



answerNet
WHITE PAPER

**The Telephone Consumer
Protection Act (TCPA)**

Protecting the public and your company

About AnswerNet

AnswerNet is a full-service provider of inbound, outbound, automated, electronic and business process outsourcing (BPO) call center services.

AnswerNet operates 28 contact centers within the continental United States and Canada.

We provide a wide range of services, from our core capabilities of telephone answering, hotlines, customer service sales, lead qualification and market research to a variety of business process outsourcing options including CRM hosting, email management and order processing.

On October 16, 2013, the Telephone Consumer Protection Act (TCPA) amendments took effect. Anyone in the telemarketing, call center, or BPO business should be aware of, and is affected by, these changes. The new amendments extend the reach of regulatory bodies, and far surpass the Do Not Call (DNC) registry and the need for list scrubbing and simple opt-outs, to stay compliant.

The amendments extend the protections to consumers to now cover text-messaging based marketing, and include new rules concerning auto dialers, among other important updates. Furthermore, the amendment eliminates assumed consent based on an existing business relationship.

What are the amendments?

The October 16 amendment contains two major changes to the original law:

1. Unmistakable express written consent (called an “opt-in”) must be obtained before any contact through automated calls or text messages for marketing purposes can be made via autodialers and/or prerecorded voice messages.
2. Business relationships previously established no longer automatically qualify as consent for telemarketing contact.

The first change affects how consent is obtained. Consumers may not be called or messaged and simply given a choice to opt-out. The new laws mean that the consumer must give indisputable express written consent **prior** to any advertising contact; furthermore, the message must be clear and unambiguous in its intent.

The second change means that previously established business relationships can no longer suffice as or substitute for written consent to receive text or auto-dialer messages from marketers. Consent cannot be a condition of a purchase, nor can a previous purchase and the consumer's presence on your CRM system be used as supporting evidence of consent.

So, **NO**, you may not send a marketing piece or advertisement disguised as a survey or other type of business correspondence, nor may you blast marketing materials to your house lists without prior consent to do so.

Are there any exceptions?

The exceptions are very limited; however, there are two key phrases that can be found in the first amendment. The first phrase is: *"auto-dialers and/or prerecorded voice messages."* Calls that are manually dialed by a live operator do not require written consent. The second key phrase is: *"marketing purposes."* This means mass text messages or telephone calls for business or emergency purposes are permissible.

The final exception is for one-time campaigns. For marketing campaigns in which consumers initiate the communication by sending a text, email, or automated phone message to enter a sweepstakes or to receive goods, products or services, a one-time automated response is perfectly fine. So, acknowledging receipt and providing detail about a contest, for example, and giving the opportunity to consent to further marketing messages is acceptable. Any additional advertising, however, still requires the consumer to opt in.

What are the repercussions?

The advertiser using telemarketing, text messaging or automated dialing techniques bears the burden of proof. Any legal dispute can lead to a penalty of **\$500 to \$1,500 per call or text message**. Not per program – per call. Thus, one thousand errant calls could, in theory, result in a fine of a half million dollars. Whether the defendant violates the TCPA "willfully" or "knowingly" will be taken into consideration, but rolling the dice could get expensive, and even ruin a business.

Achieving opt-in status for mass marketing

There are lots of things you can do. For example, you can mail postcards or set up point-of-purchase displays featuring a text or call number for coupons and special offers. Other possible ways to achieve opt-in status include the following:

- Text messages that originated from the client to the business, using a service like [TextGen](#), in which an automated conversation will provide easy consent.
- Online communications through your website, using an e-sign compliance form
- Via automated IVR systems
- Using live operators to make the calls instead of automated solutions
- QR codes for smartphones, to allow access to a website that provides opt-in consent
- Using intercept marketers who obtain consent in exchange for coupons or other promotional consideration (exclusive of requiring a sale)

The key to staying compliant is to maintain electronic, recorded and/or paper records demonstrating consent was sought and received. This log will provide supporting evidence of intent to be compliant, should a complaint be filed that results in an audit of your business practices. Additionally, always work with a reputable telemarketing company, like AnswerNet, that implements compliance best practices at all times. Your telemarketing company may ask you for evidence of the opt-in status of your lists, prior to accepting your campaign.

For more information on the compliance requirements for outbound telemarketing, please visit the following government website:

<https://www.ftc.gov/tips-advice/business-center/guidance/complying-telemarketing-sales-rule>

Appendix 1: Reference guide to compliance regulations

Keep this guide to the compliance rules handy – it will keep you compliant and in the good graces of the FCC – and keep your marketing efforts running smoothly and without interruption.

Calls to Residential Landline Telephones	
TYPE OF CALL	TYPE OF CONSENT
Prerecorded Telemarketing/Sales/Advertising Calls with Dialer	Prior Express Written Consent (No <i>existing business relationship</i> (EBR) exemption)
Prerecorded Telemarketing/Sales/Advertising Calls without Dialer	Prior Express Written Consent (NO EBR exemption)
Non Prerecorded Telemarketing Calls (Live Telemarketing calls) with or without a Dialer.	<p>No Prior Express Written Consent Required HOWEVER— Do Not Call (DNC) rules apply.</p> <ul style="list-style-type: none"> • The internal DNC must be scrubbed • Wireless block lists must be scrubbed if dialer used • EBR regulations/laws-Federal and State-must be followed • Caller ID must be displayed with a toll-free number that the recipient can call to be placed on an internal DNC list • Telemarketing calls by an autodialer that are answered by a person but NOT connected to a live operator within two seconds are abandoned. Abandoned calls require that a recorded message be immediately played stating the name of the business on whose behalf the call was placed, that the call was for telemarketing purposes, and a telephone number at which the called party may assert a do-not-call request • The FCC’s new rules also require that the recorded message include an automated opt-out mechanism
Prerecorded or Non Prerecorded Informational Calls or Non-Commercial Calls, with or without a Dialer	No consent required.
Prerecorded Healthcare Calls	Exempt, governed by HIPAA

CALLS TO WIRELESS NUMBERS-CONSUMER OR BUSINESS

(INCLUDING TEXTS OR CALLS TO ANY NUMBER WHERE A RECIPIENT MAY BE CHARGED FOR THE SERVICE)

ALL prerecorded telemarketing calls or telemarketing calls made with a dialer to any cellular or wireless phone or other mobile service such as paging systems, or any number where the receiver has to pay for the call or message (including B-to-B), are prohibited unless the caller has the EXPRESS WRITTEN CONSENT of the recipient. This rule includes sending SMS/text messages.

TYPE OF CALL	TYPE OF CONSENT
All Telemarketing Calls with a Dialer OR Which Leave a Prerecorded Message	Prior Express Written Consent
Non Prerecorded/Live Telemarketing Calls–Placed WITHOUT a Dialer (Manual Dial Or Equivalent NON DIALER Solution Only)	No Prior Consent Required. However, DNC rules apply.
Informational Or Non-Commercial Calls with A Dialer OR Which Leave a Prerecorded Message	Prior Express Consent, But May Be Written Or Oral
HIPAA Regulated Calls	Prior Express Consent

Exception: Emergency calls from a business or the government, such as to report wide-spread power outages or campus emergencies are still permitted under any of the scenarios above.

Appendix 2: Definitions

What is the Telephone Consumer Protection Act?

In place since 1991, the TCPA regulated telemarketing calls to protect consumers from unwanted contact, and restricted auto dialers and prerecorded messages to consumer telephones. Since then the laws have expanded to address the advancing technology of mobile devices and text messaging.

What is a Dialer?

As defined by the FCC, a dialer is any automatic dialing system or equipment that has the capacity to (a) store or produce telephone numbers to be called, using a random or sequential number generator and to (b) dial such numbers. The FCC has essentially stated that if the system has the “capacity” to dial numbers without human intervention, it is a dialer. There have been cases which have held that dialing in Preview Mode still constitutes dialing with a dialer. The focus is on whether equipment has the “capacity” to generate numbers, either sequentially or randomly, and dial them *regardless* of how the equipment is used.

What is Express Written Consent (EWC)?

- Prior express written consent is a signed agreement that clearly and conspicuously authorizes telemarketing calls made using an autodialing system or including an artificial or prerecorded message to be delivered to a specified number.
- The consent can be obtained through electronic agreements, provided they comply with the federal E-Sign law. This includes permission obtained via email, website form, text message, telephone key press or voice recording. If using a voice recording to capture consent, it should specifically follow all the requirements listed below. One method would be that if a consumer calls a business, that call can be routed to a dialer with a message that asks for permission to call back, and makes the requisite statements about the type of consent being obtained.
- **Oral communications do not qualify.**
- The written consent must also include a disclosure that the consumer does not need to provide such consent as a condition of a purchase.
- The consent must be signed, state specifically that the number may be used for marketing, advertising or sales, state the number may be called by an automated dialing system, and state that no purchase requirement is tied to providing the consent
- Best Practices for Express Written Consent Language-the party must expressly consent to not only receiving calls to a particular number, but also to receiving calls via auto-dialer or prerecorded message.

What are Other Types of Consent (that do not meet EWC requirements)?

- Providing phone numbers on loan applications
- Responding to numbers used in advertising, inviting callers to call or text
- Submitting contact information via on a web page
- Giving information at the time of a purchase (within the EBR time periods)

What are Informational Calls?

- Calls for nonprofits
- Political calls
- Pure customer service calls (no sales pitches/offers/advertisements/inducements attached)
- Bank account fraud alerts
- Pure surveys (no sales pitches/offers/advertisements/inducements attached)
- Other calls delivering purely informational messages (no sales pitches/offers/advertisements/inducements attached).