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## THE IMPACT OF ACA INTERNATIONAL ON TCPA LITIGATION

*Last year, in the ACA case, the D.C. Circuit overturned parts of the FCC's 2015 ruling interpreting the TCPA. The authors discuss the case and the evolving state of the law. In particular, they focus on the definitions of "automatic telephone dialing system," and "called party" in calls to reassigned phone numbers, and consumer revocation of consent.*

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Last fall, the D.C. Circuit issued its long-awaited opinion in *ACA International v. FCC*,<sup>1</sup> addressing challenges to the Federal Communications Commission's 2015 Omnibus Ruling regarding the Telephone Consumer Protection Act (the "TCPA").<sup>2</sup> The decision was much anticipated, due to the number of challenges filed against the 2015 Ruling and because many courts across the country had entered stays of proceedings pending the decision.

The D.C. Circuit addressed four aspects of the 2015 Ruling: (1) what constitutes an "automatic telephone dialing system," or ATDS; (2) the "one-free-call" exemption with respect to reassigned numbers; (3) the refusal to restrict the means of consent revocation; and (4) the scope of the time-sensitive health care alerts

exemption. The D.C. Circuit overturned the 2015 Ruling with respect to the first two issues and affirmed the FCC on the remaining two issues.

Since the issuance of *ACA International* last March, courts across the country, including three federal circuits, have issued various opinions, with little consensus as to the scope or the applicability of *ACA International*. Further, the continued vitality of the D.C. Circuit's approach in striking down portions of the 2015 Ruling may be affected by the Supreme Court's ultimate decision in *PDR Network, LLC v. Carlton & Harris Chiropractic, Inc.*<sup>3</sup> In that case, the Court will address whether the Hobbs Act requires district courts to follow the FCC's guidance on the interpretation of the TCPA, or if courts may first consider whether the statutory language is ambiguous and, if not, interpose their own

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<sup>1</sup> 885 F.3d 687 (D.C. Cir. 2018).

<sup>2</sup> 47 U.S.C. § 227, *et seq.*

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<sup>3</sup> 883 F.3d 459 (4th Cir. 2018), *cert. granted in part*, --S.Ct.--, 2018 WL 3127423 (Nov. 13, 2018) (No. 17-1705).

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