

## Are You Prepared for the New TCPA Changes Effective January 14, 2013?

The Federal Communications Commission (FCC) has approved and published its amended Telephone Consumer Protection Act (TCPA) regulations on telemarketing calls, many of which go into effect in 2013. These [updates to the TCPA](#) impose additional opt-out requirements (effective Jan. 14, 2013) and consent requirements (effective Oct. 13, 2013) for prerecorded or autodialed telemarketing calls, harmonizing the FCC's implementation of the TCPA with the Federal Trade Commission's Telemarketing Sales Rule (TSR).

### New "Opt-Out" Requirements for Autodialed or Prerecorded Telemarketing Calls

- **Old rule:** Under existing FCC rules, consumers who do not wish to receive further prerecorded telemarketing calls can opt out by dialing a telephone number (required to be provided in the prerecorded message) during regular business hours to make a company-specific Do-Not-Call request.
- **New rule:**
  - Artificial or prerecorded telemarketing messages must include an automated interactive (voice or keypress) opt-out mechanism, which is announced at the outset of the message and available throughout the duration of the call, that will allow consumers to opt out of receiving additional calls immediately.
  - The opt-out mechanism, when invoked, must automatically add the consumer's number to the seller's do-not-call list and immediately disconnect the call.
  - Prerecorded telemarketing messages left on answering machines or voicemail services must include a toll-free number that consumers can subsequently call back in order to connect directly to an automated opt-out mechanism.

### What Are "Telemarketing" Calls?

- "Telemarketing" calls include those that offer or market products or services to consumers or that have a telemarketing purpose. As a general rule, calls that are not purely informational in purpose and message constitute telemarketing.
- "Dual purpose" calls constitute telemarketing if they contain an advertisement. If the call, notwithstanding a free offer or other information, is intended to offer property, goods, or services for sale either during the call or in the future, that call is an advertisement. Examples of dual purpose calls that constitute telemarketing include calls from mortgage brokers notifying consumers of lower interest rates, calls from credit card companies offering overdraft protection, and calls regarding redemption of customer reward certificates along with notice of reward program changes.
- Telemarketing does *not* include debt collection calls; calls by or on behalf of tax-exempt nonprofit organizations; calls for political purposes; calls made by loan servicers regarding the servicing of a consumer loan, home loan modification and refinance calls placed by loan servicers pursuant to the American Recovery and Reinvestment Act (also known as the Recovery Act), and calls for noncommercial purposes, including airline notification calls, bank and credit card balance and fraud alerts, school and university notifications, research or survey calls, package deliveries, and wireless usage notifications.

### Who Is Likely to Be Impacted?

- The FCC adopted rules that mirror the FTC's TSR. The FCC's jurisdiction covers all telemarketers, whereas the FTC's jurisdiction excludes common carriers, banks and

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other financial institutions, insurance companies, airlines, and intrastate telemarketers. The FCC's new rules will most significantly impact commercial banks, mortgage brokers, pharmacies, freight airlines, and utility companies that elect to use automated or prerecorded telemarketing calls.

### How Should You Prepare for the New Rules?

- Immediately change all prerecorded telemarketing messages to provide for an automated interactive opt-out mechanism announced at the outset of the call that, once invoked, will automatically add the consumer's number to your do-not-call list and will immediately disconnect the call. Be sure to provide a toll-free number that consumers can call to connect directly to an automated opt-out mechanism if a prerecorded message is left on an answering machine or voicemail service.
- Implement employee training on the new requirements and company procedures for compliance, by hosting training sessions and by creating training and testing materials. Document the completion of training and/or retraining.
- Consult an attorney to answer questions and review your marketing for compliance. Do not wait to be investigated by the FTC, the FCC, or other government entity or to be sued in a TCPA class action.

### New Regulations Governing Abandoned Calls Now in Effect

The FCC's changes also include new regulations, effective Nov. 15, 2012, requiring that the number of dropped or abandoned telemarketing calls must be no more than 3 percent of calls per single campaign over a 30-day period, rather than the previous standard of 3 percent of all telemarketing calls over a 30-day period. If a single calling

campaign exceeds 30 days, the abandonment rate must be calculated for each successive 30-day period or portion thereof during which the calling campaign continues. A telemarketing call is "abandoned" if a consumer answers the telephone and the caller does not connect the call to a sales representative within two seconds of the consumer's completed greeting. A "single campaign" is considered an "offer of the same good or service for the same seller." Companies conducting calling campaigns should immediately begin using effective technology to track and monitor compliance with the new call abandonment rule and should maintain adequate records demonstrating compliance.

### Upcoming Changes to Consent Requirements

The FCC's amendments also include changes to consent requirements, which will go into effect later this year. Look for an upcoming alert on these changes.

If you have questions concerning compliance with the new FCC requirements, please contact [Michael Mallow](#), [James Taylor](#), or [Christine Reilly](#).

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