

# Publications

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## Eleventh Circuit Overturns FCC's One-to-One Consent Rule

A 2023 Federal Communications Commission (FCC) Order interpreted the Telephone Consumer Protection Act as requiring that consumers provide specific one-to-one consent to receive robocalls. The purpose was to fill what the FCC called the “marketing partner” gap, which allowed marketers to obtain consent from consumers by checking a box applying to multiple, often unrelated, callers. The Order was to go into effect on January 27, 2025.

But on Friday, January 24, 2025, three days before the Order's effective date, the Eleventh Circuit Court of Appeals stopped the FCC Order in its tracks. Perhaps signaling how *Loper Bright* will broadly affect federal agency regulations, the Court ruled that the 2023 Order exceeded the FCC's statutory authority under the TCPA to interpret the phrase “prior express consent” beyond the plain meaning of the words.

In *Insurance Marketing Coalition Limited v. Federal Communications Commission*, --- F.4th --- (11th Cir. 2025), the Court held that while Congress gave the FCC the power to “implement” the TCPA, it did not give the FCC authority to *add* requirements to the statute that are not there; in this case, interpreting “prior express consent” to require that consent be given on a one-to-one basis, meaning that giving consent to a list of “marketing partners” would no longer be effective.

The 2023 FCC Order at issue interpreted “prior express consent” in the TCPA to include two new restrictions for telemarketing and advertising robocalls. The first declared that “consumers cannot consent to receive robocalls . . . from more than one entity at a time” – the one-to-one consent requirement. *Insurance Marketing Coalition Limited*, --- F.4th ---, at \*4. The second restriction declared that “consumers cannot consent to receive robocalls whose subject matter is not logically and topically related to, for example, the website on which the consumer gives consent”; *e.g.*, a consumer giving consent to receive calls concerning car loans does not consent to calls concerning loan consolidation. *Id.* The Insurance Marketing Coalition argued that the FCC exceeded its statutory authority under the TCPA because both of these requirements “impermissibly conflict with the ordinary statutory meaning of ‘prior express consent.’” *Id.* at \*5. The Eleventh Circuit granted IMC's petition for review, vacated the FCC's requirements, and remanded for further proceedings.

## Related People

- Russell S. Jones, Jr.
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## Related Capabilities

- Telephone Consumer Protection Act Litigation (TCPA)
- Telecommunications Litigation

Perhaps coincidentally, this ruling follows an FCC order, also entered on January 24, 2025, staying implementation of the 2023 Order to the shorter of (1) January 26, 2026, or (2) the Eleventh Circuit's decision, discussed above. Given this ruling, it is likely the FCC will issue a supplemental order, staying implementation indefinitely. This ruling also follows recent jurisprudence under *Loper Bright*, which overturned *Chevron* deference and, as a result, has expanded the judiciary's power to review and reject interpretations of statutes adopted by federal administrative agencies. The impact of *Loper Bright* is significant, with numerous similar regulatory challenges likely to come in the near future.

Most notably, while the Eleventh Circuit stated that one of the FCC's foundational interpretations of the TCPA was "not at issue in this case," *see id.* at n. 1, it's hard to avoid the conclusion that the FCC's 2012 regulation finding that for TCPA purposes, "prior express consent" meant, in the context of telemarketing or advertising, "prior express *written* consent," is at serious legal risk of being overturned. 47 C.F.R. § 64.1200(a)(2), (3), *In the Matter of Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 27 FCC Rcd. 1830, 1831 (2012) (italics added). There is a strong argument that if Congress had meant that "prior express consent" be in writing, it would have said so, and that this is another example of the FCC adding requirements that go beyond the "plain meaning" of the words in the statute. For better or worse, the *Insurance Marketing Coalition* opinion will provide substantial support to efforts to remove "written" from the consent requirement, easing the burden on telemarketers to prove consent in TCPA cases.