

Telephone Consumer Protection Act (TCPA): Latest News and Considerations for Compliance



Think of Experian as Your TCPA Compliance Provider

Since the Federal Communications Commission's (FCC's) last update to the Telephone Consumer Protection Act (TCPA) in 2013, there has been an explosion of litigation and conflicting court cases. This has made it difficult for legitimate businesses to ensure compliance with the law when communicating with consumers on their cell phones or via text messages.

In response, the FCC released a Declaratory Ruling and Order on July 10, 2015, to offer clarity. The ruling impacts companies across industries that contact consumers via phone or text.



TELEPHONE CONSUMER PROTECTION ACT

An amendment to the Communications Act of 1934, the TCPA regulates and restricts telephone solicitations and the use of automated telephone equipment for telemarketing, autodialed and prerecorded calls, as well as text messages and unsolicited faxes.

Lawsuits/Year ¹	2015 YTD ²	2014	2013	2012	2011	2010
	2,086	2,518	1,903	1,102	830	354

Fines can range from \$500 to \$1,500 per instance. The TCPA allows individuals to file lawsuits and collect damages. Class action litigation is also on the rise, costing companies millions.

What You Should Know

While the law provides some guidance for a narrow set of exemptions on the use of autodialed/prerecorded voice and text messages to consumers from financial entities and healthcare providers, there is still a heavy TCPA-related legal risk, especially for companies in the collections space.

Using an Autodialer

Companies can still use their autodialers, but they must have prior written consent from the consumer to do so. Unless the call is for an emergency, autodialing a consumer's cell phone or sending a text is strictly prohibited; the number must be dialed manually. Internet-to-phone text messages sent through an e-mail or a web portal system are also subject to the TCPA.

With this ruling, the technology currently used by the majority of industries and businesses is for the most part useless.

The One-Call Exception

If a phone number is reassigned to a new consumer, a company cannot rely on the prior owner's consent to avoid liability. Companies have one call to a reassigned number without obtaining the new owner's prior consent to receive such autodialed calls. Any additional calls are considered TCPA violations.

"ONE-and-DONE" Rules

- The caller is responsible to make sure it has the right party on the phone
- The caller has only one chance to confirm a phone number is valid
- Includes a message left on an answering machine
- If a call is misdialed (i.e., the number is entered incorrectly into a dialing system), the caller cannot make an additional call to determine if the number has been reassigned

¹WebRecon LLC. "Twisty & Turny: Debt Collection Litigation & CFPB Complaint Statistics, Sept 2015." October 19, 2015. <http://dev.webrecon.com/twisty-turny-debt-collection-litigation-cfpb-complaint-statistics-sept-2015>.

²2015 YTD is January 1, 2015 through September 30, 2015.

Revoking Consent

A called party may revoke consent at any time and through any reasonable means, and callers may not limit the manner in which revocation may occur. The caller has the ultimate burden to demonstrate it had prior express consent to call the phone number at issue. Any reasonable method the consumer uses to revoke consent must be honored by the caller.

Who Gets an Exemption?

The Order newly exempts four types of free-to-the-consumer calls from financial institutions:

1. Calls intended to prevent fraudulent transactions or identity theft
2. Data security breach notifications
3. Calls detailing measures consumers may take to prevent identity theft following a breach
4. Money transfer notifications

In addition, when a consumer provides a phone number to a Health Insurance Portability and Accountability Act of 1996 (HIPAA)–covered healthcare provider, he or she consents to autodialed healthcare-related calls subject to HIPAA from that provider and business associates acting on its behalf. The Order also exempts certain autodialed calls that are free to the consumer and made for healthcare treatment purposes. In this exemption, telemarketing, cross marketing, solicitation, debt collection and advertising content are not allowed.

The FCC defines autodialers as “equipment which has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator to dial phone numbers.”

How Experian Can Help

With hefty fines and regulations attached to TCPA, a pre-emptive solution to ensure compliance is needed. Experian’s industry-leading credit and marketing information upholds the highest standards for data hygiene and accuracy to increase right-party contact and reduce wrong-party contact.

First Sweep SM	Phone Type Indicator Append	TrueTrace TM	Phone Number ID TM	Contact Monitor TM
<ul style="list-style-type: none"> • Scrubs data for collections suppression: <ol style="list-style-type: none"> 1. Bankruptcy 2. Deceased 3. Active Duty Military 4. Litigious Consumer 5. Phone type for 6. TCPA compliance • Provides a streamlined process to identify phone types for TCPA treatment, along with additional data to help with consumer compliance 	<ul style="list-style-type: none"> • Identifies the phone type for TCPA compliance • Optionally filters through a ported phone database to further evaluate phone types in case a number has changed to wireless 	<ul style="list-style-type: none"> • Identifies or confirms the consumer’s best address • Appends, ranks and scores up to six phone numbers • Scores all phones to improve the accuracy of the match • Provides a phone type indicator to identify cell phones 	<ul style="list-style-type: none"> • Provides direct access to 5,000 phone carriers to support TCPA compliance • Verifies phones directly with phone companies to determine owner, phone type, portability and carrier • Verifies new phones from TrueTrace to determine owner, phone type, portability and carrier 	<ul style="list-style-type: none"> • Leverage Phone Number ID verification with over 5,000 carriers • Select verified contacts to monitor for daily changes in ownership, carrier, or line type. Filter even further by using our sophisticated match codes. • Receive notices of changes on a daily basis; incorporate changes immediately into your dialer strategy • Flexibility allows you to choose who and what you monitor

Contact us to learn how Experian can set up a compliance process while managing your accounts and workflow to strengthen business practices across your company. Visit us at www.experian.com/tcpa.

