

# Telephone Consumer Protection Act Litigation (TCPA)

Polsinelli has deep experience defending all types of lawsuits under the Telephone Consumer Protection Act (TCPA), from individual suits to multimillion-dollar bet-the-company class actions and everything in between. Polsinelli attorneys understand the issues on which TCPA cases turn, including whether the calling system uses a device that qualifies as an automatic telephone dialing system (ATDS) under current law (*Facebook v. Duguid*), class certification, consent (and the ability to revoke consent), communications content, standing, defenses created by implementation of an internal calling policy and do-not-call list, and vicarious liability. We work to understand the client's business objectives as well as the motivations at play and each case's relative strengths and weaknesses, always looking for case developments or changes in the law creating opportunities that may lead to an early victory or resolution.

Clients who have retained Polsinelli to handle TCPA cases operate in industries including health care, pharmaceutical manufacturing, technology, telecommunications, chain retail, health care staffing, specialty pharmacy, franchising and financial services.

Our litigators have defended hundreds of TCPA class actions, handling them from the pleading and motion to dismiss stage, class certification, summary judgment and, where necessary, trial and appeal. Where consistent with the client's goals, we work to achieve favorable settlements. We have a robust class action practice with a proven track record.

In addition to our extensive experience in TCPA litigation, our teams regularly defend lenders, loan servicers, investors, and other financial institutions in responding to both individual and class claims alleging violations of the Fair Credit Reporting Act (FCRA), Fair Debt Collection Practices Act (FDCPA), CAN-SPAM Act, Fair Housing Act (FHA), Servicemembers Civil Relief Act (SCRA), Real Estate Settlement Practices Act (RESPA), Truth-In-Lending Act (TILA), Home Ownership and Equity Protection Act (HOEPA), and state-specific unfair, deceptive, or abusive acts and practices (UDAAP).

We also assist clients in drafting policies and procedures to reflect best practices for adhering to TCPA regulations and other federal and state requirements for monitoring and recording telephone calls. As part of our TCPA advisory practice, we have provided counsel to marketers, retailers, technology companies, and telecommunication companies on a variety of matters related to opt-out marketing, application of and compliance with "Do Not Call" lists, strategies to implement the "Do Not Track" designation on the internet, and retention and deletion policies and procedures related to the TCPA.

We counsel clients on applicable TCPA counterparts at the state level and have prepared a 50-state survey of fax, email, and telephone marketing laws. Our TCPA-related counsel to clients includes but is not limited to the following:

- Training on TCPA best practices for in-house Marketing and IT Departments concerning the proper consent, use, and storage of mobile consumer information.

- Review or creation of mobile advertising and information capture plans to ensure informed consent procedures are compliant with TCPA guidelines.
- Development and implementation of mobile security strategies and counsel to clients on employees' use of their own devices on corporate networks.
- Management of FCC investigations related to CAN-SPAM Act and blast faxes.
- Establishing organizational policies for mobile marketing practices and "robocalling" for both in-house legal counsel and third-party organizations advertising on your behalf.
- Counseling a large, national Specialty Pharmacy about structuring ad campaigns to be consistent with the 2013 changes to the FCC's regulations implementing the TCPA and, separately, the CAN-SPAM Act.
- Advised clients on data breach and notification policies, including Department of Health & Human Services notification guidelines and compliance with GLBA, HIPAA, HITECH, FCRA, Texas' Identity Theft Enforcement and Prevention Act & Texas' Health & Safety Code (involving dissemination of patient records to third parties).

## Matters

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- Defended a single-family home leasing and management company in numerous Telephone Consumer Protection Act (TCPA) class action matters, utilizing creative strategies to achieve desired results.
- Defended a broad array of clients in claims brought under the TCPA, resulting in the dismissal of numerous claims.
- Represented several national banks on various lender liability, TCPA and Fair Credit Reporting Act (FCRA) matters.
- Led defense of a national bank in a putative class action alleging mortgage servicing violations.
- Successfully defended a TCPA case for a telecommunications carrier in federal court in West Virginia. Plaintiff asserted a novel theory -- that a carrier that neither originated nor terminated alleged robocalls could nonetheless be liable for not blocking the calls because the caller-ID displayed an "invalid" telephone number. After prevailing on four discovery motions, the case was dismissed with prejudice.
- Defended a TCPA class action against a health care provider in the Southern District of Florida. Our team argued that the complaint failed to allege facts to establish concrete harm. Our motion positioned the case for a favorable settlement of all claims.
- Successfully defended a TCPA class action against a financial institution in the Northern District of Illinois. Plaintiff was seeking to certify a national class. We secured a dismissal based on the theory that the equipment used to contact Plaintiff was not an ATDS.
- Successfully defended multiple TCPA class actions in federal courts in California and Missouri against health care providers, obtaining dismissals with prejudice at the Motion to Dismiss stage.
- Successfully defended a TCPA class action in the District of Nevada with a risk exposure of \$150 million. As part of this defense, we conducted TCPA-specific discovery, including electronically stored information indicating Plaintiff's consent to receive the complained-of text message, the use of an ATDS to send the complained-of text messages, and analysis of the number of unique alleged class members and the number of allegedly authorized text messages received by those class members. We fully briefed a case and won a case-dispositive motion which focused on, among other issues, consent, use of an ATDS, and vicarious liability under the TCPA. The Ninth Circuit affirmed our win on appeal.
- Defended a class action against a nonprofit health care provider sued in the Western District of Missouri for allegedly violating the TCPA by sending unsolicited faxes seeking volunteers for a medical study. The District Court granted our motion to dismiss for failure to state a cognizable claim, finding that the faxes did not amount to proposing a sale of goods or services or any other commercial transaction. The Eighth Circuit Court of Appeals affirmed.
- Defeated class certification of a putative national TCPA class action against a national communications company after a two-day evidentiary hearing on experts. (*Warnick v. Dish Network LLC*, 2014 U.S. Dist.

LEXIS 87818 (D. Colo. June 27, 2014)). We negotiated nominal settlements of several other TCPA matters for that client after getting cases transferred to more favorable jurisdictions and winning discovery battles.

- Successfully negotiated and settled a TCPA class action arising from the actions of a rogue employee who defied company directives. This was an early resolution of the plaintiff's individual claims which allowed our client to avoid the risk of class liability.
- Successfully handled the Mainstream Marketing case, which was a First Amendment challenge to the constitutionality of the FCC and FTC rulemaking and implementation of the national "Do Not Call" registry.
- Won a motion to dismiss a Telephone Consumer Protection Act class action lawsuit in the Southern District of California where Plaintiff sought millions of dollars in damages. The Court held that Plaintiff failed to state a claim. Further, while not part of the holding, the Court previewed that it may deny class certification or find no standing because Plaintiff invites calls and is a serial TCPA litigant. The Court also expressed doubt that an automatic telephone dialing system was used while noting that the issue is not amenable to a resolution on a motion to dismiss.
- Won a motion to dismiss a TCPA class action lawsuit in the Eastern District of Louisiana. The Court took judicial notice of the complained-of text messages and held that Plaintiff consented to receive those communications. Specifically, Plaintiff voluntarily opted for informational communications about CPR and healthy living from a charitable entity. The fact that those communications also included the name of the nonprofit's associated donor or another charitable entity is not disguised marketing that gives rise to a TCPA claim.

## Publications

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September 16, 2025

**Texas Expands Its Mini-TCPA: Text Messages Now Covered, Litigation Risk Rises**

August 13, 2025

**TCPA Class Actions Challenge Companies for Not Scrubbing Against the FCC's Reassigned Numbers Database**

July 29, 2025

**Federal Court Finds Text Messages Not Subject to TCPA's DNC Requirements**

June 27, 2025

**In TCPA Case, SCOTUS Rules District Courts Are Not Bound by Final FCC Orders**

April 28, 2025

**Cybersecurity litigation emerges as fresh threat**

*Quoted, Regulatory Compliance Watch*

January 29, 2025

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

November 13, 2024

**Are You Ready for the New Telemarketing Lead Generation Rules?**

October 28, 2022

**When Enough is Too Much: Constitutional Limitations on Extraordinary Statutory Damage Awards**

February 2018

**U.S. Supreme Court Hears Oral Argument over How to Apply the Rule of Reason to Two-Sided Markets in American Express Case**