

# Afraid Your Business Might Be Breaking TCPA Regulations?

**TCPA GUIDE:** Recommendations for significantly reducing compliance risk



## **NEW TCPA (THE TELEPHONE CONSUMER PROTECTION ACT)**

**REGULATIONS** implemented in 2013 created significant overhead and financial risk for anyone making outbound calls to customer and prospects. Although the new TCPA rules may appear to inhibit growth and seem cumbersome to work around, they can be addressed in a way that allows companies to achieve their desired outbound objectives. The key is knowing who you are calling before placing the call. This is work, but it can be automated. And the time invested is a drop in the bucket compared to thousands of dollars lost in a lawsuit.

## Let's refresh— What is the TCPA?

**The TCPA allows individuals the right to file lawsuits and collect damages for receiving unsolicited telemarketing calls, faxes, prerecorded or autodialed calls.**

The Telephone Consumer Protection Act of 1991 (TCPA) is controlled by the Federal Communications Commission (FCC), empowered to issue rules and regulations to help protect consumers from unwanted solicitations via telephone.

The FCC defines an autodialed call as a phone call involving a live person or pre-recorded message that is placed using an automatic telephone dialing system that can produce, store and call telephone numbers using a random or sequential number generator. However, this definition should be broadly interpreted because using any type of call center software as part of telemarketing operations could be considered an auto-dialer within the FCC's description. Any uncertainty in software should be taken to an attorney with expertise in telemarketing law. Overall, the TCPA caters to consumers' best interests, which is why companies need to be very careful about following the strict guideline.

# Why does the TCPA need revision?



## Mobile

The TCPA has evolved with technology, so have the laws that affect its use. The overwhelming adoption of mobile devices has created new opportunities for companies to connect with consumers, and deliver more meaningful and timely communications, whether it's a new business prospect or collections notification.

Not so long ago, mobile numbers were considered secondary contacts that didn't typically appear on telemarketing call lists (standard, residential and business landline numbers). But, cell phones are growing exponentially, often replacing landlines as the primary contact number. Having been recorded as such, these numbers end up on outbound telemarketing lists that receive automated or prerecorded marketing messages.

## Legal

The TCPA and its regulations impose many complex and technical requirements onto businesses. Unfortunately, unintentional mistakes that break regulation are common. As such, it's important to beware of savvy consumers seeking clever ways to catch those accidental mistakes, and aggressive TCPA class action lawyers actively preying on consumers who might be eligible for a lawsuit.



The influx in lawsuits of this nature is because the law allows plaintiffs to claim statutory damages of over \$500 per call without showing that damage even occurred. This is why it's so imperative for businesses to educate themselves on the intricate details of the law to avoid potential-ly massive liability. Look no further than the recent multi-million dollar settlements that hit Google, Jiffy Lube and Papa John's, all huge corporations that failed to completely comply with TCPA regulations.

## OK, so what are the rules exactly?

### The 2013 revisions to the TCPA are as follows:

Consumer mobile numbers may no longer receive telephone calls that present an advertisement, or constitute telemarketing, using an automatic telephone dialing system (ATDS), or an artificial or prerecord-ed voice (robocall), without a “prior express written consent.” The key difference is in the word, “written.” Previous to the changes, the standard was just “prior express consent.” Basically, all that “opt-in” data floating around won’t be acceptable anymore. The same requirement is also necessary for prerecorded telemarketing calls made to a residential line.

In addition to these regulations, the prior exemption for making telemarketing calls, where there is an established business relationship, has been removed. An example of such a relationship would be a customer who has made a purchase with a business within the past 18 months.

The TCPA regulations that currently prohibit non-telemarketing calls and texts to a mobile phone using an ATDS or robocall, unless the sender has the consumer’s prior express consent, will stay the same.

Regulations will now allow consumers to retract previous consent, for receiving calls on their cell phones placed by an ATDS, at any time. So, even if written consent is obtained, it can be revoked at any time at the consumer’s discretion.



## What can I do to ensure my business isn't in violation of TCPA rules?

### Get written consent

The best-case scenario is being able to obtain all consumers' written consent to deliver a company's ATDS or robocall messages to their mobile phones. Once acquired, it's important to capture and store the proof of consent for four years through a CRM, client record or third-party information capture service.



However, the chances of getting even one of those written consents is slim, so what should be done?

### Use a trusted third-party service provider

Third-party service providers can verify consumer phone numbers as well as identify if the number is a cell phone or landline. This provider should be able to accurately identify non-fixed VoIP numbers as well, which should be treated like wireless numbers. Using this type of verification service to provide more in-depth information on numbers can avoid possible errors or missed opportunities.



When it comes to listings with written consent, it's even more important to verify that a person still has the same number as millions of phone numbers are reported every year. Written consent is only valid with the same name and number pairing at the time of consent. If a person, who had previously given written consent, changes his or her number, the consent is void. As such, it's best practice to verify and identify numbers before every planned automated call to ensure due diligence.

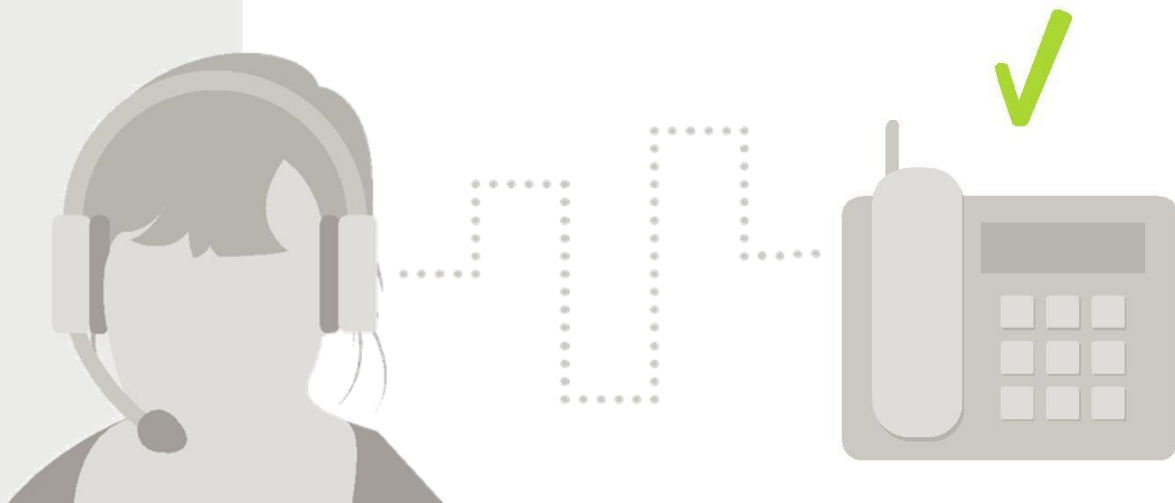
## Constantly verify lists

When in doubt, it's best to verify all call lists of any wireless numbers that do not have written consent. Marketers need to scrub against a list of cell phones that have already been blocked, as well as a list of landlines that have recently been ported to cell phones (there are millions of these migrations every year). As mentioned before, non-fixed VoIP numbers should be treated as mobile, so they'll need to go as well.

It is best practice to scrub lists every 15 days to ensure protection by the FCC's 2004 amendment, which gives safe harbor to accidental phone calls to numbers recently ported from landline to mobile. If a company unintentionally calls a mobile number without consent, it is safeguarded against prosecution if the company can prove that the call list had been scrubbed within the previous 15 days.

## Get legal consultation

With all the complexities of TCPA, we recommend businesses consult with a legal professional that specializes in telecommunications regulations and FCC law to ensure compliance.



## So what are the consequences?

The possible repercussions for non-TCPA compliance are dire, at \$16,000 per violation. Coupled with statutory damages that range from \$500 to \$1,500 per occurrence, companies should take note that consumers aren't required to provide proof of actual harm.

**TRANSLATION: Avoid any potential lawsuit over one automated phone call.**

While scrubbing call lists seems daunting, it could potentially save you thousands of dollars in unnecessary fines. Do your due diligence with extensive research and make sure any ATDS is TCPA compliant.





# TCPA GUIDE

## Best Practices Checklist



1

**Obtain** prior unambiguous, written consent for all mobile numbers, even when dialing manually.



2

**Capture** and store call evidence for four years.



3

**Utilize** a third-party provider to identify different types of numbers.



4

**Consider** non-fixed VoIP numbers as mobile numbers.



5

**Verify** and scrub call lists every 15 days.



6

**Secure** legal consultation to ensure that all your business practices are TCPA compliant.

