work regularly focuses on: determining (and helping to shape) the definitive road map for TCPA reform; assessing threats and opportunities; determining key principals to meet with; assessing potential coalition opportunities; and discussing on a continual basis how to further clients’ interests.

## Contact Us

---

Scott D. Delacourt

202.719.7459 | [sdelacourt@wiley.law](mailto:sdelacourt@wiley.law)

Kevin G. Rupy

202.719.4510 | [krupy@wiley.law](mailto:krupy@wiley.law)