**The Telephone Consumer Protection Act and Mass Notification**

As you probably know, the Blackboard Connect platform provides a powerful tool for educational institutions to send mass notifications to parents, guardians, students, and faculty regarding weather closures, threat situations, event scheduling, or to provide other important education-related information. These messages not only drive positive educational outcomes,[[1]](#footnote-1) they can also save lives.[[2]](#footnote-2)

You should also be familiar with the Telephone Consumer Protection Act (“TCPA”). Enacted in 1991, the TCPA is a federal law designed to protect consumers from receiving unwanted telemarketing messages in the form of automatic voice calls or texts. The Federal Communications Commission (“FCC”) is charged with promulgating rules to implement the TCPA.

While intended to prevent marketing messages, among its many requirements, the TCPA prohibits use of automatic telephone dialing equipment or a pre-recorded call or text to any cell phone to provide informational content absent the recipient’s prior express consent. In the context of informational messaging, the recipient can give verbal or written consent.

Violations of the TCPA can give rise to liability ranging from $500 to $1500 per violating message sent. The FCC may assess additional penalties for violations. The TCPA exempts from the consent requirement, and liability, “emergency” messaging to cell phones, which the FCC has defined as a message necessary for the “health and safety” of the recipients. The TCPA also exempts from the consent requirement, and liability, informational messages to landlines.

**The FCC’s Recent Ruling**

On July 10, 2015, in response to previously filed petitions requesting that the FCC clarify the applicability of the TCPA, the FCC issued a “declaratory ruling and order” (“Ruling”). The Ruling can be found at:

<https://www.fcc.gov/document/tcpa-omnibus-declaratory-ruling-and-order>.

The Ruling provides, among other things, that: 1) a recipient can revoke consent to receive messages on a mobile device by any “reasonable” means; and 2) the party sending the message cannot dictate the means by which such consent can be revoked.

In addition, the Ruling provides that liability can result from messages inadvertently sent to wrong numbers, or even to “re-assigned” numbers.[[3]](#footnote-3) In the context of re-assigned numbers the FCC ruled that after the first call to a re-assigned number liability can result even if the calling party did not know that the number was reassigned and the recipient didn’t inform them.

Blackboard’s educational customers employ high standards and practices in securing and maintaining the consent and information necessary to contact recipients via the recipients’ requested method of notification. Blackboard’s customers obtain consent when the parent, guardian or other person provides his or her mobile number for the purpose of being contacted. Nonetheless, in light of recent TCPA litigation against school districts as well as changes in the law resulting from the Ruling, we suggest that you review your TCPA compliance policies.

**What You Can Do**

**Suggested Best Practices.** Consider adopting the following suggestions as part of your TCPA compliance strategy:

1. Obtain written consents from message recipients at the time of collecting contact information, include an obligation for recipients to notify you if any contact information changes, require recipients to indemnify you if they fail to notify you of changes, and that documentation is part of a document-retention policy;
2. Update recipient contact information often;
3. Adopt an easy process for recipients to update their contact information if it changes;
4. Have a clear process for managing opt-out requests, and immediately block the number of any recipient that opts-out or notifies you that they are receiving messages in error;
5. Adopt and communicate an internal policy regarding managing opt-out requests so that staff know to immediately address such requests, and how to handle them;
6. Consider adopting an opt-out hotline which appears as the caller-ID;
7. Consider applying text opt-out requests to call messages as well; and,
8. Never send commercial, marketing or political messages.[[4]](#footnote-4)

**Make Your Voice Heard.**  Blackboard has filed a petition with the FCC asking the FCC to rule that all education-related messaging is “emergency” messaging as defined by the FCC and therefore exempt from the TCPA. Blackboard’s petition was not specifically addressed by the Ruling and remains pending before the FCC.

A copy of Blackboard’s FCC Petition for Declaratory Ruling regarding TCPA liability for educational messaging is available at:

<http://agreements.blackboard.com/bbinc/blackboard-petition-for-expedited-declaratory-ruling.aspx>

You can file your own comments with the FCC in support of Blackboard’s petition at the following link.

<http://apps.fcc.gov/ecfs/upload/display>

Blackboard’s “Proceeding Number” is 02-278.[[5]](#footnote-5)

In addition, consider engaging with your Congressional representatives to let them know your concerns about the application of the TCPA to educational institutions.

<http://www.contactingthecongress.org/>

This is part of our effort to keep you informed. Nothing shared above should be construed as legal advice regarding the TCPA or any other matter. We encourage you to consult with your own legal counsel to learn more about how the TCPA and the FCC’s recent ruling could affect you.

1. Something as simple reminder text messages can improve college enrollment. *See* Susan Dynarsk, Helping the Poor in Education: The Power of a Simple Nudge, The New York Times (Jan. 17, 2015), <http://www.nytimes.com/2015/01/18/upshot/helping-the-poor-in-higher-education-the-power-of-a-simple-nudge.html?smprod=nytcore-ipad&smid=nytcore-ipad-share&_r=0&abt=0002&abg=0> (“ Students who received the texts were more likely to enroll in college: 70 percent, compared with 63 percent of those who did not get them. “) [↑](#footnote-ref-1)
2. One school system recently changed its absence alert policy to ensure parents were notified as soon as possible when a child does not arrive at school as expected. *See* Alison Knezevich, *Perry Hall Middle School changes parent notification after alleged kidnapping*, The Baltimore Sun (Nov. 18, 2014, 8:00 PM), <http://www.baltimoresun.com/news/maryland/baltimore-county/perry-hall/bs-md-co-perry-hall-school-changes-20141118-story.html> (“After the alleged kidnapping of a 12-year-old student as she walked to school last week, Perry Hall Middle School officials say they are calling parents in the morning to report when a child is absent.”) [↑](#footnote-ref-2)
3. A “re-assigned” number is a number relinquished by one party and re-assigned to another party. [↑](#footnote-ref-3)
4. These messages are prohibited by Blackboard. However, because we don’t create or police your message content please make sure anyone using the system is aware of this prohibition. [↑](#footnote-ref-4)
5. Feel free to contact us if you need assistance. [↑](#footnote-ref-5)