

COLUMNS

Auto-dialing compliance elicits confusion, costly consequences

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The business of telephone solicitations just got a bit more confusing. The Federal Communications Commission (FCC) recently began enforcing new, more stringent consent requirements aimed at protecting consumers from receiving unwanted telephone solicitations.

These changes are part of the [Telephone Consumer Protection Act \(TCPA\)](#), which [generally prohibits](#) the use of auto-dialers to initiate calls or text messages to mobile phones without the “prior express consent of the called party.”

Although this sounds simple, it is not – and violations can be extremely costly. Recently, Jiffy Lube settled class action litigation to the tune of \$47 million.

What makes TCPA so complicated?

Dialed out

First, the FCC and courts have interpreted the term “automated telephone dialing system” broadly.

Any equipment that has the capacity to store, generate and dial telephone numbers – whether those numbers are randomly/sequentially generated or stored in your own

calling list – is considered to be an auto-dialer.

Second, FCC now requires businesses to acquire prior express written consent for telemarketing, regardless of whether there is an “established business relationship.”

Previously, businesses were permitted to rely on oral consent or on an exception for calls to existing customers. What is more, the FCC has eliminated the established business relationship exception.

Third, in an age where consumers are more and more likely to cut the cord and tens of millions of phone numbers are being recycled every year, it can be challenging to determine whether you are calling a wireless number.

Nearly two in every five U.S. homes relies on wireless, rather than landline, phones, and that number will continue to rise.

Meanwhile, in 2011 alone, almost 37 million phone numbers were reassigned to new users. Yesterday’s landline number is frequently a mobile phone number today.

This movement of numbers can cause even more confusion.

Even if a company obtains written consent from a customer to dial a particular mobile phone number, it can still violate the TCPA if the number has been transferred to a different subscriber.

Wrong number

There is only one thing that is crystal clear about the TCPA: it is easy to violate the Act.

Statutory damages can range from \$500 to \$1,500 per infraction, and much higher civil penalties in the event of a regulatory enforcement action. This is a mistake that could cost a company millions.

According to a Neustar analysis of data used by businesses across a wide variety of industry sectors, more than 20 percent of customer records are linked to the wrong phone numbers.

As companies connect with consumers via text and telephone hundreds of thousands of times each month, a 20 percent inaccuracy in their data can easily translate into tens of millions of dollars in legal expenses and damage awards.

In short, TCPA compliance is not something you want to be wrong about.

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