



# What You Need to Know About The FCC's New One-to-One Consent Rule

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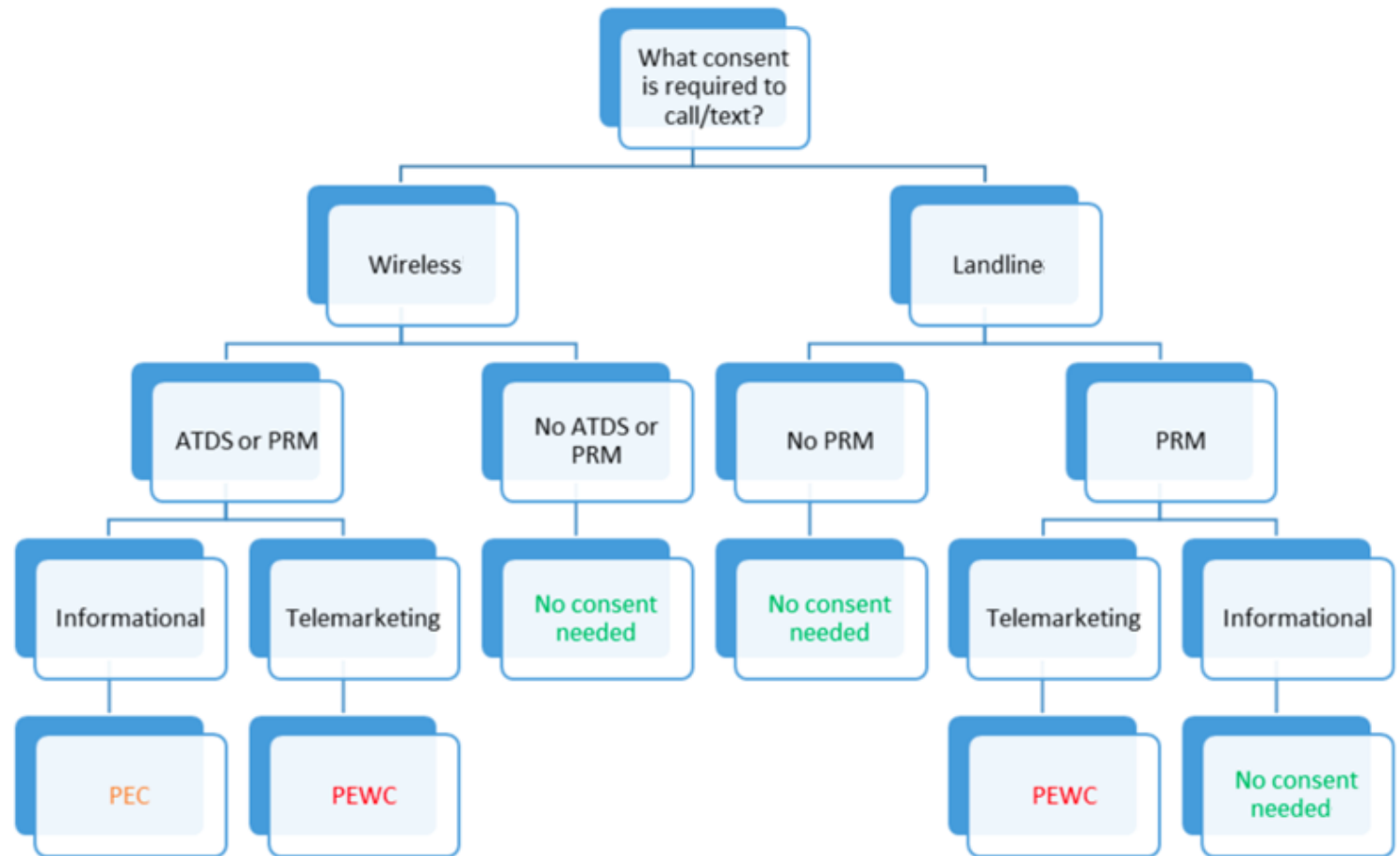
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## TCPA Primer

- Federal Communications Commission (FCC) implements TCPA rules
- Private enforcement (\$500-\$1500 per call/text)
- Applies to outbound calls (including texts)
- “Do-Not-Call” requirements
- Consent requirements for prerecorded calls (robocalls) to landlines and cell phones

## TCPA ATDS/PRM Consent Analysis Chart

### Consent Chart



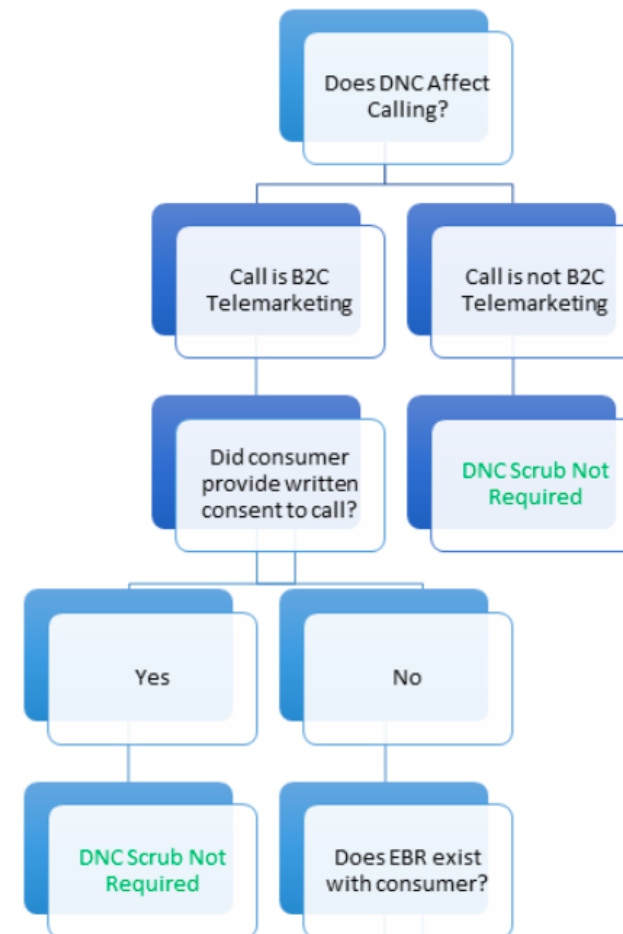
**Key:** "ATDS" – Automatic Telephone Dialing System  
"PRM" – Prerecorded Message  
"PEC" – Prior Express Consent  
"PEWC" – Prior Express Written Consent

## DNC Analysis

**Key:** “DNC” – Do Not Call  
“B2C” – Business to Consumer  
“EBR” – Established Business Relationship

**Note:** B2B calls to sell nondurable office or cleaning supplies are treated the same as B2C calls. Some states have DNC regulations that differ from the federal standard.

### Federal DNC Analysis Chart

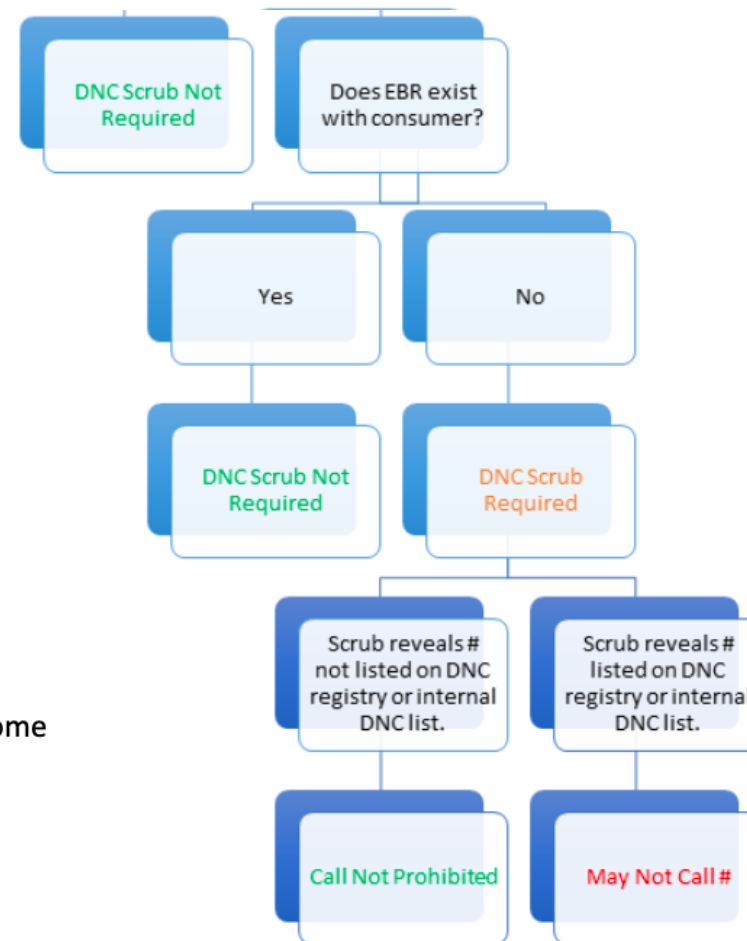


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### Federal DNC Analysis Chart



## Closing the Lead Generation Loophole

- PEWC now requires:
  - an agreement;
  - in writing;
  - bearing the signature of the consumer;
  - that “clearly and conspicuously” authorizes;
  - one identified seller to deliver telemarketing calls/texts to the consumer
- Applies to PRM/ATDS telemarketing calls.

## What's New?

- **Prior Express Written Consent (PEWC)**
  - One-to-one consent between the seller and consumer is now required for prerecorded marketing messages (to cell phones or residential numbers) and calls/texts initiated to cell phones using an automatic telephone dialing system (ATDS)
  - Calls/texts must be “logically and topically” related to the website where the consumer provided consent
  - The FCC clarified that, under existing rules, electronic lead forms and consents must meet ALL E-SIGN Act requirements

## One-to-one Consent: What's Not Permitted?

- The following practices are now prohibited when obtaining PEWC:
  - Listing multiple sellers or companies in a single disclosure;
  - Asking consumers to provide consent to be contacted by “partner companies” or “marketing partners”
- The FCC did not provide any explicit exceptions for affiliated companies operating under the same corporate umbrella or for sellers who want to obtain PEWC for themselves and their dealers or authorized retailers



## “Logically and Topically”

- All calls/texts must be logically and topically related to the website where the consumer provided its consent
  - What constitutes “logically and topically” related?
    - The FCC didn’t specifically provide a definition...
    - But sellers should limit the content “to what consumers would clearly expect”
    - FCC example: a consumer giving consent on a car loan comparison shopping website does not consent to calls/texts about loan consolidation

## Practical Business Impacts

- **Effective date.** The PEWC amendments take effect January 27, 2025; E-SIGN requirement and DNC rules already in effect
  - Potential Impact: leads contacted after January 27, 2025 must comply with the one-to-one rule
- **Virtually all third-party lead forms must be modified to obtain PEWC for a single seller**
  - Potential Impact: move from generic lead forms to exclusive/branded campaigns
- **Content of calls/texts must be logically and topically related to the interaction through which the consumer provides PEWC**
  - Potential Impact: decrease in cross-sell opportunities during outbound campaigns
- **First and third-party lead forms need updates to meet full E-SIGN requirements**
  - Potential Compliance Strategy: layer E-SIGN Consent into lead process
- **Noncompliance risk.** Expect an increase in class actions filed by aggressive plaintiffs' attorneys

## What is the E-SIGN Act?

- Under E-SIGN, a business cannot provide mandatory written disclosures in electronic format unless the consumer consents to receive them electronically
- Businesses must provide specific E-SIGN disclosures and then obtain the consumer's consent to use electronic disclosures/records

## E-SIGN Consent

- **FCC: “If compliance with the [E-SIGN Act] is required for the customer’s signature, then all the elements of E-Sign must be present.” – Paragraph 35**
- Before the new FCC Order businesses were only concerned with obtaining a consumer’s signature in a form that was recognized by the E-SIGN Act.
- After the new FCC Order businesses likely must obtain full E-SIGN consent before PEWC

## E-SIGN Consent

- **Despite requests from commenters, the FCC did not provide any specific steps businesses could take to obtain a valid e-signature under E-SIGN.**
- Recommendation → Consult with your legal counsel to develop and document a Defendable Position.
- *Bradley v. Dental* – May 2024 Maryland District Court Decision that held E-SIGN consent cannot be obtained verbally.

## Challenging the One-to-One Rule

- **Hobbs Act Challenge:** Insurance Marketing Coalition challenged the order implementing the one-to-one rule in the Eleventh Circuit
- **Issues Presented:**
  - Whether the redefinition of PEWC exceeds the FCC's authority
  - Whether the order imposes content-based restriction on protected speech
  - Whether the order is not supported by the record, does not meaningfully respond to significant comments, and fails to adequately consider impact on small businesses
- **Briefing currently to be completed by August 5.**

## ***Chevron & The Loper Bright Impact***

- **Supreme Court:** Where a federal statute is ambiguous, courts are no longer required to defer to a federal agency's reasonable interpretation of the statute.
- **What Results?** FCC orders interpreting the TCPA may be vulnerable.
  - **But:** *"We do not call into question prior cases that relied on the Chevron framework."*
- **Applicability to 1:1 Consent Rule?**

# Final Thoughts & Questions



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