Driven

NADA MANAGEMENT SERIES L44

A DEALER GUIDE TO FEDERAL EMAIL AND TELEMARKETING RESTRICTIONS

NADA
NATIONAL AUTOMOBILE DEALERS ASSOCIATION

Driven

The purpose of this *Driven* Management Guide is to familiarize franchised new car and truck dealers with the current federal restrictions on email and telemarketing communications. This guide updates and replaces the former *Dealer Guide to Telemarketing Restrictions* and has been expanded to include not only telephone marketing restrictions, but email, text message, and fax restrictions as well. This guide does not cover federal advertising requirements, which are addressed in A Dealer Guide to Federal Advertising Requirements.

This guide introduces the primary federal laws and regulations that govern telephone, email, text message, and fax communications and provides compliance guidance to dealers. Whereas many of the restrictions pertain solely to marketing communications to consumers, several apply to telemarketing for business-to-business communications. The guide also contains various appendices and a *Frequently Asked Questions* section to aid dealers in understanding and meeting their compliance obligations under federal law.

Nothing in this guide is intended as legal advice. This guide addresses federal telemarketing regulations but does not address state or local telemarketing or similar requirements. It is essential that you consult with legal counsel that is familiar with federal and state telemarketing restrictions as well as your dealership operations to determine the full range of your compliance obligations.

The presentation of this information is not intended to encourage concerted action among competitors or any other action on the part of dealers that would in any manner fix or stabilize the price or any element of the price of any good or service.

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A DEALER GUIDE TO FEDERAL EMAIL AND TELEMARKETING RESTRICTIONS

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A DEALER GUIDE TO FEDERAL EMAIL AND TELEMARKETING RESTRICTIONS

I. OVERVIEW

This guide broadly addresses the federal compliance and regulatory obligations and restrictions with respect to the primary methods of communication used by dealers and your customers today—telephone calls, emails, text messages, and faxes.[1] All of these communication methods can be and are used for both marketing and non-marketing purposes. Differing issues and challenges arise depending on the method of communication used, the purpose for which that communication is made, and, in some cases, whether a recipient has consented to receive that communication. Compliance requirements are very complex and context, recordkeeping, technology, and methodology matter.

The communications methods outlined above are regulated by four primary federal statutes:

1. The Telephone Consumer Protection Act (TCPA) as amended by the Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act.
2. Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994 (Telemarketing Act) and its implementing regulation, the Telemarketing Sales Rule (TSR).
3. Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act).
4. Junk Fax Prevention Act (JFPA).

II. BACKGROUND

Over the past decades, policymakers have become increasingly concerned with abuses by marketers, and these concerns have become exacerbated as new technologies improved marketers' ability to send a growing volume of communications at low cost. The first legislative reaction to these perceived marketing abuses was in the early 1990s, when Congress addressed an increasing number of problems associated with telemarketing abuse and fraud through the passage of several statutes, including the TCPA[2] and the Telemarketing Act[3] and its implementing regulation, the TSR.[4]

Congress charged the Federal Communications Commission (FCC) with implementing and enforcing the TCPA, while it empowered the Federal Trade Commission (FTC) to implement and enforce the Telemarketing Act. As a result of this statutory scheme, there are two sets of federal regulations that govern telemarketing, and two federal agencies with regulatory oversight. Over the years, a number of amendments and additions to the regulations implementing these statutes have been enacted. While several of the substantive provisions and some of the terminology used by each agency are inconsistent, the overall result of these changes has been to eliminate inconsistencies between the FTC and FCC provisions. Where such dual enforcement exists, this guide will generally address the FCC's set of restrictions, noting only where any material inconsistency remains.

The TCPA and the TSR expressly govern telephone calls. Over time, these rules have been expanded and interpreted to address both marketing and certain non-marketing calls, fax advertisements, and text messages.

Congress later addressed the issue of unwanted "spam" electronic mail messages (email), passing the CAN-SPAM Act.[5] CAN-SPAM imposes a series of requirements on the use of commercial email, and is enforced by the FTC. CAN-SPAM governs all email communications, with the bulk of the restrictions applying to commercial or marketing email communication.[6]

In 2005, Congress passed the JFPA to address perceived abuses with respect to commercial faxes. The JFPA amended the TCPA and placed additional restrictions on senders of commercial faxes. While fax communication and advertising have decreased significantly since 2005, many JFPA claims are still brought today, and dealers should be aware of the federal fax restrictions.

In addition to the federal restrictions, numerous states have passed do not call or other legislation restricting telemarketing and other marketing communications. **Many states have harmonized their laws with the federal requirements; however many states have enacted more onerous requirements. Dealers should consult their counsel for information regarding any applicable state or local restrictions governing email, telephone calls, text messages, or faxes.**

III. EMAIL

As noted above, the primary federal law governing email communications is the CAN-SPAM Act, and its implementing rule, the FTC's CAN-SPAM Rule.[7] The CAN-SPAM Act governs "commercial messages," which are defined as "any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service."[8] CAN-SPAM is enforced by the FTC.[9]

Basic Requirements

The detailed requirements of CAN-SPAM are outlined below. Essentially, it requires that an email sender provide certain information in emails, avoid deception, and provide a way for the email recipient to opt out of receiving future emails from that sender.

The FTC summarizes the basic requirements as follows:[10]

- Don't use false or misleading header information.
- Don't use deceptive subject lines.
- Identify the message as an ad.
- Tell recipients where you're located.
- Tell recipients how to opt out of receiving future email from you.
- Honor opt-out requests promptly.
- Monitor what others are doing on your behalf.

It is also important to understand what CAN-SPAM does *not* require. CAN-SPAM does not require that an email sender obtain consent from an email recipient before sending an email – i.e., there is no opt in requirement – unless the e-mail is being sent to an e-mail address with a wireless domain name. (The domain name is the part of the e-mail address that appears after the "@".) In this situation, the recipient must "opt-in" to receiving an e-mail before it may be sent. The FCC maintains a list of wireless domain names – available here [(https://www.fcc.gov/consumer-governmental-affairs/about-bureau/consumer-policy-division/can-spam/ domain-name-downloads]– that may be searched to determine if the e-mail address contains a wireless domain name. But generally, other than this exception, as long as you follow the other basic requirements of the Act, you can send emails until such time as the recipient asks you to stop (opting out).

CAN-SPAM also does not place any specific restrictions on the source from which you obtain email addresses. For example, it does not prohibit buying a list of email addresses but notes that doing so can be risky. There is the possibility that addresses on the list belong to people who have already opted out of receiving email from your dealership. And there's a risk that the list was put together using illegal means like address harvesting or dictionary attacks (the practice of sending email to addresses made up of random letters and numbers in the hope of reaching valid ones). Therefore, some companies choose to send marketing emails only to people who have affirmatively asked to receive them or with whom the company already has a business relationship.

What Does CAN-SPAM Apply to?

First, it is important to note that the prohibitions under CAN-SPAM are not limited to bulk messages, or email blasts or spam, but apply to even a single commercial message sent to a lone recipient. Additionally, CAN-SPAM does not exempt business-to-business emails. This does not, however, mean that *all* email you send must comply with all the CAN-SPAM requirements; only "commercial" messages must comply.[11] CAN-SPAM generally does not apply to purely "transactional or relationship" messages—that is, messages that do not advertise or promote a commercial product or service.

An email is a "transactional or relationship" message if it consists of content that:[12]

- Facilitates or confirms a commercial transaction that the recipient already has agreed to;
- Gives warranty, recall, safety, or security information about a product or service;
- Gives information about a change in terms or features or account balance information regarding a membership, subscription, account, loan, or other ongoing commercial relationship;
- Provides information about an employment relationship or employee benefits; or
- Delivers goods or services as part of a transaction that the recipient already has agreed to.

What Is an Email?

CAN-SPAM defines an "electronic mail message" as "a message sent to a unique electronic mail address."[13] An "electronic mail address" is defined as "a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the "local part") and a reference to an internet domain (commonly referred to as the "domain part"), whether or not displayed, to which an electronic mail message can be sent or delivered."[14] Finally, a "domain name" is defined as "any alphanumeric designation which is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the internet."[15]

Safety Recall Messages

Emails to customers notifying them only about safety recalls, or related to completion of a safety recall, are deemed not to be commercial email, and are thus generally not subject to CAN-SPAM. If a dealer, however, includes any commercial content in the email, such as offering a discounted oil change while having their car serviced for the recall item, it would be considered a commercial e-mail.

Because the email contains marketing/commercial content (oil change special) in addition to the recall/safety message, it may be deemed commercial and therefore subject to the requirements of CAN-SPAM (see the "primary purpose" discussion below). Of course, dealers may include such commercial information in any email communication as long as it is not deceptive, and it otherwise complies with all the requirements of CAN-SPAM.

Although the definitions above meet the common understanding as to what constitutes an email, technology moves faster than regulations and some ambiguity exists with respect to other forms of electronic communication. For example, a chat or text message would generally not be considered an email if it does not follow the format described above, but a message that is sent to an address meeting those requirements would be deemed an email, even if it is otherwise called a chat. Some federal courts have ruled CAN-SPAM's definition of "electronic mail message" includes commercial messages transmitted to a social network user's inbox, news feed, wall, etc.[16] Text messages are discussed in greater detail below.

What Is the Primary Purpose of an Email?

As noted above, CAN-SPAM applies to "any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service," but does not apply to transactional or relationship email. To determine whether a message is "commercial" or a "transactional/relationship" message, you must look to its "primary purpose."

To determine the primary purpose, be aware that an email can contain three different types of information:

1. **Commercial content**–which advertises or promotes a commercial product or service, including content on a website operated for a commercial purpose.
2. **Transactional or relationship content**–which facilitates an already agreed-upon transaction or updates a customer about an ongoing transaction.
3. **Other content**–which is not commercial, transactional, or relationship content.

If the message contains *only* commercial content, its primary purpose is commercial, and it must comply with all the requirements of CAM-SPAM. If it contains *only* transactional or relationship content, its primary purpose is transactional or relationship. In that case, it may not contain false or misleading routing information, but is otherwise exempt from most provisions of the CAN-SPAM Act.

If the message combines commercial content and other content, including transactional or relationship content, then the primary purpose of the message is deemed to be "commercial" if:

- A recipient reasonably interpreting the subject line would likely conclude that the message contains an advertisement, or;
- A recipient reasonably interpreting the body of the message would likely conclude that the primary purpose of the message is the commercial advertisement or promotion of a commercial product or service.

Relevant factors in analyzing the body of the message include:

- The placement of content that is the commercial advertisement or promotion of a commercial product or service, in whole or in substantial part, at the beginning of the body of the message;[17]
- The proportion of the message dedicated to such content, and;
- How color, graphics, type size, and style are used to highlight commercial content.

The bottom line is that whether an email is "primarily" commercial is largely subjective, and it is best to deem any email that contains more than just an incidental amount of commercial content as commercial and subject to CAN-SPAM.

Compliance Tip

A compliance approach that dealers may wish to consider is to ensure that *all* email sent by or on behalf of the dealership contains the required CAN-SPAM footer and opt-out information (see below). This approach avoids the need to make determinations with respect to commercial content in any specific email communication. It not only helps enable compliance with CAN-SPAM, it is also good customer relations. Dealers presumably want to know if someone no longer wishes to be contacted via email—regardless of federal requirements—and to honor those wishes. This is especially true where the sender chooses to implement the menu approach described below. Given that many dealers utilize an automated opt-out tracking system, this approach, while overbroad under the rules, should not present an additional material compliance burden, nor should it materially reduce the messages sent to those who wish or need to receive them.

What Are CAN-SPAM Prohibitions and Requirements?

CAN-SPAM contains a series of requirements and prohibitions with respect to email.[18] If you determine that CAN-SPAM applies to the email message you are sending, there are not only certain things you are prohibited from doing with respect to that email; there are also certain affirmative actions you must take to ensure compliance with CAN-SPAM.

CAN-SPAM Prohibits:

- **False or Misleading Header Information**[19]

  This means that the email itself cannot falsely claim to be from someone else or seek to disguise or mislead the recipient as to the identity of the sender. In particular, the "From," "To," "Reply to," and routing information—including the originating domain name and email address—must be accurate and identify the person or business who initiated the message.

The prohibition on header information applies to *all* email, not just "commercial" email. It could be a violation of CAN-SPAM for a sender to include a false or misleading header even in a clearly transactional email.

- **Deceptive Subject Lines**[20]

  The subject line of the email must accurately reflect the content of the message. Dealers should not, for example, attempt to grab the recipient's attention by including any false or materially misleading information in the subject line of the email.

CAN-SPAM Requires:

- **Identification of the Message as an Advertisement**

  Senders are required to "clear[ly] and conspicuous[ly] identify that the message is an advertisement or solicitation."[21] CAN-SPAM does not require this notice to be in the subject line, or in any particular location. Indeed, the FTC has noted that "the law gives you a lot of leeway in how" to identify the email as an advertisement, "but you must disclose clearly and conspicuously that your message is an advertisement."[22] In many cases, senders include clear language in the footer that the message includes an advertisement or solicitation.[23] Such a disclosure should be adequate as long as it is clear and conspicuous, is not buried, or difficult to find, or requires a hyperlink or excessive scrolling to find.

- **Inclusion of a Valid Physical Postal Address**

  You must tell the recipient where you are located. This can be your current street address, a post office box you've registered with the U.S. Postal Service, or a private mailbox you've registered with a commercial mail receiving agency established under Postal Service regulations. Again, many senders choose to include this information in a standard footer, attached to all emails, but the form and location of the address is not prescribed in the rules.

- **Opt-out Offer**

  The sender must offer the recipient the choice to opt out of receiving future email from the sender, who must track and honor any opt-out requests.

- **Tell Recipients How to Opt Out of Receiving Future Email From You**

  This key CAN-SPAM requirement is the one that requires the most important and complicated ongoing compliance tracking and care. An email sender must provide recipients with a way to request that they no longer receive commercial email from that sender at that email address—and then ensure that any such requests are promptly honored.

  The FTC does not require any specific language for the opt-out but states that you should craft the notice in a way that is easy for an ordinary person to recognize, read, and understand. The FTC further suggests that "creative use of type size, color, and location can improve clarity." One clear requirement is that you must provide a return email address or another easy internet-based way to allow people to communicate their choice to you. It is not enough to just give a physical address. You must include an electronic option, and in doing so, make sure your spam filter doesn't block these opt-out requests and that the address is monitored for requests, manually or electronically.

  Neither you nor anyone sending email on your behalf may require that any recipient pay any fee to opt out or provide any information other than the recipient's email address and opt-out preferences, or take any other steps except sending a reply email message or visiting a single internet web page, in order to opt out of future email.[24]

Sample CAN-SPAM Email Footer

As noted above, many senders choose to meet the notice and opt-out requirements of CAN-SPAM via a footer that is included in *all* sent emails, regardless of whether the email is a solicitation. This approach, while not required, has several advantages. Here is an example CAN-SPAM notice and opt-out footer.

> This email is from ACME Motors, 123 Main St., Anywhere, Ohio, and it may contain an advertisement, solicitation, or other commercial material. To opt out of receiving future emails from ACME Motors click here.

The language above is one option that includes the required notices. The link must be to an active "unsubscribe" option, which is often a separate URL that tracks opt-outs automatically.

A Note About Opt-outs

Although you cannot require any information to honor an opt-out request, it is permissible to *ask* recipients why they are opting out, or to ask, for example, if the recipient would like to provide an alternate, preferred contact method. You are prohibited from *requiring* such information in order to honor an opt-out request.

- **Honor Opt-out Requests Promptly**

  Any opt-out mechanism you offer must be able to process opt-out requests for at least 30 days after you send your message. For practical purposes, this means that the "unsubscribe" link, or other mechanism utilized to comply with CAN-SPAM, must be accessible for a consumer to place an opt-out request for at least 30 days from the date the last email in a campaign is sent. If you use a hyperlink or email address to electronically process opt-outs, you must ensure that link or address is operational and able to process opt-out requests. You should honor the request—that is, refrain from sending any further commercial email to that recipient—as soon as possible, but within the 10 business days the rule requires.

An essential step to CAN-SPAM opt-out compliance is to establish and maintain a list of all email addresses that have opted-out of receiving email from your dealership. Once this list is established, it is critical that it is accurate and updated as it will likely form the basis of your opt-out compliance.

Once an opt-out request has been made by a customer, you must honor that opt-out until such time that the customer provides "affirmative consent" for you to send them a commercial email.[25] The term "affirmative consent," when used with respect to a commercial electronic mail message, means that:

- The recipient expressly consented to receive the message, either in response to a clear and conspicuous request for such consent or at the recipient's own initiative; and
- "If the message is from a party other than the party to which the recipient communicated such consent, the recipient was given clear and conspicuous notice at the time the consent was communicated that the recipient's electronic mail address could be transferred to such other party for the purpose of initiating commercial electronic mail messages."[26]

Dealers should ensure that any such consent meets this standard and that they maintain a record of receiving that consent.

Opt-out Requests Apply to Email Addresses, Not Individuals

Therefore, an individual who provides an email address after opting out of another, different address may be sent emails to the new address unless and until he or she opts out at that address as well.

Note that your CAN-SPAM opt-out tracking and compliance is entity specific. That is, it applies specifically to your dealership. If you have several stores that are separate legal entities, it is *possible* that an opt-out request applies only to the one entity that sent the email. Consult counsel to ensure that the footer disclosure, legal basis, and notice requirements all meet the requirements of CAN-SPAM.

Note also that it may not make sense in terms of customer relations to take a limited approach to opt-out tracking. If a customer takes the time to ask you not to send any further email, would they want email from another, separately incorporated store? Customers may not be pleased with continued emails after opting out. One possible way to address this is via a menu approach, described below.

One Last Note:

Opt-out compliance for individual emails sent to a single recipient is relatively straightforward and involves simply ensuring that the sole recipient has not opted out of receiving email from your dealership. It is common, however, to send emails to groups of recipients. In that case, one common compliance approach is to compare the list of email addresses in your intended list of recipients against your dealership's opt-out list, and then remove or "scrub" any opted-out email addresses from the list of recipients. This will ensure that you are not sending emails to any address that has opted out. This approach can be automated, but be sure to keep a record that this step was taken. In addition, though updating an opt-out list in real time is ideal, as a practical matter that may be difficult or impossible. At the least, ensure that any list of email addresses is scrubbed against an opt-out list that is no more than a few days old, with the outer limit of 10 days.[27]

Again, it is important to remember—and to train your employees—to ensure that no commercial email is sent to any opted-out email address. That means you need a compliance system and training to ensure that even individual emails, not only mass emails, are first checked against your opt-out list.

Do Not Share Any Email Address That Has Opted Out

If a recipient has opted out of receiving future email from you and is on your "opt-out" tracking list, you cannot send commercial emails to that address, and you cannot "sell, lease, exchange, or otherwise transfer or release the electronic mail address of the recipient" even in the form of a mailing list.[28] There are limited exceptions such as transferring the addresses to comply with the law or to a company you've hired to help you comply with the CAN-SPAM Act.

This does not require you to delete the email address from your system, but since you cannot send a commercial email or share the address with any third party, you may wish to consider whether you should retain any such email address. If you do delete the email address, it would be prudent to retain a record of that deletion as well, so if the email address is later provided to you (with affirmative consent), you are able to establish compliance with the previous opt-out request.

Sharing Email Addresses with Your Manufacturer

Most manufacturers contractually require dealers to share customer information, including email addresses. Such agreements raise important and complicated issues that are outside the scope of this guide, but there are two points we will raise here.

First, if a customer has opted out of receiving emails via the dealer's opt-out mechanism, the dealer may not thereafter share that email address with anyone—not even the manufacturer. As noted above, there are no exceptions to this restriction other than to comply with the CAN-SPAM Act or other law.

Second, a dealer may have already shared an email address with the OEM and the OEM intends to send marketing messages to the email recipient, but the recipient has since opted out. Manufacturer agreements often address these situations by requiring dealers to track and share opt-out requests with them. This is difficult for most dealers to do in a timely fashion, even if such requests are tracked electronically, particularly as opt-out tracking across dealer systems can vary and be delayed for a variety of procedural and technical reasons. That said, sharing opt-out requests with the OEM is required. You should review and understand these requirements with your manufacturer(s), and to the extent possible, work toward integrating your systems to ensure that opt-out requests (and other customer marketing preferences and permissions) are properly recorded and made available to the OEM in a timely fashion.

Sharing Email Addresses With Your Manufacturer *(cont'd)*

You must ensure that the manufacturer honors those requests for any marketing sent "on behalf of" the dealer. If OEMs cannot ensure that such opt-outs are tracked, dealers should consider not sharing that information.

Menu Option

While CAN-SPAM requires the inclusion of an opt-out offer, the commercial email sender may comply by providing the recipient a list or menu from which to choose the specific types of commercial email the recipient wants or does not want to receive from the sender. If you choose to provide a menu rather than a sole opt-out option, one of the choices ***must*** be to "opt out of all commercial emails" from you.

If you choose to provide a menu, your CAN-SPAM footer may advise "managing email preferences":

> This email is from ACME Motors, 123 Main St., Anywhere, Ohio, and it may contain an advertisement, solicitation, or other commercial material. To manage your email preferences, click here.

The link can lead to a menu of options such as these:

ACME Motors Message Options

Please select the communications you would like to continue to receive from ACME Motors

(click on all that apply):

- ❑ New Car Messages—emails about new vehicle specials, promotions, or offers.
- ❑ Used Car Messages–emails about used vehicle specials, promotions, or offers.
- ❑ Service Specials—customer email offers for service or parts.
- ❑ All ACME Motors commercial email Messages.
- ❑ Opt Out of All Commercial Emails

Each of the options should include a button or other mechanism for recipients to select which types of emails they want to continue to receive. There is no guidance or requirement as to whether the choices may be pre-selected as "yes" or "no," but one of the options *must* allow the recipient to opt-out of *all* emails. If you choose the menu approach, be aware that it does create additional compliance complexity: You must then ensure that you properly categorize the types of email you send and separately scrub the opt-out preferences against any message you send, so that each message is sent only to those recipients who have not opted out of receiving such messages.

Note also that your footer need not be limited to the required CAN-SPAM language. You may choose also to address related compliance issues, display or link to your privacy notice, or include other relevant material in your footer. This could be particularly applicable to dealers subject to state privacy laws that require privacy or related disclosures.[29] While the footer does not need to be limited to the required disclosures, the opt-out option must be clear and conspicuous, and it should not be buried or hidden within various other information.

Monitor Your Service Providers

Monitor what others are doing on your behalf.[30] The law makes clear that even if you hire another company to handle your email marketing, you cannot contract away your legal responsibility to comply with the law. Both the company whose product is promoted in the message and the company that actually sends the message may be held legally responsible. That means that you must ensure that any email sent on your behalf contains the appropriate information and opt-out opportunity. You must also ensure that any opt-outs received by third parties from an email they sent on your behalf are tracked and honored.

What Are the Penalties for Violating CAN-SPAM?

There is no consumer private right of action for violations of the CAN-SPAM Act. That means that an individual email recipient cannot sue you directly based on violations of the Act. However, violations of CAN-SPAM are considered unfair or deceptive acts or practices under Section 5 of the FTC Act.[31] That means that each separate email in violation of the law is subject to penalties of up to $51,744,[32] and more than one person may be held responsible for violations. For example, both the company whose product is promoted in the message and the company that originated the message may be legally responsible. An email that makes misleading claims about products or services may also be subject to laws outlawing deceptive advertising, like Section 5 of the FTC Act. CAN-SPAM is enforced by the FTC (in certain circumstances by other federal agencies) and can also be enforced by state attorneys general.[33] In addition, under many state laws, consumers can bring direct state claims based on a violation of a federal duty such as CAN-SPAM.[34] Thus, even though the consumer cannot sue directly under the federal act, an underlying violation of the Act (or other similar federal duties) could potentially form the basis of a direct state claim.

Lastly, the CAN-SPAM Act has certain aggravated violations that may give rise to additional fines. The law even provides for criminal penalties—including imprisonment—for several actions including:[35]

- Accessing someone else's computer to send spam without permission.
- Using false information to register for multiple email accounts or domain names.
- Relaying or retransmitting multiple spam messages through a computer to mislead others about the origin of the message.
- Harvesting email addresses or generating them through a dictionary attack.
- Taking advantage of open relays or open proxies (which allow email and other connections to anyone on the internet) without permission.

These are generally not activities with which dealers are or should be directly involved. However, you should exercise caution and ensure that you understand the practices of any third-party marketing company with whom you work.

IV. PHONE CALLS AND TEXT MESSAGES

Including Fax Advertising

As noted above, the regulation of marketing telephone calls and text message is addressed by two primary federal statutes: the 1994 Telemarketing Act (and the implementing regulations under the TSR), and the TCPA. The majority of the restrictions and obligations under the TCPA and the TSR are the same. Though this guide focuses on the FCC's TCPA restrictions, which are wider in scope than the FTC restrictions, we begin with a brief overview of the FTC's Telemarketing Act and the TSR.

FTC Telemarketing Restrictions: The TSR

Enacted in 1994, the Telemarketing Act[36] targets deceptive or abusive telemarketing practices.[37] The Act specifically directed the FTC to issue a rule defining and prohibiting deceptive and abusive telemarketing practices.[38] In addition, the Act mandated that the rule address some specified practices that it designated as "abusive."[39] The Act also authorized state attorneys general or other appropriate state officials, as well as private persons who meet stringent jurisdictional requirements, to bring civil enforcement actions in federal district court.[40]

Pursuant to The Act's directive, the FTC promulgated the original TSR in 1995 and subsequently amended it on several occasions to add, among other things, provisions establishing the National Do Not Call Registry (DNC Registry) and addressing the use of pre-recorded messages, debt relief offers, and artificial intelligence.[41] The TSR applies to virtually all "telemarketing," defined to mean "a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call."[42]

The Telemarketing Act, however, explicitly states that the jurisdiction of the FTC in enforcing the TSR is coextensive with its jurisdiction under Section 5 of the FTC Act. As a result, some entities and products fall outside the jurisdiction of the TSR.[43] Further, the Rule wholly or partially exempts from its coverage several types of calls.[44] This also means that unlike the FCC rules, the FTC telemarketing rules under the TSR only apply to telemarketing that occurs over state lines (interstate telemarketing), and only to telemarketing to consumers (with limited exceptions not generally applicable to dealers).

The TSR is fundamentally an anti-fraud rule that protects consumers from deceptive and abusive telemarketing practices. First, the TSR requires telemarketers to make certain disclosures to consumers, and it prohibits material misrepresentations.[45] Second, the TSR requires telemarketers to obtain consumers' "express informed consent" to be charged on a particular account before billing or collecting payment and, through a specified process, to obtain consumers' "express verifiable authorization" to be billed through any payment system other than a credit or debit card.[46] Third, the TSR prohibits telemarketers and sellers from requesting or receiving payment in advance of obtaining credit repair services;[47] recovery services;[48] offers of a loan or other extension of credit, the granting of which is represented as "guaranteed" or having a high likelihood of success;[49] and debt relief services.[50] Fourth, the TSR prohibits credit card laundering[51] and other forms of assisting and facilitating sellers or telemarketers engaged in violations of the TSR.[52]

The TSR also protects consumers from unwanted telephone calls and text messages. With narrow exceptions, it prohibits telemarketers from calling consumers whose numbers are on the DNC Registry or who have specifically requested not to receive calls from a particular entity.[53] (Each of these duties is discussed in greater detail below.) Finally, the TSR requires that telemarketers transmit to consumers' telephones accurate caller ID information[54] and places restrictions on calls made by predictive dialers[55] and calls delivering prerecorded messages.[56]

The FTC definition of telemarketing[57] means the TSR does not generally cover unsolicited calls you receive from a consumer. If you "upsell" during that call, however, it will be covered regardless of who initiated the call.[58] (Note that the FCC rules apply only to calls that are initiated by you or someone acting on your behalf.)

If your dealership engages in interstate telemarketing to consumers, most of your compliance responsibilities under the FTC rules are already covered by the FCC requirements.[59] However, the FTC rules create several additional compliance responsibilities for dealerships that engage in interstate telemarketing. These include prohibitions on certain deceptive and abusive telemarketing acts or practices such as failing to truthfully disclose certain information before a customer pays for goods or services over the phone. The FTC rules also impose specific recordkeeping requirements.[60]

In April of 2024, the FTC further amended the TSR to prohibit deceptive and abusive practices in all business-to-business (B2B) calls. The original TSR exempted B2B calls (other than those selling office and cleaning supplies, which the Commission considered the "most significant B2B problem area" at the time). It also updated the TSR's recordkeeping requirements, now requiring that most records related to calls regulated by the TSR be kept for five years rather than previously mandated two years, including call detail records, records of consent, and records of compliance with the DNC Registry. The TSR does allow dealers and telemarketers to allocate responsibility for recordkeeping.

The TSR also provides exemptions for 1) interstate calls and 2) calls that do not involve a sale until a later face-to-face meeting. Most dealers do not complete a transaction/sale over the phone, but rather sales occur after a later face-to-face meeting at the dealership. Therefore, your additional compliance responsibilities under the TSR are significantly reduced if 1) you only make intrastate calls and 2) for interstate calls, you do not complete the sale of your goods or services, or require payment or authorization of payment, until after you have made a face-to-face sales presentation.[61] This exemption should apply to much, if not all, of the customary sales transactions a dealership conducts.

FCC Telemarketing Restrictions: The TCPA[62]

On December 20, 1991, Congress enacted the TCPA in an effort to address a growing number of telemarketing calls and certain telemarketing practices thought to be an invasion of consumer privacy and even a risk to public safety. The TCPA is a very broad statute. It restricts the use of automatic telephone dialing systems, artificial and prerecorded voice messages, and the transmission of unsolicited advertisements to fax machines. It also imposes certain identification requirements on the use of those devices and directed the FCC to develop rules to implement these restrictions and to protect the privacy rights of residential telephone subscribers. The TCPA additionally directed the FCC to consider methods to accommodate telephone subscribers who do not wish to receive unsolicited advertisements, including live voice solicitations and text messages.[63] This included specific authority to "require the establishment and operation of a single national database to compile a list of residential subscribers who object to receiving telephone solicitations."[64] This database is now known as the DNC Registry.

DNC Registry

Pursuant to the FTC's TSR and the FCC's TCPA authority, the DNC Registry was created. It allows consumers to indicate their desire not to receive telephone solicitations and it means that marketers[65] are prohibited from initiating a telephone solicitation to a consumer who has registered their phone number on the DNC Registry unless an exemption applies. Registered telephone numbers remain on the DNC Registry indefinitely. The DNC Registry allows for registration of both landline and cellphone numbers.

The DNC Registry's do not call restriction, however, only applies to telephone *solicitations*, or phone calls and text messages that are made "for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services."[66] Many of the day-to-day calls that dealers make to consumers may fall outside of this definition.[67] You need to exercise caution, however. Calls that are placed to conduct surveys or market research, or to notify consumers about recalls (see note below), or for other non-solicitation reasons, can be brought within this definition if they serve as a pretext to an otherwise prohibited advertisement or a means of establishing a business relationship.

The FTC maintains the DNC Registry, but both the FCC and the FTC enforce it. The requirements related to the DNC Registry do not apply to calls that you make to other businesses or to calls that you receive from consumers. However, be aware that several states allow businesses to add their telephone numbers to state DNC lists.[68]

Calls About Safety Recalls Not Prohibited

The national DNC rules do not prohibit dealers from calling consumers to alert them that their vehicles have been recalled because of a product safety or defect concern and to schedule appointments to correct the defect. The FCC granted a 2005 NADA petition clarifying the rules and noted that the clarification applies when the defect repair work involves no cost to the consumer.

That means that if you make a call about a recall that also encourages the purchase of other goods and services (upselling), it "will be deemed a prohibited telephone solicitation."

Also, note that this clarification technically applies only to the national DNC rules because the calls are not considered solicitations. The separate restrictions under the TCPA that requires consent for text messages, prerecorded calls, calls made to cellphones, or calls made using an auto dialer still apply.

Exceptions

The national DNC restrictions do not apply to consumers (1) with whom you have a qualifying "established business relationship", (2) from whom you have received prior express permission to receive such calls, or (3) with whom the person making the call has a personal relationship.

Established Business Relationship Exception

The TCPA defines "established business relationship" (EBR) as:

1. "a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber's purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call;
2. or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party."[69]

The first exemption is commonly referred to as a "Customer EBR" because the consumer is a current customer or was a customer within the past 18 months. The second exemption is commonly referred to as an "Inquiry EBR" because a consumer has made an inquiry or submitted an application to a business within the past three months. Based on an EBR, a dealer can call a Customer EBR for up to 18 months from the date of the last payment, transaction, or shipment between the consumer and dealership and an Inquiry EBR for up to three months starting from the date the consumer makes the inquiry or application.

It is important to remember that a consumer whose number is not on the DNC Registry can still prohibit individual dealerships from calling by asking to be put on the dealership's own internal do not call list, which is discussed in more detail below. Also, this exemption only permits a dealer to place live calls to consumers on the DNC Registry; it does not give permission to use an Automated Telephone Dialing System or a prerecorded message, as is more fully discussed in the subsequent *Other Telephone-Related Restrictions* section. It is important to ensure that any telemarketer or other vendor share with the dealership DNC requests it receives when calling on behalf of the dealership.

Prior Express Permission Exception

A dealership may place a telemarketing call or text to a person who has provided prior express permission to receive such calls—even if their number is on the DNC List. The express permission must be evidenced by a written agreement, signed by the consumer, which states that the consumer agrees to be contacted by you and that includes the telephone number to which the calls may be placed.[70] The consumer's consent must be "clear and conspicuous" and not buried "in the fine print of a document where the consumer might not notice it and must include the name of the dealership to which consent is provided."[71] The consumer's prior express permission shall remain in effect as long as the consumer has not asked to be placed on your company-specific do not call list (discussed below). If the consumer subsequently requests not to be called, you must cease calling the consumer even if the consumer continues to do business with you.[72]

You may not call consumers on a do not call list to request their written permission to receive telemarketing calls from you. You must obtain their prior express permission through other means, such as direct mail or while in the dealership by signing a consent form. To the extent that you seek their prior express permission through electronic means, you should note that the term "signed" includes an electronic or digital form of signature, to the extent that it is recognized as a valid signature under applicable federal or state contract law, including the E-SIGN Act.[73]

Calls and Texts to Consumers with Whom the Dealer has an EBR

A company with which a consumer has an EBR may call or text the consumer for up to 18 months after the consumer's last purchase, last delivery, or last payment, unless the consumer asks the company not to call again. In that case, the company must honor the request not to call.

If a consumer makes an inquiry or submits an application to a company, the company can call for three months. Once again, if the consumer makes a specific request to that company not to call, the company may not call, even if it has an EBR with the consumer.

Work with counsel to consider the means to seek such consent from any consumer who provides a phone number to the dealership. For example, you might use a separate signed consent box on a signed repair order or credit application that states that the consumer consents to receive phone calls from you. Ideally, this consent would be combined with the TCPA consent discussed at length below.

Personal Relationship

The DNC Registry rules also do not apply to telephone solicitations to persons with whom the caller has a personal relationship—i.e., an individual personally known to the caller. This includes family members, friends, and acquaintances of the caller. It does not include the names of referrals that have been provided by family members, friends, or acquaintances.[74]

Be careful in relying on this exemption.[75] The FCC states:

> *"In determining whether the caller is considered a friend or acquaintance of the caller, we will look at, among other things, whether a reasonable consumer would expect calls from such a person because they have a close or, at least, firsthand relationship. If a complaining consumer were to indicate that a relationship is not sufficiently personal for the consumer to have expected a call from the marketer, we would be much less likely to find that the personal relationship exemption is applicable. . . ."*[76]

The FCC further cautions that "any individual or entity relying on personal relationships abusing this exemption may be subject to enforcement action."[77] To the extent that you rely on this exemption to make a telephone solicitation to someone who has registered their phone number on the DNC Registry, it is important to maintain contemporaneous records that enable you to demonstrate the nature of the relationship between the caller and the consumer at the time the call was placed.

The DNC Registry requirements also apply to SMS and text messages. To emphasize this point, in 2024, both the FTC and FCC announced that the DNC Registry requirements have always applied to text messages and SMSs.[78] Therefore, before initiating a non-exempt text or SMS campaign, check all number against the DNC Registry.

Wireless Numbers and the DNC Registry

Misinformation has widely circulated regarding wireless numbers and the DNC Registry. In particular, it has been suggested that a separate DNC registry is to be established for wireless numbers, or that DNC restrictions do not apply to wireless numbers. These suggestions are false. **The federal government does not maintain and is not establishing a separate Do Not Call list for wireless phone numbers.** Wireless phone subscribers have always been able to add their personal wireless phone numbers to the DNC Registry, and you do not need to check more than one federal list when engaging in telemarketing solicitation.

If an exception does not apply, ensure that you have checked a phone number against the DNC Registry before making any telephone solicitation. The DNC Registry is widely available, but subject to certain procedures and restrictions. As noted above, the FTC maintains the DNC Registry and information about accessing and using the registry can be found here. See also Appendix C, which contains details from the FTC about the registry and how to access and use it.

DNC Registry: FAQs

What information is contained in the DNC Registry and what restrictions apply to its use?

The only personal identifying information that is maintained by the DNC Registry is the consumer's telephone number. Consumers may register their wireless telephone numbers in addition to landline numbers. The registry does not include the consumer's name or address. No person may sell, rent, lease, purchase, or use any list established to comply with the National DNC rules or company-specific do not call rules except as necessary to comply with the DNC requirements.

How do you access the DNC Registry?

The FTC has developed a fully automated, secure website (https://telemarketing.donotcall.gov) dedicated to providing this information to sellers and telemarketers. The telephone numbers are sorted by area code and can be provided electronically in two forms. Businesses can download a complete listing of telephone numbers from a particular area code, or a shorter list containing only those phone numbers that have been added or removed since the business's last download. In addition, the national database provides a single-number lookup feature whereby you can enter a few telephone numbers to determine whether any of those numbers are included on the national registry. Consult the FTC's website for additional details.

What information must a business provide to gain access to the DNC Registry?

Prior to gaining access, you are required to certify, under penalties of law, that you are accessing the registry solely to comply with the do not call rules or to prevent calls to telephone numbers on the registry. You also need to provide some identifying information, such as company name and address, company contact person, and the contact person's telephone number and email address. After you pay the required fee (if any), the FTC will provide you with a unique account number, called a "Subscription Access Number" (SAN), that affords you direct access to the national registry throughout the annual period. If another entity or service provider is accessing the system on your behalf, it will need to identify your dealership by using its SAN. If the dealership's SAN is not used, the dealership has not met its requirement to access the DNC registry prior to making non-exempt calls.

How often will the dealership need to download an updated do not call list?

After you have enrolled in the registry, you must synchronize your lists with an updated version of the registry at least every 31 days.[79]

Is there a cost for accessing the DNC Registry?

Sellers and telemarketers must pay an annual access fee based on the number of area codes that they download. There is no annual fee for the first five area codes downloaded, but there is an annual fee for each additional area code. The FTC sets a maximum fee for sellers who wish to access the entire national registry.

After you receive your account number, you must specify the area codes that you wish to access. You will be able to access the phone numbers from the area codes you selected at any time during the annual period, which is measured from the first day of the month in which you paid the annual fee.

The FTC periodically reexamines and adjusts these fees. Consult the website here for additional information. Fees are payable via credit card, debit card, or electronic funds transfer. In 2025, this fee will increase to $80 per area code up to a maximum annual fee of $22,038.

Your dealership's divisions, subsidiaries, or affiliates must pay a separate annual fee to access the national registry if the entity is separately incorporated or, for a non-corporate entity such as a partnership, is a similarly distinct legal entity and the entity has a different name or markets under a different name. If the name difference reflects only a geographic distinction, the entity is not required to pay a separate fee for access.[80]

The FTC rules prohibit you from initiating a telemarketing call to any consumer unless you first have paid the annual fee required to access the national registry. This restriction does not apply, however, if all your telemarketing calls are to persons with whom you have an established business relationship or prior express permission to call. You are also prohibited from entering into cost-sharing arrangements with others for the purpose of evading or reducing the annual fee that you must pay to access the registry.[81]

National Do Not Call "Safe Harbor"

Should you erroneously call a consumer whose number is registered on the DNC list, there is a "safe harbor" from liability.[82] To fall within the safe harbor, you must be able to demonstrate: 1) that the call was the result of error, and 2) that as a part of your standard business practices you fulfill the following obligations:

- **Written Procedures**. You should have established and implemented written procedures to comply with the national do not call requirement. While there is no specific requirement that you have a formal written dealership policy, having such a policy is not only prudent, it could insulate you from liability for an inadvertent failure to comply.
- **Training**. You must have trained your personnel, and any entity assisting in your compliance, in those procedures. It is not enough that you have written procedures in place; you must be able to show that those procedures

have been and are implemented in the regular course of business.

- **Recording**. You must have recorded and maintained a list of telephone numbers that you may not contact. This is your "company-specific do not call list" (discussed below).

- **Accessing the Database**. You must have a process in place that updates your do not call list no more than 31 days before calling a consumer, and you must maintain records documenting this process.

- **Monitoring and Enforcing**. You must monitor and enforce compliance with your written procedure. This includes taking disciplinary action for non-compliance.

- **Purchasing the Database**. You must have a process in place that ensures that you do not sell, rent, lease, purchase or use the national do not call database, or any part thereof, for any purpose other than to comply with federal and state requirements to not call telephone numbers registered on the national database. You may not enter into cost-sharing arrangements with other telemarketers for the purpose of evading or reducing the annual fee you must pay to access the database.[83]

> Several of these obligations are similar to requirements for your company-specific do not call responsibilities (see below). We have provided a sample written policy in Appendix B to assist you with all requirements. The sample is only a starting point. The written procedures you adopt must be appropriate to the operations of your dealership. In addition, in order to take advantage of the safe harbor outlined above, you should ensure that all aspects are met and documented. For example, training should be part of a written policy, conducted with employees, and then documented (content, participants, other details). The same is true for the other requirements, such as monitoring and enforcing.

What Does "Error" Mean?

If you have written do not call procedures, and implement them, you will not be liable for a TSR violation either if a subsequent call is the result of "error." But you may be subject to an enforcement investigation, which would focus on the effectiveness of the procedures in place, how they are implemented, and if all personnel are trained in do not call procedures. If there is a high incidence of "errors," it may be determined that the procedures are inadequate to comply with the Rule's do not call requirements, the safe harbor is not fulfilled, and the calls violate the Rule. If there is a low incidence of "errors," there may not be a Rule violation. The determination of whether an excusable "error" occurs is based on the facts of each case. To ensure that you have adequate do not call procedures, it is recommended that you test them periodically for quality control and effectiveness.

Company-Specific Do Not Call Lists

In addition to the DNC Registry requirements, you are also prohibited from placing telemarketing calls to consumers who have asked you not to call them.

> **NOTE** that unlike the national DNC rules outlined above, the "company-specific" DNC rules do, in fact, *require* that you have policies and procedures to comply. Indeed, **you are prohibited from making any telemarketing calls until you have instituted the procedures delineated below.**

If you engage in telemarketing, you must institute the following procedures to record and honor company-specific do not call requests[84]:

- **Written Policy**. You must have a written policy, available upon demand, for maintaining a company-specific do not call list. Your policy should address the following elements:
  - **Training**. You must inform and train your personnel who are engaged in any aspect of telemarketing on the existence and use of your company-specific do not call list. The training should also include a review of the national do not call list requirements and other telemarketing restrictions.

– **Recording Do Not Call Requests**. You must record and honor all customer requests not to receive telemarketing calls from you or someone acting on your behalf.[85] You must:

  - Develop a company-specific do not call list that records the customer's name (if provided) and telephone number at the time the request is made.

  - Honor such requests "within a reasonable time" from the date the request is made. This must occur within 10 days of the date of the request or sooner if you have the capability to honor the request in less than 10 days.[86]

  - Honor and maintain records of a customer's request not to receive further telemarketing calls for a period of five years.[87]

– A consumer's do not call request terminates an EBR for purposes of telemarketing calls even if the consumer continues to do business with you.

– A consumer's do not call request does not apply to affiliated entities unless the consumer requests that the affiliate be included, or the consumer reasonably would expect the affiliate to be included given the identification of the caller and the product advertised.

– You also are prohibited from sharing or forwarding to any party (other than an affiliated entity or someone making a telemarketing call on your behalf) the consumer's request not to be called absent prior express permission from the consumer.

- **Identifying Yourself**.[88] In any telemarketing call that your dealership makes, the caller must:

  – Promptly provide the caller's name

  – Promptly provide the name of your business.

  – Identify the telephone number or address where you may be contacted (and which may not be a 900 number or other number for which the customer would incur charges that exceed their local or long-distance transmission charges).

Other Telephone-Related Restrictions

You may not initiate a telephone solicitation to a consumer before 8 a.m. or after 9 p.m. local time at the called party's location. Both the TCPA and the TSR prohibit solicitation calls outside of the hours of 8:00 a.m. to 9:00 p.m. in the called party's time zone.[89] Additionally, many state laws impose shorter calling hours and prohibit placing calls on holidays or during a declared state of emergency. Always check the allowable calling hours and days for the states you are calling into.

You must transmit, and are prohibited from blocking, your Caller ID information. The phone number that you transmit may include any number associated with you that allows the consumer to identify you. This includes the number assigned to you by your carrier, the specific number from which your sales representative placed a call, the number of a party that made the telemarketing call on your behalf, or your customer service number.[90] The number must permit an individual to make a do not call request during your regular business hours. You or the person placing a telemarketing call on your behalf must be able to record do not call requests. Therefore, if the person answering the calls at the caller ID number transmitted is not the same person who made the telemarketing call, or if you are using an automated system to answer the calls, you nevertheless are responsible for ensuring that your company-specific do not call responsibilities are satisfied.[91] There are no exemptions to this requirement.

Fax advertising restrictions and requirements. The TCPA also contains several restrictions and requirements with respect to commercial faxes. They are discussed below.

Restrictions on the use of autodialers and calls with artificial or prerecorded voice messages. The FCC auto dialer rules prohibit calls using an Automated Telephone Dialing System" (ATDS), which is commonly referred to as an "autodialer" to call a cellular telephone service (or any service for which the called party is charged for the call[92]) unless the caller has prior consent. If the call is for marketing purposes, the consent must be in writing. The requirements for this written consent are outlined below.

An ATDS is defined as *"equipment which has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator and to dial such numbers."* The TCPA and the FCC rules impose restrictions on the use of autodialers and prerecorded or artificial voice messages. Consumer claims and litigation related to the use of autodialers have exploded in recent years. While courts have recently provided guidance that should provide some relief from abusive litigation, this area remains fraught with risk. Additionally, several states' telemarketing laws have definitions that are more restrictive than the TCPA's ATDS definition. For this reason, it is recommended that you consult with your legal counsel before reaching a conclusion about whether a system is an ATDS/autodialer.

Autodialer Background—and Supreme Court Resolution

The TCPA rules on calling telephone numbers using an ATDS/autodialed or prerecorded calls were historically aimed at combating so-called "robocalls," which employed automated technology that randomly or sequentially generated telephone numbers and then dialed them or initiated a call using an artificial or prerecorded voice. Given the changes and advances in technology since the inception of the TCPA in 1991, which have expanded the traditional capabilities and functions of telephone equipment, a great deal of controversy erupted about the exact contours of what is or is not an ATDS and difficulties arose due to courts' differing interpretations of ATDS as applied to current technology. These technological changes, along with an expansive view taken by the FCC and several federal and state courts over the years, had broadened the interpretation of what constitutes an ADTS and resulted in this restriction taking on very widespread applicability.

In April 2021, the Supreme Court in *Facebook, Inc. v. Duguid*[93] largely resolved this dispute, ruling unanimously in favor of a more restrictive interpretation of what type of dialing system constitutes an ATDS. In doing so, it rejected the broader definition of ATDS, requiring instead that the dialing system actually use a random or sequential number generator.

Despite the Supreme Court's decision, plaintiffs continue to bring cases alleging that dialing systems that use systems to sequentially order telephone numbers to be dialed constitute an ATDS. It is likely dialing systems that dial from a list of curated numbers are not an ATDS, but because the risk of using a system that could unintentionally be an ATDS is so great, automated dialing systems should be reviewed by legal counsel prior to initiating a calling campaign.

Determining When You're Calling a Cellphone

As noted above, federal law places specific limitations on calls made to cellular telephones. But in today's world cellphones are ubiquitous, and many consumers use only a cellphone (and no landline), providing that number as their "phone number" or their "home phone." Many dealers reasonably ask how they can determine when they are calling a cellular phone. The answer is far from clear. There are reportedly services and databases that will allow you to make that determination, but NADA has not been able to confirm the existence or efficacy of any such service. Absent that confirmation, the most conservative compliance advice is to clarify with your customers at the time you obtain the phone number whether that number is a landline or a cellular phone. You should clarify that on all your forms (credit applications, repair orders, intake sheets, etc.). Furthermore, make sure to obtain the requisite consent to contact the consumer at the provided phone number, using whatever means you intend. If the customer denies permission, honor that request, or delete that number from your records.

Other Text Messaging Considerations

Background

Text messaging has become the preferred method of communication for many consumers today. It is easy, fast, and convenient, but it also raises unique and serious compliance concerns. That is because text messages are deemed to be "phone calls" according to the TCPA and are thus subject to the same TCPA restrictions as those for phone calls.[94]

Many telemarketers are unaware that text messages should (usually) be treated like phone calls. That lack of awareness —combined with the explosion in text communications, the FCC's heightened consent requirements, the TCPA private right of action,[95] and the availability of statutory damages ranging from $500 to $1,500 per unsolicited call or text message[96] —has led to a flood of TCPA lawsuits against businesses across the country, including dealers.[97] For dealers, understanding and complying with text messaging restrictions is critical.

What Is a Text Message?

SMS text messages are considered "phone calls" under the TCPA. The FCC has also clarified that internet-to-phone text messages, including those sent using an interconnected text provider, are also text messages/phone calls and therefore require consumer consent (see below).[98] But text messages may also be considered emails, and thus subject to CAN-SPAM.

A Text Can Be Considered Email

A text message may be considered an email subject to CAN-SPAM and all the restrictions and requirements outlined above if it is sent to an email address—that is, if it has an internet domain name after the "@" symbol (whether the email address is displayed or not). The FCC has required all wireless service providers to provide all internet domain names used to transmit electronic messages to wireless devices and has published a list of registered domain names (https://www.fcc.gov/consumer-governmental-affairs/about-bureau/consumer-policy-division/can-spam/domain-name-downloads) to which marketers may not send unsolicited email.

The FCC has enacted a restriction under CAN-SPAM that prohibits sending any commercial text message that is considered an email to a wireless device without "express prior authorization," as well as meeting all other CAN-SPAM requirements (your mailing address, cost-free opt-out mechanism, etc.).[99]

A Text Is Considered a Phone Call

Since the FCC has concluded that TCPA protections encompass both voice and text calls, as noted above, text messages sent to cellphones are treated the same as phone calls to cellphones. This means:

- You cannot send a commercial text to a phone number that is on the DNC Registry (unless an exception applies) or your company-specific do not call list.
- You cannot send any text whatsoever—commercial or not, whether the number is on a DNC list or not—using an autodialer/ATDS unless you have "prior express consent."
- You cannot send a marketing text message using an autodialer/ATDS to any recipient unless you have "prior express written consent."

Autodialed Text Messages

The TCPA and the FCC's implementing rules prohibit making any non-emergency call using an ATDS without prior express consent.[100] If the call includes or introduces an advertisement or constitutes telemarketing, prior express written consent is required.[101]

The Supreme Court's 2021 *Facebook v. Duguid* decision limiting the scope of what type of dialing system constitutes an ATDS (outlined above) applies equally to text messages.

Text Message Best Practices

CTIA, a trade group representing wireless carriers, issued best practices for the use of text messages in marketing. As part of those best practices, a business should obtain consent for the text messages and advise that message and data rates may apply. Additional best practices apply, and you should consult the CTIA standards prior to engaging in text message campaigns, which can be found in the CTIA Messaging Principles and Best Practices and CTIA Short

Code Monitoring Handbook.[102] Many carriers and texting platforms refuse to allow text message traffic that does not meet the CTIA best practices. Additionally, carriers and texting platforms are requiring senders to register all texting campaigns with the Campaign Registry, which is a central hub for registering messaging campaigns. *See* https://www.campaignregistry.com/ for details about registration.

What Is "Consent?"

You must obtain consent before calling or texting a recipient. The type of consent depends on the nature and type of communication. Briefly, you must obtain:

Prior Express **Written** Consent (written consent) for all marketing or solicitation:[103]

- Calls made to cellphones using an ATDS.
- Text or SMS messages using ATDS.
- Calls made to residential landlines using a prerecorded message.

Prior Express Consent (express consent) for all:[104]

- Transactional or informational calls made to cellphones using ATDS or a prerecorded message.
- Transactional or relationship text messages ATDS.

It is important to understand the differences between the two types of consent—written and express consent—required to make certain calls or to send specified types of text messages. The prior express written consent standard for marketing text messages is the same as that for autodialed or prerecorded marketing phone calls. Similarly, the prior express consent standard for non-marketing text messages sent using an autodialer/ATDS is the same as that for non-marketing calls to cellphones.

Prior Express Written Consent vs. Prior Express Consent: The Differences

Prior Express Written Consent

This standard requires written consent using a physical or electronic document. If the consent is electronic, it must meet the requirements of the federal ESIGN Act.[105]

In addition, the express written consent must be unambiguous, meaning that:

- The consumer must receive a "clear and conspicuous disclosure" to receive future calls or texts that deliver autodialed and/or prerecorded telemarketing messages on behalf of a specific dealer/entity.
- The consumer's consent is not a condition of purchase.
- The consumer must designate a phone number at which they can be reached.

Sample Prior Express Written Consent Language is provided below. The sample language is for illustrative purposes only. Your dealership's consent language must be reviewed by your attorney prior to relying on it for compliance:

> I consent to receive marketing text messages and phone calls, including those made using an autodialer and prerecorded messages from [*NAME OF DEALER*] at (___)___-____ [*telephone number*].
>
> I understand that consent is not a condition of purchase and that Msg & data rates may apply.
>
> Signature ______________________________
>
> **Note:**
> If collecting Prior Express Written Consent via email or other electronic means, consider adding:
>
> By clicking ['*Agree,*'] I agree by electronic signature to:
>
> (1) the Electronic Disclosure Consent;
>
> (2) [*Prior Express Written Consent language*]; and
>
> (3) the Privacy Policy and Terms.

That said, it is prudent to obtain some affirmative indication from the consumer for this disclosure rather than simply providing a notice. If a dispute concerning written consent arises, the dealer bears the burden of proof to demonstrate that a clear and conspicuous disclosure was provided and that the consumer unambiguously consented to receive telemarketing calls to the number specifically provided. Dealers must maintain each consumer's written consent for at least five years.[106]

The FCC Closes the Lead Generation Loophole

On January 24, 2025, the U.S. Court of Appeals for the Eleventh Circuit Court of Appeals overturned the "lead generation loophole" rule. As of this writing, the requirements in this section to obtain one-to-one consent are not in effect. All other prior express written consent and prior express consent should still be followed.

In early 2024, the FCC announced that it was closing the so called "lead generation loophole." The loophole that the FCC was referring to was websites that use hyper-linked "marketing partner" lists that purport to obtain consent for hundreds (if not thousands) of companies to call a consumer based on a consumer's single "click" on a website form.[107]

The TCPA's Prior Express Written Consent requirements apply to: (1) marketing calls/texts made to cell phones using an ATDS or prerecorded message; and (2) prerecorded marketing messages delivered to residential numbers. Under the Supreme Court's decision in *Facebook*, modern phone systems and text platforms likely do not qualify as an Automatic Telephone Dialing System (see previous section "Autodialer Background—and Supreme Court Resolution").

Prior Express Written Consent is required for all marketing calls using an autodialer/ATDS or a call that includes a prerecorded or artificial voice. The 2024 TCPA Prior Express Written Consent revisions require that:

- **Consent must be obtained on a *one-to-one* basis.** Lead generators cannot list several sellers in a single consent form or use "marketing partners" hyperlinks to obtain consent for multiple sellers. Lead generators can, however, provide a list of sellers and require consumers to individually check a box for each seller they want to contact them.
- **Calls/texts must be logically and topically related to the website where the consumer provided consent.** It has always been a risky practice to obtain "consent" to call/text consumers on a website that is not directly related to a product or service the seller offers. The new order highlights this risk (but does not adopt a precise definition of "logically and topically related").

The rule revisions become effective January 27, 2025. However, it is important to note that any consent language on a webform must ***clearly and conspicuously*** disclose to the consumer that by taking an action (such as selecting a call-to-action box on a webform), the consumer is agreeing to provide consent for *all* the sellers to call. Before relying on a lead form to obtain consent for a dealership to place calls to a consumer, it is highly recommended that you consult with legal counsel. If the lead form does not meet the TSR's and TCPA's consent requirements, then all calls violate those laws.

Prior Express Consent

Prior express consent is a less stringent standard required by the TCPA for non-marketing calls and texts made using an ATDS or prerecorded message. A consumer can provide consent by any means, written or otherwise. Of course, without a written record, proving that you obtained consent can be difficult. That said, the FCC has stated that for transactional text messages and calls using an ATDS or prerecorded message, "persons who knowingly release their phone numbers have in effect given their invitation or permission to be called at the number which they have given, absent instructions to the contrary."[108]

But that does not mean that such permission is limitless. Indeed, such consent is only valid to the extent that it relates to the same subject matter or transactional context that is covered by the challenged calls or text messages. Dealers relying on prior express consent must remember

Compliance Tip

While it may be adequate "prior express" consent for a consumer to voluntarily provide their cellphone number to you, it may not be wise to rely on that alone. Consider including language on your applications, repair order forms, etc., that makes it clear that by providing a phone number, the consumer is consenting to receiving calls from your dealership. This is not required (and does not constitute "express written consent"), but it avoids confusion and provides clarity for you and your customer about calls to their cellphone. It also provides you with tangible evidence of consent in the event any call recipient challenges your practices under the TCPA.

that receiving such consent from consumers does not open the door to any future communication, even if the business believes the content may be of interest to those individuals. Subsequent communications must relate to the same subject matter and transactional context in which consent was given.

Compliance Tip

If you use prerecorded calls for non-marketing reasons—to remind customers about pre-existing service appointments, for example, or to notify them that their vehicles are ready for pick-up—your compliance responsibilities depend on whether you are calling a cellphone or a landline. As it can be difficult to determine whether you are calling a cellphone, obtain consent (ideally written consent, but it is not required) from consumers at the time they provide their phone numbers regardless of the type of phone number they are providing. For service customers, obtain consent on the repair order and ask for a separate customer signature or initials (though this is not required) indicating acceptance. For example, you could include on the form language such as: "By providing your cellphone number to [*INSERT NAME OF DEALERSHIP*], you consent to receive telephone calls, including autodialed or prerecorded calls and text messages at that cellphone number. Initial here _____." If you choose to seek consent meeting the express written consent requirements for marketing calls, the circumstances of that consent must meet those higher standards.

The NADA TCPA infographic in Appendix A outlines the level of consent required under the TCPA for autodialed and prerecorded calls and texts. Note that it *does not* cover do not call compliance issues.

Revocation of Consent

Just as with phone calls, a text message recipient who has provided consent may revoke that consent at any time, and by any reasonable mechanism. This means that you may not require a specific method or process for revocation. In a 2024 Order, the FCC codified its prior guidance and strengthened a consumer's ability to revoke consent so that "any reasonable method to clearly express a desire not to receive further calls or text messages from the caller or sender of a text message" constitutes a valid revocation of consent.[109]

Additional Text Message Considerations

Many text messaging service providers have adopted an approach that allows—or seemingly requires—a consumer to respond "STOP" or a similar specific phrase to revoke consent for future text messages. While it is acceptable to allow consumers to text "STOP" or another unambiguous message to revoke consent, dealers should work with their vendors to ensure that the system is not set up to *require* "STOP" or any other specific revocation language. It's okay for a text stating "STOP" to indicate revocation of consent, but it must not be the *only* way consumers can do so. Consumers who have provided prior consent to receive calls or texts can revoke consent through any reasonable means.[110] If a consumer sends a text stating, *"Please do not send me any more text messages"* or similar unambiguous revocation of consent, the dealer must honor that, and should be wary of any automated system that is unable to detect such requests. Consumers can also call, email, or even stop by the dealership and verbally revoke consent, and the dealer must have a system in place to ensure that revocation is honored.[111]

Text Messages Sent in Response to a Customer Who Has Texted You

The FCC has recognized a limited exception for a one-time text message sent immediately after a consumer's request for the text.[112] Such texts do not violate the TCPA or FCC rules or regulations—even without meeting the written consent requirements outlined above—so long as the text:

- Is requested by the consumer;
- Is a one-time-only message sent immediately in response to a specific consumer request; and
- Contains only the information requested by the consumer with no other marketing or advertising information.

In support of this exemption, the Commission noted that consumers welcome such messages. By stressing that the ruling was strictly limited to one-time, on-demand text messages, the FCC did not extend the exemption to:

- Recurring text message programs; or
- Text messages that have not been expressly requested by the consumer.

The FCC reasoned that such a text is not a marketing text, but simply a response to a consumer request. Be careful, however, before relying on this exception for responsive texts generally, as the FCC expressly limited it to situations where "the on-demand text message has been expressly requested by the consumer in the first instance."[113] This seems to indicate that unless the customer has expressly asked for a text response, this exception may not apply.

This interpretation also appears to indicate that any other text, even in response to a text sent by a consumer to you (if you are using an "autodialer"), could violate TCPA without the requisite written consent (or an explicit request to send a responsive text). This means that dealers face some TCPA risk in sending *any* commercial texts to consumers, even in response to texts they receive from the consumer, until they have obtained the requisite written consent.

Text Messaging at the Dealership

While the 2021 Supreme Court TCPA decision brought some welcome clarity to text messaging communications, risks remain when sending any text message without first having the required written consent. Given that customers text dealers all the time and generally prefer being contacted via text, the ubiquity of text messaging raises serious legal risks. To be responsive to customers and comply with the law, you must work with your counsel to implement a program that ensures you are not using a system or software that is an "automatic telephone dialer" under the law,[114] and/or that you obtain the proper consent from *all customers* and ensure that you do *not send any text message* to any customer from whom you do not have consent.

Seek Written Consent from 100% of Your Customers

Consider instituting processes to obtain adequate written consent from every customer and ensure that no text messages are sent without confirming that consent has been provided.

Remember that you can obtain written consent either on paper or electronically. In the dealership, you likely need to employ multiple methods for obtaining consent.
For example, because service customers are generally physically present in the store, consider obtaining signed consent in connection with each repair order (and ensure that you track those customers who refuse to provide such consent). At a minimum, this written consent should include the prior express consent language suggested above. If you wish to send any commercial or marketing text messages to that customer, obtain the prior express *written* consent.

Similarly, for customers who are physically present in the new- or used-vehicle sales department, consider a similar process to ensure that when a customer provides a phone number, they also sign the prior express written consent.

For vehicle customers who are not physically present at the dealership, obtain ESIGN-compliant electronic consent prior to any text message communication. Ensure that such consent is obtained (or has been obtained) at the time that a cellphone number is provided. If the consumer does not consent, work with counsel to determine whether a cellphone number should be obtained or maintained without consent.

Send All Text Messages Via Dealership System

One compliance challenge with text messaging is that your employees generally have their own personal devices and are accustomed to communicating via text message, making it difficult to ensure compliance with national and company-specific do not call requirements.[115] Ensure, through training and technology, that no text message is sent to any dealership customer unless it is sent and tracked within the dealership system. Sending and tracking through the dealership system ensures you have the requisite consent prior to texting, and allows you to track revocation of consent.

Conduct Due Diligence on Service Providers

There are many technology vendors who can help you set up a text message compliance system. Work with counsel and exercise caution in selecting the appropriate vendor. Do not take vendor assurances that they are "TCPA-compliant" at face value and be wary of claims that a technological tool alone can ensure TCPA compliance for text messaging. This is a complicated area of the law that requires not only technical tools, but also training and enforcement by the dealer to assure compliance.

Reassigned Numbers

Millions of wireless phone numbers are reassigned every year as subscribers change providers or simply change their numbers without notification. What about texts or phone calls to those numbers to which you had previously obtained consent, but which now belong to other people?

The FCC has made it clear that the consent you obtained from the former number owner is not applicable to a subsequent text or call to the reassigned owner, even though you had no notice that the number was reassigned. Indeed, a number of class action lawsuits have been filed alleging violations of the TCPA's consent requirements based on just such calls/texts to reassigned numbers.

In response to this dilemma, the FCC commissioned the Reassigned Number Database.[116] Dealerships can use the database to determine whether a telephone number may have been reassigned. This prevents them from calling consumers for whom they don't have consent for such calls because the person who now has the reassigned number did not provide the original consent.

Prerecorded Voice Messages

In addition to the autodialer restrictions, the TCPA also contains prohibitions on phone calls that contain an artificial (including a call using artificial intelligence) or prerecorded voice message. Specifically, you cannot make any call with an artificial or prerecorded voice message to:

- A cellphone, unless:
  - for marketing calls, you have ***prior express written consent***;
  - for non-marketing calls, you have ***prior express consent***; or
- A landline for marketing purposes, unless you have ***prior express written consent***.

Non-marketing calls that contain an artificial or prerecorded voice may only be made to landlines if accompanied by an automated opt-out mechanism, and more than three such calls cannot be made in any 30-day period without prior express consent.[117] See the "Noncommercial Prerecorded Calls to Residential Lines" section below for more details.

In the dealership context, it is not uncommon to use prerecorded or artificial voice messages to confirm appointments or notify consumers that their vehicle is ready for pick-up in the service department. You should ensure that these messages comply with the restrictions.

Ringless Voicemail

Over the past several years, callers have increasingly used a technology known as "ringless voicemail" or "direct-to-voicemail drops" to contact consumers. The technology allows companies to deposit a recorded message directly into a consumer's voicemail without causing the consumer's phone to ring. The consumer receives only an indicator that a voicemail is ready to be retrieved. Several companies provide ringless voicemail services and market them as a cheap and efficient way to supplement businesses' outreach efforts.

Before using ringless voicemail, it is imperative to validate that the dealership has consent to call all consumers on the list to be called. The FCC emphasized this point in a 2022 Declaratory Ruling and Order, which established that ringless voicemail calls to wireless phones are a "call" made using an artificial or prerecorded voice, which requires the Prior Express Written Consent of the called party.[118]

The TRACED Act[119]

The TRACED Act, which aims to address complaints about illegal robocalls, was signed into law on December 31, 2019.

The TRACED Act is primarily aimed at telecommunication service providers, but it contains provisions that apply to marketers broadly. Among other things, the TRACED Act:

- Requires voice service providers to develop STIR/SHAKEN call authentication technologies (discussed below).

- Expands FCC enforcement authority against robocall offenses with a longer statute of limitations and increased forfeiture amounts.
- Promulgates new rules about certain prerecorded calls to landlines.

STIR/SHAKEN Framework

Call Blocking and False Spam

Illegitimate scammers have long plagued American consumers with illegal robocalls. One common method scammers use is "spoofing," in which they falsify Caller ID information to entice call recipients to answer the call. There have long been demands for telephone service providers to block these calls.

Providers have historically not taken steps to block suspected scam calls, in part because the FCC rules have prohibited telephone service providers from blocking calls that pass through their networks. The TRACED Act not only removes this restriction but requires providers to implement a protocol to block such calls. The tool required under the TRACED Act to block these calls is the Secure Telephone Identity Revisited and Signature-based Handling of Asserted Information Using toKENs standards—i.e., the STIR/SHAKEN protocol. The protocol requires that calls traveling through phone networks have their Caller ID "signed," or validated, by all carriers on the network, so that the phone company of the call recipient can be sure that the call is indeed from the number displayed on the Caller ID.[120]

Carriers use third-party analytics companies to block calls that are suspected of being unwanted, nuisance, or illegal calls. Calls may also be labeled as "Spam" or "Scam Likely." Carrier blocking or labeling of calls is generally determined based on call volume, call durations, complaints filed by consumers, and other statistical information from third parties. It is important to work with the dealership's carriers and to test its outbound calls to identify inaccurate labeling or blocking of dealership calls. Dealers can also "whitelist" their phone number to help ensure its calls are not categorized as unwanted or fraudulent.

To whitelist the dealership's phone number(s), you can visit Free Caller Registry at https://www.freecallerregistry.com/fcr/.

TCPA Exemptions and Expansions

Noncommercial Prerecorded Calls to Residential Lines

The TRACED Act also contains a requirement that led to a change in the rules governing noncommercial prerecorded calls to residential lines (landlines). On December 30, 2020, the FCC released a Report and Order (Order) that imposed certain new restrictions on non-marketing prerecorded calls to residential lines.[121]

As noted above, prerecorded non-marketing calls to residential lines had previously been exempt from TCPA consent requirements. The Order changed these exemptions, requiring consent to send more than three such calls per 30-day period to a residential line, and requiring an automated opt out mechanism. Existing exemptions for calls to wireless numbers were not changed, as they already satisfy the TRACED Act's requirements. Nevertheless, the Order codifies these exemptions, which previously were set forth only in FCC declaratory rulings.

As of publication date, the new requirement is not yet effective, but as a practical matter, you should consider putting processes in place to ensure either that consent is provided, or that you don't exceed the 30-day call limit and that your calls contain the opt-out mechanism. Although the Order does not define what "consent" means in this context, it stands to reason that consent means "prior express consent" because these are non-marketing calls. And while written consent is not required, consider obtaining it as proof if needed.

Lastly, the TRACED Act amends the TCPA's enforcement and civil forfeiture provisions by extending the statute of limitations to four years and adding additional penalties that it may impose on first-time offenders.

State Legislation

The TCPA does not preempt state telemarketing (and fax advertising) laws that are more restrictive than the TCPA. Your state may impose additional obligations not addressed in this guide. Some states also maintain their own state-specific do not call lists, whose registrants may or may not be shared with the federal list. Other states have discontinued individual do not call programs, merging their information with the federal list. Many states also require telemarketers to register with the state's telemarketer registration program. In some states, a dealership may be considered a telemarketer. Dealers should consult their state association and counsel regarding state and local obligations.

> To comply with the myriad FCC, FTC and state telemarketing restrictions, it is essential that you audit your operations to determine the extent of your telemarketing activity. It is equally important, after you have completed this process and determined your compliance obligations, that you train your employees and others working on your behalf on the full range of their responsibilities.

Enforcement and Penalties

Enforcement by the FTC and FCC

TCPA violations are subject to enforcement by the FCC, including texting forfeiture penalties up to $18,936 per violation.[122] The Telemarketing Act explicitly states that the jurisdiction of the Commission in enforcing the Rule is coextensive with its jurisdiction under Section 5 of the FTC Act,[123] which provides for penalties up to $51,744 per violation.

Actions by States

Under the TSR, state attorneys general may bring civil actions on behalf of the residents of their individual states against telemarketers that they believe are violating any of the rules promulgated by the FTC under the TSR, including the DNC Registry.[124] The lawsuits may result in orders to enjoin future violations, monetary damages, restitution, or other compensation on behalf of the residents of the state, and any other relief that a reviewing court deems appropriate.

Under the TCPA, state attorneys general may bring civil suits on behalf of residents of their states against telemarketers that have engaged in a pattern of calls in violation of the rules promulgated under the TCPA.[125] The state may recover actual monetary losses or $500 in damages, whichever is greater, for each violation. If the court finds that the telemarketer committed knowing or willful violations of the regulations, the court may award treble damages of $1,500 per violation to the state.

Private Rights of Action

Both the TCPA and the Telemarketing Act grant a private right of action to people who have been adversely affected by violations of the rules promulgated under either law. Under the TSR, persons injured may bring a lawsuit in federal court within three years after the discovery of a violation of the act if the actual damages for each person affected by the alleged violations exceed $50,000.[126]

Consequences of such a lawsuit could include an order enjoining the telemarketer against future violations, monetary damages, or any other relief that the court may deem appropriate. Considering that the amount of actual damages suffered must exceed $50,000 per person affected by any alleged violation, it would be unlikely that citizens who have experienced violations of the TSR would be able to sue pursuant to this private right of action.

The TCPA provides a more robust private right of action than the TSR. It allows a person who has received more than one call at a number on the national DNC list,[127] an autodialed or prerecorded call in violation of the consent requirements, or a fax in violation of the fax requirements (outlined below), to bring a claim for actual or statutory damages of $500 per call or fax, with treble damages of $1,500 per call available for willful or knowing violations.[128]

As outlined above, telemarketers are granted a safe harbor affirmative defense in potential suits brought for violations of the national do not call rules. If the telemarketer can show that it has "established and implemented, with due care, reasonable practices and procedures to effectively prevent" violations of the TCPA, then the telemarketer will not be held liable for any alleged violations.[129] This affirmative defense mirrors the safe harbor that the FCC and FTC provide in regulation. However, if the reviewing court finds that a violation was knowing and willful, the court has discretion to award treble damages in that case.

Also, the TCPA includes a private right of action for violations of the statute or the FCC's prohibitions against calls using an ATDS or placing an artificial or prerecorded voice call without consent, with damages up to $500 for each violation of the statute, subject to trebling (to $1,500) for a willful or knowing offense.[130]

Fax Advertising Restrictions and Requirements

The TCPA[131] also addresses the problem of unwanted advertisements sent via fax machines. Congress noted that because fax machines "are designed to accept, process, and print all messages which arrive over their dedicated lines," fax advertising imposes burdens on unwilling recipients above the burdens imposed by most other types of telemarketing.[132] Among other things, recipients of fax advertising must pay "the cost of the paper used, the cost associated with the use of the facsimile machine, and the costs associated with the time spent by the facsimile machine when receiving a facsimile advertisement during which the machine cannot be used by its owner to send or receive facsimile transmissions."[133]

The TCPA therefore prohibits the "use [of] any telephone facsimile machine, computer, or other device to send, to a telephone facsimile machine, an unsolicited advertisement"[134] unless an exception applies. The TCPA defines "unsolicited advertisement" as "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission in writing or otherwise."[135] The statutory prohibition applies to such advertisements sent both to residential and business facsimile numbers. The prohibition also extends to faxes that are sent to personal computers equipped with, or attached to, modems and to faxes that are sent to computerized fax servers. However, the prohibition does not extend to fax messages that are sent as email over the internet.[136] See the JFPA section below for exemptions to this prohibition.

Transactional Fax Messages

"Transactional" faxes are not advertisements for purposes of the TCPA's facsimile advertising rules, and thus are not prohibited. Transactional messages are fax messages whose purpose is to facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender. Examples include receipts or invoices, the primary purpose of which is to confirm the purchase of certain items by the facsimile recipient, or messages containing account balance information or other type of account statements. However, for such messages to fall outside the definition of "unsolicited advertisement," they must relate specifically to existing accounts and ongoing transactions. Messages regarding new or additional business would advertise "the commercial availability or quality of any property, goods, or services…" and therefore would be covered by the prohibition.

Junk Fax Prevention Act[137]

In 2005, the JFPA was enacted. It amended the TCPA to permit the sending of unsolicited facsimile advertisements to individuals and businesses with which the sender has an EBR,[138] and to provide a process by which any sender must cease sending such advertisements upon the request of the recipient. The JFPA, like the TCPA, required the FCC to issue implementing regulations.[139] The agency did so in the Junk Fax Order,[140] which adopted rules to implement the JFPA.

Exceptions

There are two exceptions to the unsolicited advertising fax prohibition under the TCPA (as amended by the JFPA):

1. The persons or entities have provided you with prior express permission to send fax advertisements.
2. You have an EBR with the recipient.

Prior Express Permission

If you have received prior express permission to send a fax, that fax does not meet the definition of "unsolicited advertisement" and the fax prohibition does not apply. The TCPA does not define "prior express invitation or permission," but the FCC has clarified that prior express invitation or permission may be given by oral or written means, including electronic methods. Whether given orally or in writing, this permission must be express, given prior to sending such faxes, and include the fax number to which such advertisements may be sent. In addition, it cannot be in the form of a "negative option," according to which the recipient must call the fax number if they no longer wish to receive such faxes. It is also impermissible to send a fax seeking permission. However, a company that requests a fax number on an application form could include a clear statement indicating that, by providing such a fax number, the individual or business agrees to receive facsimile advertisements from that company or organization. To the extent you rely on this exemption, it would be advisable to ensure that the permission is in writing.[141]

The FCC further clarified that "[e]xpress permission [to receive a fax advertisement] need only be secured once from

the consumer… until the consumer revokes such permission by sending an opt-out request to the sender."[142] Section 64.1200(a)(4)(iv) of the Commission's rules thus requires that "[a] facsimile advertisement that is sent to a recipient that has provided prior express invitation or permission" must include an opt-out notice like that required for faxes sent pursuant to an established business relationship.

EBR

The JFPA permits the sending of fax advertisements if there is an EBR between the sender and recipient. Also, a person sending a fax advertisement under the EBR exemption must have obtained the facsimile number directly from the recipient or ensure that the recipient voluntarily agreed to make the number available in a directory, advertisement, or publicly accessible internet site.[143]

As noted above, the term "existing business relationship" means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a business or residential subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the business or residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.[144]

Unlike the EBR exemption for DNC Registry telephone calls, this exception does not include any time limitation. Instead, it applies until the recipient opts out of future faxes.

The EBR exemption applies only to the entity with which the business or residential subscriber has had a "voluntary two-way communication." It does not extend to affiliates of that entity, including a fax broadcaster that is retained to send facsimile ads on behalf of that entity. While the fax broadcaster may transmit an advertisement on behalf of an entity that has an EBR with the recipient, it is not permitted to use that same EBR to send a fax advertisement on behalf of another client.

The entity that sends a facsimile advertisement on the basis of an EBR is responsible for demonstrating the existence of the EBR. The FCC does not require any specific records to be kept by facsimile senders. However, should a question arise as to the validity of an EBR, the burden will be on the sender to show that it has a valid EBR with the recipient.

Opt-out Notice

Any fax advertisement sent pursuant to either TCPA exception must contain certain information that will allow the recipient to opt out of future fax transmissions from the sender. Among other things, the Act requires the sender of fax advertisements to provide notice and contact information on the fax that allows recipients to opt out and requires senders to honor opt-out requests within the shortest reasonable period of time, not to exceed 30 days.[145]

This opt-out notice must:

- Be "clear and conspicuous" on the first page of a fax.
- Provide a domestic telephone and fax number.
- Include a cost-free mechanism to opt out.
- State that a recipient may opt out, and that the sender's failure to comply with that request within 30 days is unlawful
- Describe how a recipient can opt out.[146]

"Clear and conspicuous" for purposes of the opt-out notice means a notice that would be apparent to a reasonable consumer. Also, the notice must be separate from the advertising copy or other disclosures and placed at either the top or bottom of the fax. The notice must be distinguishable from the advertising material through, for example, use of bolding, italics, different font, etc. If there are several pages to the fax, the first page of the advertisement must contain the opt-out notice.

The "cost-free" mechanisms include a website address, email address, toll-free telephone number, or toll-free facsimile machine number. A local telephone number may be considered a cost-free mechanism so long as the advertisements are sent to local consumers for whom a call to that number would not result in long-distance or other separate charges. Senders of facsimile advertisements need to make available only one of these mechanisms to comply with this requirement. If a sender uses a website for receiving opt-out requests, it must describe the opt-out mechanism and procedures clearly and conspicuously on the first page of the website.

The requirement to include the cost-free mechanism is distinct from the requirement to include a domestic contact telephone number and facsimile number. However, if the cost-free mechanism offered by the sender is either a domestic toll-free telephone number or toll-free facsimile number, the sender will be in compliance with both sets of requirements. The facsimile number should be a number that is separate and distinct from the telephone number so that consumers are less likely to find a busy line and can make opt-out requests without delay. It is the responsibility of the sender to ensure that the number is available to accept opt-out requests. In accordance with the statute, the new rules require the sender to accept opt-out requests 24 hours, seven days a week at the number(s), website or email address identified in the opt-out notice.

Third Party Fax Broadcasters

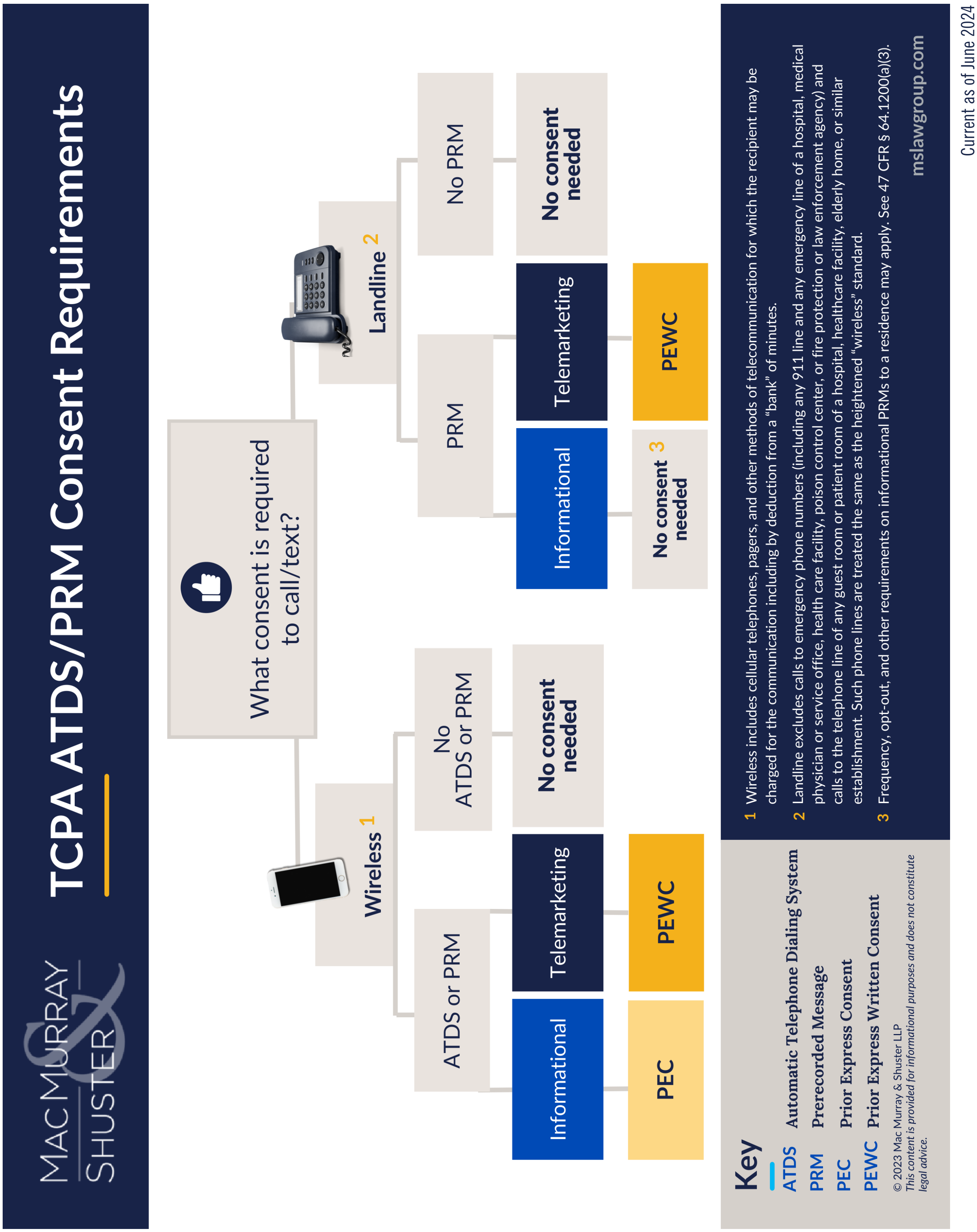
If you hire a fax broadcaster to transmit your fax advertisements and the fax broadcaster is responsible for the content of the advertisement or for determining its destination (e.g., supplying the list of fax numbers to which faxes are sent), the fax broadcaster must also identify itself on the fax.[147] Often fax advertisements are sent in bulk on behalf of a business or entity by separate professional fax broadcasters. Generally, the person or business on whose behalf a fax is sent or whose property, goods, or services are advertised is liable for a violation of the junk fax rules, even if the person or business did not physically send the fax. A fax broadcaster also may be liable if it has a "high degree of involvement" in the sender's fax message, such as supplying the fax numbers to which the message is sent, providing a source of fax numbers, making representations about the legality of faxing to those numbers or advising, about how to comply with the junk fax rules.

Penalties and Enforcement

As outlined above, there is a private right of action under the TCPA, which allows a person who has received a fax in violation of the fax requirements to bring a claim for actual or statutory damages of $500 per call or fax, with treble damages of $1,500 per call available for willful or knowing violations.[148]

APPENDICES

Appendix A: TCPA Compliance Infographic



Appendix B: Sample Do Not Call Policy

[*Name of Dealership*] Telemarketing Policy

[This Sample Telemarketing Policy template is for *informational purposes only* and is only intended as a starting point in your dealership's efforts to comply with federal telemarketing restrictions. It is *not* intended as legal advice, and it is *not* a "turnkey" product that you can simply adopt as your own. The language it contains may not be appropriate for your operations. This template may be modified from time to time. It may be necessary to consult outside advisors for assistance in developing an appropriate telemarketing policy for your dealership.

This Sample Policy template primarily addresses your dealership's obligation to establish and implement: 1) a written policy to ensure compliance with company-specific do not call requirements within 10 business days from the request, and 2) written procedures to comply with national do not call requirements as prerequisites to avoiding liability for a violation of the requirements. This Sample Policy template also addresses other federal telemarketing requirements. *It does not address telemarketing restrictions that your state or local jurisdiction may impose. Ensure that legal counsel familiar with federal, state, and local telemarketing restrictions and your dealership operations reviews your Telemarketing Policy and your efforts to comply with all applicable telemarketing restrictions.*]

Introduction

[*Company*] strives to maintain the highest standards possible in every aspect of our business. We pledge not to initiate outbound telemarketing calls to any person who previously stated, in any form, that they do not wish to receive such calls from us. This Policy sets forth the Dealership's procedures for complying with the company-specific do not call rules *and* the national do not call rules contained in the FCC regulations implementing the Telephone Consumer Protection Act and the FTC Telemarketing Sales Rule (collectively referred to as the "federal do not call rules"). It also addresses other telemarketing restrictions, including state restrictions. All Dealership employees and other persons or entities working on behalf of the dealership must abide by this Policy.

For purposes of this Policy, the term "telephone solicitation" means the "initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services." When involving phone calls or text messages to consumers over state lines, the term "telephone solicitation" also includes a call or text message that is conducted to induce a charitable contribution. For purposes of this policy, the term "unsolicited advertisement" means "any material advertising the commercial availability or quality of any property, goods or services which is transmitted to any person without that person's prior express invitation or permission."

This Policy, in and of itself, does not create a contract between the Dealership and any person or entity.

Telemarketing Coordinator(s)

This Policy shall be implemented, maintained, and updated as necessary by a Telemarketing Coordinator designated by the Dealership. The Telemarketing Coordinator shall report to the [*Insert Office or Title*]. In the event the Telemarketing Coordinator leaves the employment of the Dealership, the Dealership's [*Insert Office or Title*] shall take over the responsibilities of the Telemarketing Coordinator until a new Telemarketing Coordinator is designated.

The Telemarketing Coordinator may delegate or outsource the performance of any assigned function as they deem necessary from time to time. The responsibilities of the Telemarketing Coordinator are as follows:

- Become thoroughly familiar with the federal do not call rules and with other federal, state, and local telemarketing restrictions that affect the Dealership.

- Coordinate Dealership compliance efforts relating to federal, state, and local telemarketing restrictions.
- **National Do Not Call Registry**. Determine the area codes in which Dealership personnel and others working on the Dealership's behalf engage or may engage in telephone solicitations. Register the Dealership at https://telemarketing.donotcall.gov and download the telephone numbers from those area codes that are listed in the National Do Not Call Registry. Download updates to the National Registry in the same manner at least once every 31 days thereafter.
- **Company-Specific Do Not Call List**. Maintain a list of phone numbers of consumers who have stated that they do not wish to receive telephone solicitations from the Dealership or anyone acting on its behalf. Train employees and others working on behalf of the Dealership to immediately forward any such requests to the Telemarketing Coordinator. Promptly add such requests to the Company-Specific Do Not Call List (this must occur within 10 business days of the Dealership's receipt of the request or sooner if possible). The List must contain the phone number(s) of the consumer making the request, the name of the consumer (if provided by the consumer), and the date of the request. Ensure that the consumer's phone number remains on the List for a period of at least five years. Ensure the consumer's request is forwarded and applied to affiliates of the Dealership if requested by the consumer or if the consumer reasonably would expect the affiliate to be included given the nature and type of goods or services offered and the identity of the affiliate. Train employees and others working on behalf of the Dealership in the information they must provide at the beginning of a telephone solicitation to consumers.

[State a procedure for screening telephone solicitations before they are initiated, such as:]

- [*Train employees and others working on behalf of the Dealership who wish to initiate a telephone solicitation to first forward to the Telemarketing Coordinator the phone number they wish to call. Upon receipt, the Coordinator must search the list of phone numbers downloaded from the DNC Registry and the Company-Specific Do Not Call List to determine if the specified phone number is listed and instruct the employee as follows:*

    1. *If the phone number is listed on the Company-Specific Do Not Call List, inform the employee that the call may not be initiated.*
    2. *If the phone number is not listed on either the Company-Specific Do Not Call List or the list of phone numbers downloaded from the National DNC Registry, inform the employee that the call may be initiated (unless state or local law prohibits the call).*
    3. *If the phone number is not listed on the Company-Specific Do Not Call List but is among the phone numbers downloaded from the National DNC Registry, determine if any of the following exemptions apply:*
        a. *Prior Express Permission*
        b. *Established Business Relationship*
        c. *Personal Relationship (intrastate telephone solicitations only)*
    4. *If one of the exemptions applies, inform the employee that the call may be initiated (unless state or local law prohibits the call).*
    5. *If none of the exemptions apply, inform the employee that the call may not be initiated.*]

- [*The Telemarketing Coordinator may permit an employee to directly access the Company-Specific Do Not Call List and the list of phone numbers downloaded from the National DNC Registry for purposes of determining if a telephone solicitation may be initiated, provided that: 1) the employee has been thoroughly trained on the National and Company-Specific Do Not Call rules (including applicable exemptions), this Policy, and the procedures for accessing the Company-Specific Do Not Call*

List and the list of phone numbers downloaded from the National Registry; 2) the Telemarketing Coordinator is confident the employee understands these rules; 3) the employee agrees to and understands that they must furnish the Telemarketing Coordinator with documentation that substantiates the employee's subsequent reliance on an exemption to the national Do Not Call rules; and 4) the employee agrees to abide by and understands the restrictions on the use of the Do Not Call Lists.]

- Screen all incoming phone lists provided by manufacturers, lead providers, or other entities to ensure that Dealership employees, or other persons working on the Dealership's behalf, are not provided a phone number to call for telemarketing purposes that the Dealership is prohibited from calling.
- Ensure that the Dealership fully complies with the Caller Identification requirement.
- Determine if any Dealership personnel or others working on behalf of the Dealership, engage in the use of automatic telephone dialing systems ("autodialers") and/or prerecorded messages. If the Dealership uses such devices, develop, and incorporate into this Policy appropriate procedures to ensure compliance with, and provide users of these devices with training on, the full set of restrictions that apply to their use.

[State a procedure for screening fax advertisements before they are initiated, such as:]

- [*Develop and incorporate into this Policy appropriate procedures to ensure that fax advertisements are only sent to persons who have provided the Dealership with prior express permission to receive fax advertisements.*]
- [*Review all outgoing Dealership faxes (or other transmissions) to any person or entity to determine if such faxes or transmissions are prohibited by the FCC rules implementing the TCPA.*]
- Ensure that Dealership fax advertisements contain the identifying information required by the FCC rules implementing the TCPA.
- Ensure that any Do Not Fax requests that are received from consumers, businesses, or other entities are properly recorded and that the requester's fax number is eliminated from lists of persons to whom the dealership is authorized to send fax advertisements.
- Produce and review fax activity reports from Dealership fax machines to ensure adherence to these procedures.
- Coordinate training on this Policy for all Dealership personnel, and others working on the Dealership's behalf who are engaged in any aspect of telemarketing.
- To the extent that phone calls are initiated to, or received from, consumers located in another state provide initial training to all employees and others working on behalf of the Dealership on the requirements they must satisfy to fully comply with the FTC Telemarketing Sales Rule. Develop and incorporate into this Policy appropriate compliance procedures for such calls.
- Ensure that each employee and other person working on the Dealership's behalf who is engaged in any aspect of telemarketing signs an acknowledgment that they have been informed of, and received compliance training on this Policy.
- Ensure that any contract with an outside company to perform telemarketing services on behalf of the Dealership requires the contractor to comply with all federal, state, and local telemarketing laws and regulations. Review the contractor's procedures for ensuring its compliance with this provision.

- Require independent contractors that perform telemarketing services at, and on behalf of, the Dealership to abide by this Policy. Include a contract termination remedy for violations of this Policy in the Dealership's contracts with such independent contractors.

- Develop and retain all necessary records to substantiate the Dealership's compliance with the National and Company-Specific Do Not Call rules and with other federal, state, and local telemarketing restrictions. This includes, but is not limited to:

    1. The Dealership's Do Not Call Policy.
    2. The Dealership's Company-Specific Do Not Call List.
    3. The list of phone numbers the Dealership has downloaded from the National DNC Registry, the dates of the downloads, and any registration or other information necessary to demonstrate compliance with the National Do Not Call rules. This includes records demonstrating that the Dealership has updated its Do Not Call list of numbers from the National DNC Registry at least once every 31 days.
    4. Documentation supporting the Telemarketing Coordinator's determination that an exemption to the National Do Not Call rules applies which permits a telephone solicitation to a phone number that is contained on the List downloaded from the National DNC Registry.
    5. Documentation supporting the Telemarketing Coordinator's determination that an exemption exists which permits the transmission of a fax advertisement, a telephone call using an autodialer, or a prerecorded voice message.
    6. Records the Dealership must maintain to comply with the five-year record retention requirement imposed by the FTC Telemarketing Sales Rule.
    7. Documentation of all telemarketing training of employees or others working on behalf of the dealership who are engaged in any aspect of telemarketing.
    8. Copies of contracts with outside companies and independent contractors that perform telemarketing services on behalf of the Dealership that contain the contractual language specified above.
    9. Documentation of all Dealership efforts to monitor and enforce this Policy (records pertaining to disciplinary action against employees may be retained by the Human Resources Manager).
    10. Employee Acknowledgments of their telemarketing responsibilities.

- Coordinate with the Dealership's Program Coordinator for Safeguarding Customer Information to ensure that this Policy and the Dealership's efforts to comply with federal, state, and local telemarketing restrictions are consistent with the Dealership's efforts to appropriately safeguard its Customer Information.

- Supplement these procedures as necessary to ensure the Dealership complies with additional requirements imposed by state or local law.

- [*Add any additional Telemarketing Coordinator responsibilities that apply at your Dealership*]

Employee Requirements

Each employee and other person acting on behalf of the Dealership who is engaged in any aspect of telemarketing shall abide by the following requirements:

1. Upon receiving a request (whether written or verbal) from a consumer not to receive calls from the Dealership, or any person or entity acting on its behalf, you will promptly report to the Telemarketing Coordinator the consumer's name (if provided), telephone number, and the date of the request.
2. Upon receiving a request (whether written or verbal) from any person or entity not to receive fax advertisements from the Dealership, or any person or entity acting on its behalf, you will promptly report to the Telemarketing Coordinator the requester's name (if provided), fax number, and the date of the request.
3. You may not share with any party (other than with an affiliated entity or other party making a telephone solicitation on your behalf or as necessary to comply with this requirement) the consumer's request not to be called.
4. Before initiating any telephone solicitation, you will inform the Telemarketing Coordinator of all area codes of consumers that you wish to contact. Should you subsequently identify additional area codes of consumers that you wish to contact after initially providing this information, you will inform the Telemarketing Coordinator of the additional area codes. You are prohibited from initiating a telephone solicitation to any area code that the Dealership has not registered on the National Do Not Call Registry.
5. [<u>State a procedure for screening telephone solicitations before they are initiated, such as:</u>]

   [*Before initiating any telephone solicitation, you will provide the Telemarketing Coordinator with the phone number of the person you wish to call. If the Telemarketing Coordinator determines that the person is listed on the National DNC Registry and no exemption to the Registry applies, or that the person is listed on the Dealership's Company-Specific Do Not Call List, you are prohibited from calling that person.*]

   Or

   [*Before initiating any telephone solicitation, you will execute the following procedures:*

   1. *Check the Dealership's Company-Specific Do Not Call List. If the phone number is listed, you may not initiate the call. If it is not listed, proceed to the next step.*
   2. *Check the list of phone numbers the Dealership has downloaded from the National DNC Registry. If the phone number is listed, proceed to the next step. (If it is not listed, you may call unless state or local law prohibits the call.)*
   3. *Determine if any of the following exemptions to the National Do Not Call rules apply:*

      1) Prior Express Permission

      2) Established Business Relationship

      3) Personal Relationship (intrastate telephone solicitations only)
   4. *If one of the exemptions applies, you may call (unless state or local law prohibits the call), provided that you furnish the Telemarketing Coordinator documentation that supports the existence of the applicable exemption. The Telemarketing Coordinator will explain to you the types of acceptable documentation and the frequency with which you must provide it.*]
6. Before initiating any telephone solicitation, you will review this Policy and sign an Employee Acknowledgment of your understanding of this Policy and your agreement to abide by its terms.
7. You may not initiate a telephone solicitation to a consumer before 8 a.m. or after 9 p.m.

8. At the beginning of any telephone solicitation, you will provide the called party with the following identifying information:

    1) Your name.

    2) The name of the Dealership.

    3) Your telephone number. This must be a phone number where the Dealership can be contacted during normal business hours. It may not be a 900 number or other number that will cause the called party to incur charges that exceed their local or long-distance transmission charges.

9. When initiating a telephone solicitation to a consumer located in another state, you also will state that the purpose of your call is to sell a good or service and you will describe the nature of the good or service, that is the subject of your phone call. In addition, prior to discussing the sale of a good or service or a prize promotion over the telephone with a consumer located in another state, you will consult with the Telemarketing Coordinator regarding additional responsibilities that you must comply with under the FTC Telemarketing Sales Rule.

10. You are prohibited from engaging in false, misleading, deceptive, or abusive acts or practices in telephone solicitations or other conversations with any person or entity.

<u>State a procedure for screening fax advertisements before they are initiated, such as:</u>

11. [*Prior to transmitting any advertisement or solicitation to the fax machine of any person or entity, you will consult with the Telemarketing Coordinator to ensure the Dealership is authorized to send the transmission.*]

12. Prior to using any automatic telephone dialing system ("autodialer") or delivering a prerecorded message, you will consult with the Telemarketing Coordinator to ensure the Dealership is authorized to use such device.

13. You will immediately forward to the Telemarketing Coordinator any list of consumer phone numbers that you receive from any person or entity so that it may be screened against the Dealership's Company-Specific Do Not Call List or the list of phone numbers downloaded from the National DNC Registry.

14. You will immediately forward to the Telemarketing Coordinator any list of fax numbers that you receive from any person or entity so that the Telemarketing Coordinator can determine if the Dealership has prior express permission to send fax advertisements to those persons or entities.

15. You may not sell, rent, lease, purchase, disclose, or use the National DNC Registry, the Dealership's Company-Specific Do Not Call List, or any part thereof, for any purpose except to comply with this Policy and any federal, state, or local requirement for not calling phone numbers listed on a do not call list.

16. You may not engage or participate in any cost-sharing arrangement with other telemarketers for the purpose of evading or reducing the annual fee for accessing the national database.

17. You must comply with this Policy and all applicable federal, state, and local laws and regulations governing any aspect of telemarketing. You understand that the Dealership will monitor and enforce this Policy. **Any violation may result in disciplinary action, up to and including termination for employees, or contract termination for independent contractors that perform services in the Dealership**. The contract termination remedy must be expressly provided for in any Dealership agreement with such independent contractors.

18. [*Add additional requirements that apply at your Dealership for employees and independent contractors engaged in telemarketing*].

Do Not Call Lists

Company-Specific Do Not Call List

All Do Not Call requests will be honored within 10 business days of the request. [*Explain how the Dealership's Company-Specific Do Not Call List will be maintained, updated, and accessed.*]

National Do Not Call Registry

[*Explain how the Dealership's list of phone numbers for which it registered on the National DNC Registry will be accessed, maintained and updated.*]

Q&A for Telemarketers & Sellers About DNC Provisions in TSR

Background

1. **What is the National Do Not Call Registry?**

   The National Do Not Call Registry is a list of phone numbers from consumers who have indicated their preference to limit the telemarketing calls they receive. The registry is managed by the Federal Trade Commission (FTC), the nation's consumer protection agency. It is enforced by the FTC, the Federal Communications Commission (FCC), and state officials.

2. **Why was the National Do Not Call Registry created?**

   The registry was created in 2003 to offer consumers a choice regarding telemarketing calls. The FTC's decision to create the National Do Not Call Registry was the culmination of a comprehensive, three-year review of the Telemarketing Sales Rule, as well as the FTC's extensive experience enforcing the Rule in the previous seven years. The FTC also held numerous workshops, meetings and briefings to solicit feedback from interested parties, and considered more than 64,000 public comments, most of which favored creating the registry.

Calls and Organizations Covered by the TSR

3. **What calls are covered?**

   The do not call provisions of the TSR cover any plan, program or campaign to sell goods or services through interstate phone calls. This includes calls by telemarketers who solicit consumers, often on behalf of third party sellers. It also includes sellers who provide, offer to provide, or arrange to provide goods or services to consumers in return for some type of payment as part of a telemarketing transaction.

   The National Do Not Call Registry covers intrastate telemarketing calls under the FCC's rules. You can find information on the FCC's regulations at fcc.gov.

4. **What types of calls are not covered by the National Do Not Call Registry?**

   The do not call provisions do not cover calls from political organizations, charities, telephone surveyors, or companies with which a consumer has an existing business relationship.

5. **What area codes are included in the National Registry?**

   The area codes in the National Do Not Call Registry cover the 50 states, the District of Columbia, Puerto Rico, U.S. Virgin Islands, Guam, North Mariana Islands, American Samoa, and toll-free numbers (500, 800, 866, 877, 880, 881, 882, and 888).

6. **Do the do not call provisions of the TSR cover calls soliciting money for charities?**

   Charities that are calling on their own behalf to solicit charitable contributions are not covered by the requirements of the national registry. However, if a third-party telemarketer is calling on behalf of a charity, a consumer may ask not to receive any more calls from or on behalf of that specific charity. If a third-party telemarketer calls again on behalf of that charity, the telemarketer may be subject to a fine of up to $51,744.

7. **Do the do not call provisions of the TSR cover tax-exempt organizations?**

   Entities that have been granted tax-exempt status under the Internal Revenue Code are not necessarily Exempt Organizations for purposes of the National Do Not Call Registry.

   The FTC has successfully challenged the status of purported nonprofit organizations whose role in fact was simply to generate leads for other firms which then charged consumers thousands of dollars in fees for their services.

8. **8. Do the do not call provisions of the TSR cover political solicitations?**

   No. Political solicitations are not covered by the TSR at all, since they are not included in its definition of "telemarketing."

9. **If a call includes a telephone survey and a sales pitch, is it covered?**

   Yes. Callers purporting to take a survey, but also offering to sell goods or services, must comply with the do not call provisions. But if the call is for the sole purpose of conducting a survey, it is exempt.

10. **How does the established business relationship provision work for a consumer whose number is on the registry?**

    A company with which a consumer has an established business relationship may call for up to 18 months after the consumer's last purchase or last delivery, or last payment, unless the consumer asks the company not to call again. In that case, the company must honor the request not to call. If the company calls again, it may be subject to a fine of up to $51,744.

    If a consumer makes an inquiry or submits an application to a company, the company can call for three months. Once again, if the consumer makes a specific request to that company not to call, the company may not call, even if it has an established business relationship with the consumer.

    A consumer whose number is not on the national registry can still prohibit individual telemarketers from calling by asking to be put on the company's own do not call list.

11. **What is an Exempt Organization?**

    In general, your organization may access as an Exempt Organization if it is not required to access the National Do Not Call Registry because either (1) it is a nonprofit organization; or (2) an organization that only makes telephone calls that are in one or more of the categories described below.

    The determination of whether your organization is exempt may require careful assessment of your specific business practices. Therefore, in making this decision, you may wish to consult with an attorney.

    If you are not an Exempt Organization and you have nevertheless subscribed to the registry as an Exempt Organization, you may be subject to civil and/or criminal penalties. If you subscribed as an Exempt Organization by mistake, and wish to withdraw your subscription, please contact the HELPDESK at tmhelp@donotcall.gov.

Nonprofit Organizations

To qualify for this type of exemption, an organization must be truly nonprofit. That is, it must not be organized to conduct business for its own profit or the profit of its members. Please note that an organization that has been incorporated as a nonprofit or recognized by the IRS as tax-exempt is not necessarily an Exempt Organization for purposes of the National Do Not Call Registry. An organization that purports to be a nonprofit is not exempt if the organization is, in fact, operated for the profit of its members, officers, or affiliated for-profit companies.

Organizations That Only Make Telephone Calls That Fall Within Exempt Categories

A for-profit organization may register as an exempt organization if ALL of the telephone calls that it makes fall within one or more of these categories:

- **Informational messages:**

  The Telemarketing Sales Rule applies to calls that are made as part of "a plan, program, or campaign which is conducted to induce the purchase of goods or services . . . ." The Rule does not apply to calls to deliver purely informational messages that are not delivered to induce purchases. For example, a message from an airline that contains only information about a flight cancellation is an informational message. However, telephone calls that combine information with a direct or indirect solicitation for goods or services are not exempt, and a for-profit organization that makes such calls is not an exempt organization.

- **Surveys or political polls:**

  If calls are being made for the sole purpose of conducting a survey or poll, they are exempt. But purported survey calls are not exempt if they are also part of a plan, program or campaign to induce purchases of goods or services. Organizations placing such telemarketing calls must comply with the Do Not Call provisions and are not Exempt Organizations.

- **Promoting a political party or candidate:**

  If calls are being made solely for a political purpose and are not part of a plan, program or campaign to induce purchases of goods or services, the calls are exempt.

- **Business-to-Business Calls:**

  Most phone calls to a business made with the intent to solicit sales from that business are exempt from the Do Not Call provisions.

- **Solicitations for charitable contributions:**

  Calls that solicit a contribution, donation or gift of money or other thing of value are exempt from the National Do Not Call Registry requirements even if the calls are made by a for-profit organization. (Nevertheless, for-profit organizations soliciting contributions must honor call recipients' request to be placed on an entity-specific do not call list.)

- **Calls to consumers who have an Established Business Relationship with the organization on whose behalf the call is made:**

  Sellers and telemarketers may call a consumer whose number is on the National Do Not Call Registry if the seller on whose behalf the call is made has an established business relationship with the consumer—provided the consumer has not asked to be on the seller's entity-specific do not call list. There are two kinds of established business relationships. One is based on the consumer's purchase, rental, or lease of the seller's goods or services, or a financial transaction between the consumer and seller, within 18 months preceding a telemarketing call. The 18-month period runs from the date of the last payment, transaction, or shipment between the consumer and the seller. The other is based on a consumer's inquiry or application regarding a seller's goods or services, and exists for three months starting from the date the consumer makes the inquiry or application. For more information, please see the Exemptions to the National Do Not Call Registry Provisions section of *Complying with the Telemarketing Sales Rule*.

- **Calls to consumers who have given their written permission to receive telemarketing calls:**

Sellers and telemarketers are allowed to call a consumer who has given his or her express agreement, in writing, to receive calls from a specific party, even if the consumer's number is in the National Do Not Call Registry, unless the consumer has revoked that consent. The consumer must give express agreement in writing to receive calls placed by—or on behalf of—the seller. The writing must include the number to which calls may be made and the consumer's signature. The signature may be a valid electronic signature, if the agreement is reached online. Sellers making prerecorded calls to consumers must meet additional requirements. First, before obtaining written consent from a consumer, the seller must disclose clearly and conspicuously that the purpose of the agreement is to authorize the seller to place prerecorded calls to the consumer. Second, the seller may not require a consumer to give consent to receive prerecorded calls as a condition of purchasing a good or service. Third, the seller must have obtained express consent directly from the consumer to place the calls. This means that a seller cannot place calls with prerecorded messages to consumers whose information the seller obtained from third-parties. For more information, please see the Exemptions to the National Do Not Call Registry Provisions section and the Telemarketing Calls that Deliver Prerecorded Messages section of *Complying with the Telemarketing Sales Rule*.

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Whether your organization is exempt is a determination that requires consideration of not only the FTC's regulations, but also regulations enforced by the Federal Communications Commission (FCC). For more information about the FCCs regulations, see the FCC's website at fcc.gov.

Waiting Period

There is a three day waiting period for exempt Organizations that apply to the National Do Not Call Registry after they have subscribed (and before their Subscription Account Number (SAN) will be issued). The chart below outlines how the waiting period works. The timing of the waiting periods depends on when you create your profile. The waiting period will begin on the NEXT business day after you complete your profile.

You will not necessarily be contacted during or at the end of the waiting period, however if you are contacted and you do not respond adequately, you will be blocked from accessing the Registry. Whether you are contacted or not, it is up to you to ensure that you are complying with the rules.

If You Create Your Profile on...	Check Your Status for Activation on...
Monday	Friday
Tuesday	Monday
Wednesday	Tuesday
Thursday	Wednesday
Friday	Thursday
Saturday or Sunday	Thursday

Accessing the Registry

12. **Who can access the national registry?**

    Access to the national registry is limited to sellers, telemarketers and other service providers. Sellers are companies that provide, offer to provide, or arrange for others to provide goods or services to a customer in return for some type of payment as part of a telemarketing transaction. Telemarketers are companies that make telephone calls to consumers on behalf of sellers. Service providers are companies that offer services to sellers engaged in telemarketing transactions, such as providing lists of telephone numbers to call, or removing telephone numbers from the sellers' lists.

    Some sellers are exempt from the FTC's rules, but are required to access the registry under the FCC's rules. As explained above, some entities (Exempt Organizations) are exempt from accessing the national registry under both agencies' rules. These Exempt Organizations still may access the registry voluntarily, and do not have to pay a fee for that access. They must, however, submit appropriate certification information to gain access to the registry.

13. **Can I use numbers on the registry for any purpose other than preventing telemarketing calls?**

    No. The registry may not be used for any purpose other than preventing telemarketing calls to the telephone numbers on the registry. Any entity that accesses the national registry will be required to certify, under penalty of law, that it is accessing the registry solely to comply with the TSR or to prevent calls to numbers on the registry. Use of the registry for purposes other than those set forth in the certificate could subject you to legal action.

14. **How can I access the registry?**

    The registry can be accessed only through the fully automated and secure website at telemarketing.donotcall.gov. The first time you access the registry, you must set up a profile and provide identifying information about you and your organization. If you are a telemarketer or service provider accessing the registry on behalf of your seller-clients, you will be required to identify your seller-clients and provide their unique Subscription Account Numbers (SANs). After you (or the company telemarketing on your behalf) have accessed the registry and downloaded telephone numbers the first time, you'll have the option of downloading only changes in the data that have occurred since the last time you accessed the registry.

15. **What information must I provide to access the registry?**

    The first time you access the system, you will be asked to create a profile and provide certain limited identifying information, such as your company name and address, contact person, and the contact person's telephone number and email address. If you are accessing the registry on behalf of a seller-client, you also will have to identify that seller-client.

16. **How often must I access the registry and remove numbers from my calling list?**

    If you are required to use the registry, you must synchronize your lists with an updated version of the registry at least every 31 days.

17. **How often may I download data from the national registry?**

    You will be able to access data for those area codes that are in your subscription as often as you like during your annual period. However, to protect system integrity, you may download data files from the national registry only once in any 24-hour period.

18. **What information can I access from the national registry?**

    The only consumer information that companies will receive from the national registry is registrants' telephone numbers. The numbers will be sorted and available by area code. Companies will be able to access as many area codes as desired (and paid for), by selecting, for example, all area codes within a certain state. Of course, companies also will be able to access the entire national registry.

19. **Do I need to pay for area codes that change (split)?**

    Occasionally, area codes will be "split" into other area codes to provide more numbers to a densely populated area. When this occurs, telemarketers who want those numbers will be required to subscribe to the new area code (assuming they have not already) and pay for the new area code if it exceeds their limit of five "no-cost" area codes. If you have subscribed to all area codes (the Global list) you will not be required to pay for the new area code.

20. **May I check just a few numbers at a time to see if they are registered?**

    Companies that have provided the required identification information and certification, and paid the appropriate fee (there is no fee to subscribe to five or fewer area codes) will be allowed to check a small number of telephone numbers (10 or less) at a time via interactive Internet pages. This will permit small volume callers to comply with the do not call requirements of the TSR without having to download a potentially large list of all registered telephone numbers within a particular area.

Registering and Subscribing to the Registry

21. **When registering, I am asked to select from three Organization Functions. What are these functions and which one should I select?**

    The three organization functions are Seller, Telemarketer/Service Provider, or Exempt Organization.

    Seller: includes any person or business who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.

    - A Seller also may be a Telemarketer, if it is calling on its own behalf, or if it retains one or more Telemarketers to place calls for it. In either case, you should register as a "Seller".
    - Every Seller should subscribe to area codes, pay the appropriate fee, and agree to the certification requirements in order to receive a Subscription Account Number (SAN) from the National Do Not Call Registry. A Seller may direct a Telemarketer to complete the online subscription process on their behalf, but the Seller must have its own subscription and SAN, separate from the Telemarketer's subscription and SAN.

    Telemarketer (TM): includes any person or business who, in connection with telemarketing, initiates or receives telephone calls to or from a customer.

    - If a Telemarketer is accessing the registry through a Seller's account, (the Seller by definition is the Telemarketer's Client) the Seller must have its own subscription with the Registry. The Telemarketer may access the Registry on behalf of the Seller at no additional charge if the Telemarketer is authorized by the Seller to use the Seller's SAN. Any applicable fees should be paid by the Seller, or by the Telemarketer on that Seller's behalf. The Telemarketer may use the data it downloads only for that Seller. Telemarketers should understand that every Seller must have its own subscription to the Registry. At the direction of a Seller, a Telemarketer may complete the online subscription process and obtain a SAN for the Seller.

- If a Telemarketer accesses the registry on its own behalf as well as accessing the registry through a client's account, it may obtain its own SAN by subscribing to area codes for itself and paying its own access fee and agreeing to the certification requirements. However, a Telemarketer may not use Registry data to place calls on behalf of more than one Seller unless each Seller has its own subscription and a SAN. That is, a Telemarketer cannot purchase the list once and then provide the data to all of its Clients who have not paid the appropriate fees to access the Registry.

Service Provider (SP): includes any person or business that provides assistance to sellers or telemarketers to engage in telemarketing, such as list brokers and service bureaus.

- If a Service Provider accesses the registry through a client's account, the client must have its own subscription with the Registry. The Service Provider may access the Registry on behalf of the client at no additional charge if the Service Provider is authorized by the client to use the client's SAN. Any applicable fees should be paid by the client, or by the Service Provider on that client's behalf. The Service Provider may use the data it downloads only for that client. Service Providers should understand that every client must have its own subscription to the Registry. At the direction of a client, a Service Provider may complete the online subscription process and obtain a SAN for the client.
- If a Service Provider accesses the registry on its own behalf as well as accessing the registry through a client's account, it may obtain its own SAN by subscribing to area codes for itself and paying its own access fee and agreeing to the certification requirements. However, a Service Provider may not use Registry data to place calls on behalf of more than one Seller unless each Seller has its own subscription and a SAN. That is, a Service Provider cannot purchase the list once and then provide the data to all of its Clients who have not paid the appropriate fees to access the Registry.

22. **What is an EIN and how is it used by the National Do Not Call Registry?**

    An Employer Identification Number (EIN) is a number assigned by the Internal Revenue Service to companies and organizations. You are required to enter your organization's EIN to create a profile, unless you are the sole owner or proprietor of the company or organization. An EIN has the format nn-nnnnnnn.

23. **My company is located outside of the US. Do I need to have an EIN to complete my profile?**

    Organizations who wish to create a profile on the registry are required to obtain an EIN from the Internal Revenue Service (IRS). The National Do Not Call Registry does not provide EINs. Before registering on the National Do Not Call Registry, a company located outside the US must first contact the IRS to obtain an EIN.

    International applicants can contact the IRS to apply for their EIN by calling (267) 941-1099 (Not a toll-free number).

    After your organization has obtained an EIN from the IRS, you can create a new profile by using the REGISTER NEW USERS button at https://telemarketing.donotcall.gov.

24. **What is an SSN and how is it used by the National Do Not Call Registry?**

    A Social Security Number (SSN) is a number assigned to an individual by the Social Security Administration. If you do not have an Employer Identification Number (EIN) because you are the organization's sole owner or proprietor, then you must enter your Social Security Number to create a profile. The SSN has the format nnn-nn-nnnn.

25. **Once I register, how do I activate my account?**

Once your profile is completed, you will be issued an Organization ID and your Representative and Downloader passwords onscreen. They will not be sent to you by email. (Either print the page or write down the Organization ID and Representative passwords), and close the registry window.

A confirmation email will be sent to the email address you provided. You should receive it shortly after finishing your profile. (If you don't see it, check your spam or junk mail folder.) If you haven't received it within 15 minutes, please contact the Helpdesk by email at tmhelp@donotcall.gov. Make sure to include your Organization ID.

When you receive the confirmation email click on the link in the email. It will take you back to the Log in page. Once there, log in with your Organization ID and Representative password to activate your account.

Once you have activated your account, your next step will be to subscribe to area codes.

26. **Why should I subscribe to area codes?**

You must subscribe to area codes to gain access to the data on the National Do Not Call Registry, and to have a Subscription Account Number (SAN) issued to your organization.

27. **How do I subscribe to area codes for the first time?**

   1. From https://telemarketing.donotcall.gov, click LOG IN CURRENT USERS and log in with the Representative password.
   2. Click the GREEN button for CREATE NEW SUBSCRIPTION. (The GREEN button always takes you to Subscription Information).
   3. Click SUBSCRIBE TO AREA CODES OR ADD AREA CODES TO YOUR CURRENT SUBSCRIPTION.
   4. Under SUBSCRIBE TO AREA CODES on the bottom right side of the page, choose one of the following options:
      1. Select ALL AREA CODES IN THE US to order every available area code and click SUBMIT.
      2. Select ALL AREA CODES WITHIN A STATE to order all of the area codes in one or more states and click SUBMIT. A list of states, territories, and Toll-Free numbers will appear. Select the appropriate check box(es). Then click CONTINUE (or CANCEL to return to the previous page).
      3. Select AREA CODES BY AREA CODE NUMBER to order individual area codes from one or more states and click SUBMIT. USE THIS OPTION TO SUBSCRIBE TO FIVE OR FEWER AREA CODES OR TO SELECT INDIVIDUAL AREA CODES. A list of individual area codes will appear. The area codes are sorted by area code number lowest to highest, left to right across the page. To group them by state, click SORT BY STATE. To return to the original sort click SORT BY AREA CODE. If you selected some area codes, but want to start over, click CLEAR SELECTIONS. Click on the applicable check box(es) for the area codes you want in your subscription. When complete click CONTINUE (or CANCEL to return to the previous page).
   5. A confirmation page will appear. If you are satisfied with the area codes that you have selected, click CONTINUE to submit your order (or CHANGE to return to the previous page).
   6. If you ordered five or fewer area codes it will take up to one business day to process your order. Your SAN will not be issued until your subscription finishes processing, and you won't be able to download phone numbers

or add area codes to your current subscription until then. You can check the progress of your subscription by going to MANAGE/RENEW SUBSCRIPTIONS then CHECK STATUS (click SUBMIT for the CURRENT time frame). The PAYMENT STATUS will display as INPROCESS until processing has finished. If successful, the PAYMENT STATUS will change to COMPLETED and your Subscription Account Number (SAN) will be displayed.

7. Once your subscription to five or fewer area codes finishes processing and your Subscription Account Number (SAN) has been issued, you will be able to download phone numbers, and the SUBSCRIBE TO AREA CODES OR ADD AREA CODES TO YOUR CURRENT SUBSCRIPTION link will be enabled so that you can add more area codes to your subscription if you wish.

   PLEASE NOTE: YOUR SAN WILL NOT BE SENT TO YOU BY EMAIL. To find your SAN log into the registry and then click the MANAGE/RENEW SUBSCRIPTIONS button (the GREEN button) then either CHECK STATUS or VIEW AREA CODES. It will also be displayed at the top of the Home page once you have logged into your account.

8. If a fee is due, click CONTINUE at the bottom of the page to make the required payment. Follow the prompts to enter your payment information on that site.

9. If you pay by Direct Debit/Electronic Funds Transfer there will be a waiting period of up to 3 to 5 full business days to allow the payment to clear before your SAN will be issued and you can begin downloading phone numbers.

10. If you pay by credit card, your SAN will be issued immediately and you will be able to download as soon as the transaction is approved, which usually occurs during that same session.

28. **When does my subscription expire?**

    Your subscription will expire twelve months after your Subscription Start Date (which is the first day of the month in which your current subscription becomes active). Visit the Manage/Renew Subscriptions page to see your Subscription Expiration Date. The period between your Subscription Start Date and Subscription Expiration Date is referred to as your Annual Subscription Period.

29. **What is the process for renewing my subscription?**

    An organization may renew its subscription no earlier than 30 days before its subscription expires. Organizations are notified of their renewal eligibility by email 30 days before their subscription will expire. If an organization renews during this early period, their new Annual Subscription Period will start on the first day of the following month. The current subscription will remain in effect until then. There is no overlap. Subscriptions can also be renewed after they have expired. A new 12-month Annual Subscription Period will run from the first day of the month in which an organization renews.

30. **Can I renew my subscription early?**

    As noted above, organizations may renew their subscription up to 30 days before their subscription expires. If you do this, your new subscription will start the day after your current subscription expires. There is no overlap.

    If you add new or different area codes to your upcoming subscription, you will not be able to download them until your new subscription becomes active. Adding area codes to your current subscription does not extend the length of the Annual Subscription Period.

The Manage/Renew Subscription page will change when you become eligible to renew your subscription:

1. When you are eligible for early renewal, you will see two links at the top of this page:
    - RENEW YOUR SUBSCRIPTION TO AREA CODES
    - SUBSCRIBE TO AREA CODES OR ADD AREA CODES TO YOUR CURRENT SUBSCRIPTION (EXPIRES: DD MMM YYYY)
2. If you are not yet eligible for early renewal, you will only see the current subscription option link:
3. SUBSCRIBE TO AREA CODES OR ADD AREA CODES TO YOUR CURRENT SUBSCRIPTION (EXPIRES: DD MMM YYYY)

(If you select this link you will be adding area codes to your current subscription period and they will expire on the date shown).

4. If your subscription has expired, you will also see the current subscription option, but no expiration date will be displayed:
    - SUBSCRIBE TO AREA CODES OR ADD AREA CODES TO YOUR CURRENT SUBSCRIPTION

(If you renew now, you will start a new subscription with a new twelve-month expiration date).

31. **What happens if I don't renew early?**

You may renew at any time once you are within 30 days of your Subscription Expiration Date, but if your current subscription expires, you will not be able to download area codes again until you renew.

32. **What is the easiest way to renew my subscription to the same area codes?**

After you click on RENEW YOUR SUBSCRIPTION TO AREA CODES use the Select Area Codes from Last Subscription button on the Order Area Codes – Step 2 page to automatically select all area codes from your last subscription. You may add or remove area codes before continuing.

33. **Is there a way to see what area codes were in a previous, or are in my current or upcoming subscription? Can I also review the Subscription Account Numbers (SANs) that have been issues for those subscriptions?**

You can go to MANAGE/RENEW SUBSCRIPTIONS then select either CHECK STATUS or VIEW AREA CODES to view your organization's subscription information (or your client's subscription information) in the following time periods:

- **Previous**: Your expired subscription.
- **Current**: Your currently active subscription. This is the only subscription you can download area codes from.
- **Upcoming**: Your future subscription, created during the early renewal period.

Only one subscription is active at a time. Subscriptions always remain current until their Subscription Expiration Date, they never end earlier. When your current subscription expires, it becomes your previous subscription, and your upcoming subscription **becomes** your current subscription.

34. **Will I be issued a new SAN with my new subscription?**

Your Subscription Account Number (SAN) expires when your current subscription expires, so you will be issued a new Subscription Account Number (SAN) to identify that new subscription. You must distribute your new SAN to any Telemarketers or Service Providers that work on your behalf if you want them to continue working for you.

To help you manage the SANs that your organization may have obtained over a number of years, your new SAN will have the subscription start year appended to the end. For example, 11111234-567890-**11** is a SAN that started in 2011.

35. **Will I need a new Organization ID and password for my new SAN?**

You do not need to create a new profile (and be issued a new Organization ID) in order to renew your subscription

Passwords on the registry expire every 90 days regardless of your subscription status. If your Representative password has expired before you begin your renewal transaction, you'll need to reset it before you'll be able to log in and renew. See below for information on changing your passwords.

36. **How can a Client/Seller share their Subscription Account Number (SAN) with a Telemarketer/Service Provider (TM/SP)?**

As noted in the DEFINITION section above, "Every Seller should subscribe, pay the appropriate fee, and agree to the certification requirements to receive a Subscription Account Number (SAN) with the National Do Not Call Registry." If that Seller then procures some type of telemarketing services from a Telemarketer/Service Provider (TM/SP) — for example, purchasing a list, scrubbing a list, or making telemarketing calls on the Seller's behalf — the Seller must share it's SAN with that TM/SP. Sharing the SAN gives the TM/SP access to the Seller's profile information (read only) and their subscription to area codes. Exempt Organizations (EOs) can also share their SANs with a TM/SP.

The TM/SP can then use the following steps to add their clients SANs to their Client List.

1. Obtain the client's SAN and Organization ID from the client.
2. Click on MANAGE CLIENTS.
3. Click on ADD A CLIENT'S SAN.
4. Enter the client's SAN in the CLIENT SAN field.
5. Enter the client's Organization ID in the Organization ID field.
6. Click Add. The ADD CLIENT-REVIEW page will appear which will display the client's Name, Address, and SAN. Confirm that the information is correct and click Submit.
7. If the information is not correct, click Cancel. The registry will return to the previous page so corrections can be made.
8. Once Submit has been clicked, the ADD CLIENT – COMPLETE page will appear, which acknowledges that the organization has been added to the Client List.

The TM/SP can then review their Client's List by going back to MANAGE CLIENTS and clicking on MANAGE EXISTING CLIENTS. This page will display all of their clients' Organization Names, SANs, and SAN Expiration Dates, and provides access for them to view their client's Profiles, and the Area Codes in the client's subscription. They can also use this page to remove clients from the Client's List by clicking on DELETE. Once a SAN has been added the TM/SP should also be able to see the SAN on the VIEW AREA CODES page under MANAGE / RENEW SUBSCRIPTIONS.

37. **How can a Seller/Exempt Organization keep track of the TM/SPs that they have shared their Subscription Account Number (SAN) with?**

Once a TM/SP has added a Seller/EO to their Client List, the Seller/EO has the ability to see what Organizations are sharing its SAN in two ways:

1. For the first 90 days that their SAN is being shared, they will see a table on the registry's HOME page which displays the Organization Name of the TM/SP with whom they have shared their SAN, the date/time the SAN was added to the TM/SP's Client's List, and the name of the TM/SP's Authorized Representative.
2. By going to MANAGE / RENEW SUBSCRIPTIONS then VIEW SAN SHARING.

On this page the Seller/EO will see their:

- SAN and SAN Expiration Date;
- the Organization name(s) of the TM/SP(s) with whom their SAN is being shared;
- whether or not that TM/SP has shared their SAN with another TM/SP (and the Organization name of that other TM/SP)
- the date of the last download that was completed by that TM/SP using their SAN

The Seller/EO can also click on the Delete button to remove their SAN from the Client's List of any TM/SP with whom they are no longer affiliated.

Since organizations are required to search the registry at least every 31 days, knowing the date of the last download by the TM/SP allows the Seller/EO to know whether or not that requirement is being met.

38. **What are the guidelines for SAN Sharing by different Organization Functions?**

The following chart provides additional information for Sharing SANs:

Type of Organization	Who Must Pay?	Who Must Complete the Certification?	Who May Download the Information?	Who Owns the Subscription Account Number (SAN)?	May the Organization Share the SAN?
Seller who engages in its own telemarketing	Seller	Seller	Seller	Seller	Yes with one **or** more TM/SP but not with an EO
Seller who uses Telemarketer (TM) **or** Service Provider (SP)	Either Seller **or** TM/SP on behalf of Seller	Either Seller **or** TM/SP on behalf of Seller	Either Seller **or** TM/SP on behalf of Seller	Seller	Yes, with one **or** more TM/SP but not with a Seller or an EO

Type of Organization	Who Must Pay?	Who Must Complete the Certification?	Who May Download the Information?	Who Owns the Subscription Account Number (SAN)?	May the Organization Share the SAN?
Telemarketer or Service Provider (TM/SP) that accesses the registry through a clients account	TM/SP **or** no one (if using existing SAN)	TM/SP	Seller	Seller/Client	Yes, with another TM/SP but not with a Seller or an EO
Telemarketer or Service Provider (TM/SP) that accesses the registry on its own behalf as well as accessing the registry through a client's account	TM/SP and client	TM/SP	TM/SP	TM/SP	Yes, with another TM/SP but not with a Seller or an EO
Exempt Organizations (EO)	No payment required or TM/SP if engaging in non-exempt telemarketing activities on behalf of EO	EO **or** TM/SP on behalf of EO	EO **or** TM/SP on behalf of EO	EO	Yes with one **or** more TM/SP

Note: A Covered Seller is subject to the Federal Trade Commission's amended Telemarketing Sales Rule.

Paying For Access

39. **How much does it cost to access the registry?**

    Data for up to five area codes is free. Beginning October 1, 2023, the annual fee will be $78 per area code of data (after five) up to a maximum annual fee of $21,402.

40. **How often do I have to pay a fee?**

    The fee must be paid annually. Payment of the fee provides access to the data for an "Annual Subscription Period," which is defined as the twelve months following the first day of the month in which the seller paid the fee. For example, a seller who paid its annual fee on September 15, 2015, has an "Annual Subscription Period" that runs from September 1, 2015 through August 31, 2016.

Organizations will also have to pay if they add new area codes to their current subscription and the number of area codes being added require additional payment. See Question 45 below for more information.

41. **Who must pay a fee to the registry?**

Organizations that subscribe to more than five area codes will be required to pay a fee to access data on the registry, except for Exempt Organizations (who pay no fees). The fee is based on the number of area codes to which the organization subscribes. Fees must be paid online to Pay.gov during the subscription or renewal process. Pay.gov accepts Credit Cards (Visa, MasterCard, American Express, and Discover) and ACH payments.

The recipient in an ACH Transaction is:

Federal Trade Commission (FTC)
600 Pennsylvania Ave NW
Washington DC 20580

Pay.gov does not accept Carte Blanche, wire transfers, cashier's checks, or traveler's checks.

42. **When will I be able to access data on the registry if I pay for my subscription using a credit card?**

Immediate access to data on the registry will be granted when an organization pays for its subscription using a credit card, providing that the credit card payment clears during that session.

43. **When will I be able to access data on the registry if I pay for my subscription by Direct Debit / Electronic Funds Transfer?**

If your organization pays for its subscription using direct debit from a bank account (also known as electronic funds transfer by entering the bank ACH number at the Pay.gov), you must wait until after your payment clears before you can begin downloading from the Registry. Generally, payments take between three to five full business days to clear. However, it is possible for payments to take longer before they will clear.

Please note that the length of time you must wait before your payment clears will depend on when you submit your payment for processing. Keep in mind:

- If you submit your payment before 8 PM EST, then your payment will begin processing the next full business day
- If you submit your payment after 8 PM EST, then your payment will begin processing the second full business day
- Waiting periods do NOT include weekends or holidays.

For example, if you submit your payment on a Monday, BEFORE 8 PM EST, and there are no holidays during that week, then your payment will generally clear by close-of-business on Thursday, and you will be able to begin downloading data from the registry on Friday. Alternatively, if you submit your payment on a Monday, AFTER 8 PM EST, and there are no holidays during that week, then your payment will generally clear by close-of-business on Friday, and you will be able to begin downloading data from the registry on the following Monday.

44. **How do I request a refund?**

    You can go to MANAGE / RENEW SUBSCRIPTIONS then REQUEST A REFUND to learn the requirements that must be met in order to obtain an automated refund for your payment and to ask for the refund. Refunds are only available for credit card transactions.

45. **What if I pay for a small number of area codes, and then later in the year expand my business to call more area codes? Will I have to pay twice?**

    If you need to access data from more area codes than you initially selected, you may do so, but you will have to pay for access to those additional area codes if your total number of area codes exceeds five. Beginning October 1, 2023, obtaining additional data from the registry during the first six months of your annual period will require a payment of $78 for each new area code. During the second six month period, the charge to obtain data from each new area code will be $39. Payment for additional data provides you with access to the additional data for the remainder of your Annual Subscription Period (Please note that adding area codes to your subscription DOES NOT affect your Subscription Expiration Date. New area codes will expire when your current subscription expires).

46. **What happens after I pay for access?**

    After payment is processed, you will be given a unique Subscription Account Number (SAN) and permitted access to the appropriate portions of the registry. You will now be able to download phone numbers from the registry. For more information on downloading see the DOWNLOADING PHONE NUMBERS section of this FAQ that starts at Question 48 below.

47. **If I'm a Telemarketer or Service Provider (TM/SP) working for a Seller, can I use the Seller's Subscription Account Number (SAN) to access the registry?**

    A Telemarketer or other Service Provider working on behalf of a Seller may access the registry directly or through the use of its Seller-Client's SAN. If access is gained through its Seller-Client's SAN, the Telemarketer or Service Provider will not have to pay a separate fee for that access. The extent of its access will be limited to the area codes subscribed to by its Seller-Client.

    If a Telemarketer or Service Provider is accessing the registry directly — that is, if a Telemarketer or Service Provider decides to obtain the information on its own behalf — it will have to pay a separate fee and comply with all requirements placed on sellers accessing the registry. Such a Telemarketer or Service Provider will be provided a SAN that can be used only by that company. In other words, that SAN is not transferable.

48. **What if a Seller uses one telemarketer at the beginning of the year and switches to another later in the year? Will the Seller have to pay twice?**

    No. When you pay for your SAN it is for an Annual Subscription Period that runs from the first day of the month in which your subscription becomes active until 12 months later. (See question 27). Sharing your SAN with a different telemarketer does not require any additional payment.

Downloading Phone Numbers

49. **I've just completed my registration and my first subscription to 5 or fewer area codes, why can't I download?**

    Your first order of 5 or fewer area codes will take up to 3 business days to process. Once your order has finished processing you will be able to download files (or use the INTERACTIVE PHONE NUMBER SEARCH)

50. **What are the options available for accessing telephone numbers?**

    A Full List Download is a download that contains all the registered telephone numbers within the area codes that are part of your organization's subscription as of the day before you are doing the download.

    If you have subscribed to individual area codes, each area code will be available in a single discrete file for downloading. If you have subscribed to all of the area codes in a state, all of the area codes in that state will be combined into a single discrete file for downloading. If you have subscribed to all of the area codes in the US, all of the available area codes will be combined into a single discrete file for downloading. A Change List Download is a download that contains telephone numbers that have been added to or deleted from the National Registry since the last time your organization successfully performed a download. You will be notified by email when the Change List download is ready, which may take up to 24 hours. The Change List Download file is a single discrete file for downloading.

    NOTE: It is recommended that you complete a Full List Download of your subscription at least once every six months to ensure that your lists are accurately synchronized).

    ADDITIONAL NOTE: If you are a Telemarketer/Service Provider downloading on behalf of clients you will be required to certify your compliance with the Telemarketing Sales Rule (TSR) each time you download.

    The Interactive Phone Number Search allows you to enter an area code and up to 10 telephone numbers in that area code. For each telephone number entered, the system displays whether the number is Registered or Not Registered. You are only allowed to enter a total of 100 phone numbers in a single web session.

51. **When are Full Lists updated and available for me to download?**

    Full area code lists are updated every day and are usually available for download after 8:00 am ET each day.

52. **What file formats are available for download?**

    Data is available from the national registry using Internet-based formats and download methods that serve both small and large businesses. Data also is available in three different sets: Full Lists, Change Lists, and the Interactive Phone Number Search (small list look-ups). Full Lists and Change Lists are available as "Flat Text Files or XML tagged data files. With a Web browser, you may access a secure Web page that allows you to select the download set that you prefer. For the Interactive Phone Number Search, you will be asked to enter from one to 10 telephone numbers on an online form. After entering the numbers and clicking a button, the national registry will display the list of numbers you entered and whether each number is registered in the national registry, or not registered.

    You will be limited to the numbers in the area code(s) to which you have subscribed. The Full List will contain just 10-digit telephone numbers, with a single number on each line. For the Change List in Flat File Format, each line of the file will contain a telephone number, the date of the download, and an "A" (for Added) or "D" (for Deleted). The Change List data will be displayed in fixed-width fields.

For both Flat Text Files and XML tagged data, if you select a Change List, you will be provided all telephone numbers that have been added to, or deleted from, the registry since the date of your last successful download. Change Lists, for both Flat Text Files and XML tagged data, are available to provide changes on a daily basis (representing the additions and deletions from the day before).

To assist in automating the download process, the national registry offers the option to set up Web services for requesting Change Lists in either Flat Text File or XML tagged data format.

For more information on the file formats, see below.

53. **If the download files are compressed, what software can I use to uncompress a file?**

Download files are compressed or zipped to make downloads faster and more secure. You can use any standard software for uncompressing or unzipping downloaded files. If you do not have this software installed on your computer, you can download it from one of the Web sites that offer such software, for example:

- www.pkware.com for PKZIP
- www.winzip.com for WinZip

Note: The Federal Trade Commission and the National Do Not Call Registry do not endorse any Web sites, vendors or software products. This list is provided simply for your convenience.

54. **How do I uncompress a file?**

Generally, you will need to rename the downloaded file to conform to the conventions required by the decompression software you are using. For example, you may need to rename the file so it has a .ZIP file extension. After you rename the file, then click on it to launch the decompression software. For details, you should consult the documentation for your decompression software.

55. **How large are the download files? How much disk space do they take?**

The Full List will grow larger as more telephone numbers are entered into the National Registry. The size of a Change List depends on how long ago you downloaded a list and how many telephone numbers were added to and deleted from the Registry since that time.

The following table provides estimates of typical file sizes for the Full List, but the sizes of the files you download may be different. The estimates are based on 23 million registered telephone numbers:

File Name	Uncompressed Size on Disk (MB)	Compressed Download Size (MB)
Global File (All States)	4,860	616
California	560	69
Other Large States (TX, FL, NY)	319	40
Average States	87	11
Large Area Code	42	5
Average Area Code	15	2

56. **How long will it take to download a file?**

The time it takes to download a file depends on the connection speed, Internet traffic and other conditions. The following table is based on the typical file sizes described:

File Name	Download Speed in Minutes (2Mbps DSL)
Global File (All States)	43
California	5
Other Large States (TX, FL, NY)	3
Average States	1
Large Area Code	0.3
Average Area Code	0.1

57. **How does downloading work?**

Downloads work in different ways, depending on your list selection. Remember that before you can download registered telephone numbers, you must agree to the certification requirements of the National Registry.

If you choose to download a Full List, you will see a list of links for the files that are available for download. For example, if you subscribed to five individual area codes, you will see a separate link for each area code; if you subscribed to all of the area codes in two different states, you will see a separate link for each state; if you subscribed to all of the area codes in the US, you will see a single link labeled "Global". Click on the applicable link, and then answer the dialog box questions to save the download file to disk. If you have multiple files to download, repeat this process for each file. Be sure you have enough disk space to hold the downloaded files. Once the files are downloaded, you must uncompress them before you'll be able to read them.

If you choose to download a Change List, a custom list of telephone numbers that have been added to and deleted from the National Registry since your last successful download will be generated. When your Change List is ready, you will receive an email at the email address for your Authorized Representative (if you logged in as the Representative to request the list), or the email address for your Downloader (if you logged in as the Downloader to request the list). You should receive the email within 24 hours after you submit your request. Inside the email will be a link which you must click on to start the download. Answer the dialog questions to save it to disk. Be sure you have enough disk space to hold the downloaded files. As noted above, once the Change List is downloaded, you must uncompress it.

For Change Lists, you may also choose to set up a SOAP-based web service to automate downloads of the files using either Flat Text File or XML tagged file format. The compressed XML payload is similar to that of the XML Change files. You must contact the Help Desk to obtain specific technical details and the WSDL specification for this service.

58. **My download failed. What do I do?**

Click on the Download Phone Numbers button again and follow the instructions to retry. If the problem persists, click on the Contact Help Desk button and fill out the form to report this to the Help Desk. Please include any error messages you're getting.

59. **Once I download my subscription, what do the contents of the file look like?**

As noted above, the download files come in two different formats: Flat Text Files or XML Tagged Files[PB1]. The sections below describe the contents of these file formats for Full Lists and for Change Lists. A Full List in Flat Text File format looks different from a Change List in Flat Text File format.

Flat Text File – Full List

The Full List in a Flat Text File has one three-digit area code, a comma, and a seven-digit telephone number per line, with a linefeed at the end of each line:

123,4567890
123,4567890
123,4567890

Flat Text File – Change List

The Change List in a Flat Text File has one record per line, with a linefeed at the end of each line. Each record has a 10-digit telephone number, a date and time stamp, and the transaction type (the letter A if the phone number was added or the letter D if the phone number was deleted).

1234567890,yyyy-mm-ddThh:mm:ss,A
1234567890,yyyy-mm-ddThh:mm:ss,A
1234567890,yyyy-mm-ddThh:mm:ss,D
9876543210,yyyy-mm-ddThh:mm:ss,A
9876543210,yyyy-mm-ddThh:mm:ss,D

XML Tagged File – Full List

When you receive the Full List as an XML Tagged File, an element indicates what level and value of data are contained in the file.

For the complete national list, the level is "all" and the value is null (Example 1)

For a state list, the level is "state" and the value is a 2 character state abbreviation, such as NY for New York (Example 2)

For an area code list, the level is "ac" and the value is the area code, such as 716 (Example 3)

Note: XML Tagged Files will not contain the extra white space shown below for formatting.

Example 1: National List

```
<list type=’full’ level=’all’ val=’’ />
<ac val=’123’>
<ph val=’4567890’ />
<ph val=’4567890’ />
<ph val=’4567890’ />
</ac>
<ac val=’xxx’>
<ph val=’xxxxxxx’ />
<ph val=’xxxxxxx’ />
<ph val=’xxxxxxx’ />
</ac>
</list>
```

Example 2: State List

```
<list type='full' level='state' val='NY' />
<ac val='212'>
<ph val='4567890' />
<ph val='4567890' />
<ph val='4567890' />
</ac>
<ac val='xxx'>
<ph val='xxxxxxx' />
<ph val='xxxxxxx' />
<ph val='xxxxxxx' />
</ac>
</list>
```

Example 3: Single Area Code List

```
<list type='full' level='ac' val='716' />
<ac val='716'>
<ph val='4567890' />
<ph val='4567890' />
<ph val='4567890' />
</ac>
</list>
```

XML Tagged File – Change List

The Change List XML Tagged File has a 7-digit telephone number, a date and time stamp, and the transaction type (the letter A if the phone number was added or the letter D if the phone number was deleted.)

```
<list type='change' />
<ac val='123'>
<ph val='4567890' dt='yyyy-mm-ddThh:mm:ss' tt='A' />
<ph val='4567890' dt='yyyy-mm-ddThh:mm:ss' tt='A' />
<ph val='4567890' dt='yyyy-mm-ddThh:mm:ss' tt='D' />
</ac>
<ac val='987'>
<ph val='6543210' dt='yyyy-mm-ddThh:mm:ss' tt='A' />
<ph val='6543210' dt='yyyy-mm-ddThh:mm:ss' tt='D' />
</ac>
</list>
```

Note: XML Tagged Files will not contain the extra white space shown above for formatting.

Compliance

60. **What happens to companies that don't pay for access to the registry?**

    A company that is a seller or telemarketer could be liable for placing any telemarketing calls (even to numbers NOT on the registry) unless the seller has accessed the registry and paid any required fees. Violators may be subject to fines of up to $51,744 per violation. Each call may be considered a separate violation.

61. **What if I call a number that's not on the registry without checking the registry first?**

    It's against the law to call (or cause a telemarketer to call) any number on the registry (unless the seller has an established business relationship with the consumer whose number is being called, or the consumer has given written agreement to be called). But it's also against the law for a seller to call (or cause a telemarketer to call) any person whose number is within a given area code unless the seller first has subscribed to and accessed the portion of the registry that includes numbers within that area code, and paid the annual fee, if required.

    In addition, it's against the law for a telemarketer, calling on behalf of a seller, to call any person whose number is within a given area code unless the seller has first subscribed to and accessed the portion of the registry that includes numbers within that area code, and paid the annual fee, if required. Telemarketers must make sure that their seller-clients have paid for access to the registry before placing any telemarketing calls on their behalf.

62. **What's my liability if my company inadvertently calls a number on the registry?**

    The TSR has a "safe harbor" for inadvertent mistakes. If a seller or telemarketer can show that, as part of its routine business practice, it meets all the requirements of the safe harbor, it will not be subject to civil penalties or sanctions for mistakenly calling a consumer who has asked for no more calls, or for calling a person on the registry. To meet the safe harbor requirements, the seller or telemarketer must demonstrate that:

    - it has written procedures to comply with the do not call requirements
    - it trains its personnel in those procedures
    - it monitors and enforces compliance with these procedures
    - it maintains a company-specific list of telephone numbers that it may not call
    - it accesses the national registry no more than 31 days before calling any consumer, and maintains records documenting this process
    - any call made in violation of the do not call rules was the result of an error

Passwords

63. **Why are two passwords necessary?**

    The registry provides an organization with two passwords when it creates its profile. This affords your organization maximum flexibility if you want more than one person in your organization to know how to access the National Do Not Call Registry, and allows you to access the information whenever you need it. **Once you receive your passwords and whenever you change them, you should print and save them in a secure location.**

64. **What are the two passwords that were issued to my organization?**

The two passwords are for the designated Authorized Representative and for the Downloader.

The password for Authorized Representative grants access to all functions on this Web site:, Review Profile, Manage/Renew Subscriptions, Manage Clients (if your organization is a Telemarketer or Service Provider (TM/SP), Download Phone Numbers and Contact Help Desk.

The password for Downloader grants access to ONLY the Download Phone Numbers, and Contact Help Desk functions. The Downloader password can be shared with more than one person to give access to telephone numbers on the registry. Keep in mind that only one person can be logged in with either password at any one time.

65. **What should I do when a password has been entered incorrectly too many times and it says my account has been locked?**

If you have tried to log in five times in a 15 minute period and failed all five times, you must send an email to the Help Desk at tmhelp@donotcall.gov to have your account unlocked before you can try to log in again. Make sure the Caps Lock is turned off and be careful when typing upper and lower case letters. You cannot copy and paste the passwords into the password field, they must be typed.

Locking you out of the account after five attempts is a security measure designed to prevent one method for automated attacks against the system.

If you still have trouble with the password, your Authorized Representative may obtain a new password by following the steps below (Forgot My Password). This creates a completely new temporary password that is generated automatically. When you get a new password, you'll have to change it immediately before you'll be able to access the system.

66. **I forgot our Representative password. How do I get a new password?**

1. Go to the Forgot My Password page. Then:
    - enter your Organization ID
    - enter your Authorized Representative email address. If your Authorized Representative email address has changed, please notify the Help Desk of this change by email at tmhelp@donotcall.gov
    - click Submit.
2. If successful, an email will be sent to the Authorized Representative. If you don't receive an email from TMReset@donotcall.gov within a few minutes, please contact the Help Desk at tmhelp@donotcall.gov.
3. When the email comes, open it and click on the link provided in the email.
4. At the prompt, enter your Organization ID, and then click Submit.
5. The system will provide you with a new Temporary password (make sure you write it down or print it out) and you will receive an email confirming that the password has been changed. You will be required to change that password before you can access the system.
6. Once you have changed the password, login with your Organization ID and the new password you have created.

67. **I forgot our Downloader password. How do I get a new password?**

    If you have forgotten your Downloader password, your Representative can change your password using the steps below.

68. **How do I change our Representative or Downloader password?**

    Start at the login screen. Click CHANGE MY PASSWORD. When the Change My Password screen appears, follow these steps:

    - Enter your Organization ID and the Representative Password (only the Representative can change a password).
    - Where the screen says "Change Password For:" select either Representative or Downloader (depending on which password you want to change).
    - Enter the New Password that you have created in the next two fields.
    - Click Submit.

    The screen will confirm that the password has been changed and will display your new password. If you do not get the confirmation screen, then your attempt to change the password has failed. An error message should appear at the bottom of the screen that will help you determine why you were not successful.

69. **What are the rules for passwords?**

    A password must be at least eight characters and contain:

    - lower and upper case letters
    - numbers (digits 0 – 9)
    - either punctuation or symbols (such as a comma "," or an asterisk "*")

    For example: KljYYu=59.

    You are allowed five attempts to log in and then your account will be locked.

    Only the Authorized Representative for an organization may change passwords or request a new password for a forgotten one. Passwords must be changed every 90 days. A password may not be reused for two years.

70. **Can the Help Desk assist me if I have forgotten my Organization ID or changed my Authorized Representative email address but did not update my profile?**

    Telemarketers requesting the Organization ID or changing the Authorized Representative Email Address will have to send an email to the FTC Do Not Call Registry Help Desk at tmhelp@donotcall.gov and include the following information:

    - Your complete Organization Name.
    - Your complete Organization Address.

    If your organization has changed names or moved since your profile was created, and your profile wasn't updated, please provide your old Organization Name and/or Address.

Troubleshooting

71. **What if I have problems when I try to access the national registry?**

    The website at www.telemarketing.donotcall.gov has an online Help Desk available for email help requests during regular business hours via a secure electronic form. There is a CONTACT HELP DESK link at the top of the page. You'll need to log in with your Organization ID and password to access the Contact Help Desk link.

    If you cannot use Contact Help Desk, you can email the Help Desk at tmhelp@donotcall.gov.

    What are the Help Desk hours of operation?

    The Help Desk's operational hours are 8:00 a.m. to 8:00 p.m. Eastern Time, Monday through Friday, except for Federal government holidays, as listed:

    - New Year's Day
    - Martin Luther King's Birthday
    - President's Day
    - Memorial Day
    - Independence Day
    - Juneteenth Independence Day
    - Labor Day
    - Columbus Day
    - Veteran's Day
    - Thanksgiving Day
    - Christmas Day

72. **How quickly can I expect a response from the Help Desk?**

    During operational hours, the Help Desk will respond to requests for assistance within two hours of receipt. Otherwise, the Help Desk will respond within two hours of the start of normal business hours.

73. **How does the Help Desk respond?**

    The Help Desk responds only via email. There is no phone number by which to contact the Help Desk. Leidos provides both Tier 1 and Tier 2 level support. Tier 1 elevates selected problems to Tier 2 or the FTC for guidance and resolution as needed.

74. **What type of assistance does the Help Desk provide?**

    The Help Desk provides assistance only to those Telemarketers, Sellers and Exempt Organizations registered on the telemarketing web site. The Help Desk does not provide assistance to consumers or those with questions concerning the consumer do not call web site.

    The Help Desk can provide only technical assistance, not legal opinion. For legal advice, you may need to consult with an attorney.

In order to receive information from the Help Desk, visit the Contact Help Desk page and fill out the form. The system assigns a problem case number to the reported problem for tracking purposes. A reply will be sent to the email address entered on the form.

There may be cases when the Help Desk cannot be reached using the Telemarketing web site. In these rare cases an email can be sent directly to tmhelp@donotcall.gov. Please note that for issues reported by email the Help Desk cannot assign a problem case number for tracking purposes.

75. **Where can I get more information about compliance?**

The best source for more information is our comprehensive guide Complying with the Telemarketing Sales Rule.

It's important that sellers and others involved in telemarketing recognize that both the FTC and the FCC regulate telemarketing practices. Those involved in telemarketing should review regulations put in place by both agencies. The FCC's regulations may be found at https://www.law.cornell.edu/cfr/text/47/64.1200.

The FTC works for the consumer to prevent fraudulent, deceptive and unfair business practices in the marketplace and to provide information to help consumers spot, stop and avoid them. The FTC manages the National Do Not Call Registry, which gives consumers a choice about getting telemarketing calls at home. To register a number, log on to DONOTCALL.GOV, or call toll-free, 1-888-382-1222; TTY 1-866-290-4236. If your number is registered and you have received an unwanted telemarketing call, you may file a complaint at DONOTCALL.GOV, or call toll-free, 1-888-382-1222; TTY 1-866-290-4236.

Appendix D: Exemplar Campaign Initiation Checklist

[*Company Logo*]

Outbound Campaign Initiation Checklist

Department Name: ______________________________

Campaign Name/ID: ______________________________

Campaign Description: ______________________________

Topic/Requirement	Campaign Information	Employee(s) Signoff
REGISTRATION ANALYSIS		
Will this campaign trigger additional telemarketer registration requirements (Please verify with the CCO)		
PHONE SYSTEM INFORMATION		
Phone system(s) for campaign		
Dial method (manual, click-to-call, etc.)		
Source of consent (if consent relied upon as an exemption). Attach exemplar of any applicable consent form(s).		
SCRUBBING		
Scrub Wireless Block list?		
Scrub Ported Number List (wireless)?		
Block calls to cell phones in these states		
Scrub Federal DNC Registry?		
Scrub state DNC lists?		
Scrub out all Indiana numbers?		
Scrub out all NJ and/or WI numbers?		
Scrub out any other states?		
Relevant DNC exemption(s)		
Scrub internal DNC lists?		

Appendix D: Exemplar Campaign Initiation Checklist (cont'd)

SCRIPT (attach copy)		
Script name		
Call recording disclosure at beginning?		
Promptly discloses agent's name, company name and purpose of call?		
Discloses total price (with all fees)?		
Discloses negative option feature (if applicable)?		
Discloses length of agreement?		
Discloses cancellation policy?		
Consumer asked to authorize all charges?		
Incorporates state-specific disclosures?		
MISC. COMPLIANCE INFORMATION		
Maximum attempts per day		
Maximum attempts per campaign		
State calling times applied?		
Caller ID name		
Caller ID number		
Abandoned message played?		
Maximum abandon rate		

Approved By:

Signature: ______________________ Date: ______________________

Name: ______________________ Title: ______________________

ENDNOTES

1 Note that this guide does not address telemarketing rules that apply to nonprofit organizations or to charitable solicitations. It also does not address telemarketing restrictions that your state may impose.
2 47 U.S.C. § 227.
3 15 U.S.C. §§ 6101-6108.
4 The Telemarketing Sales Rule, 16 CFR 310, implements the Telemarketing Act, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), Public Law 107056 (Oct. 25, 2001).
5 15 U.S.C. §§ 7701–7713.
6 Some states have also enacted legislation governing email communication that may contain duties in addition to those outlined here. However, CAN-SPAM expressly pre-empts any state law that is inconsistent with CAN-SPAM.
7 16 C.F.R. §§ 316.1-6.
8 15 U.S.C. § 7702(2)(A).
9 15 U.S.C. § 7706.
10 See the FTC's CAN-SPAM Act: A Compliance Guide for Business.
11 As discussed below, CAN-SPAM prohibits *any* email containing false or misleading header information, but the remaining requirements apply only to commercial email.
12 15 U.S.C. § 7702(2)(B).
13 15 U.S.C. § 7702(6).
14 *Id.* at (5).
15 *Id.* at (4).
16 Candid Answers to CAN-SPAM Questions; https://www.ftc.gov/business-guidance/blog/2015/08/candid-answers-can-spam-questions.
17 Indeed, the FTC has stated unequivocally that "if the bulk of the transactional or relationship part of the message doesn't appear at the beginning, it's a commercial message under the CAN-SPAM Act." See the FTC's CAN-SPAM Act: A Compliance Guide for Business, which includes several examples of email messages with mixed commercial and transactional content.
18 The restrictions and obligations with respect to emails containing "sexually oriented material" are not discussed in this guide.
19 15 U.S.C. 7704(a)(1).
20 *Id.* at (a)(2).
21 *Id.* at (a)(5)(A)(i).
22 CAN-SPAM Act: A Compliance Guide for Business.
23 Note that the requirement to identify the message as an advertisement does not apply "if the recipient has given prior affirmative consent to receipt of the message" (*Id.* at (5)(B)). While not required in those instances, to assure compliance many senders include the disclosure language in the footer of all email. here is no penalty under CAN-SPAM for "over-identifying" messages as potentially containing advertisements.
24 16 CFR § 316.5.
25 15 U.S.C. § 7704 (a)(4)(B).
26 15 U.S.C. § 7702(1).
27 Because you have 10 days under the statute to honor any opt-out request, if possible, ensure that you do not come even close to that 10-day limit.
28 15 U.S.C. § 7704 (a)(4)(A)(iv); 15 U.S.C 45.
29 As of April 15, 2024, this list includes California, Colorado, Connecticut, Delaware, Indiana, Iowa, Kentucky, Montana, New Hampshire, New Jersey; Oregon, Tennessee, Texas, Utah, and Virginia; however, a number of other states have legislation currently pending in their state legislatures.
30 This includes, as outlined above, your manufacturer franchisor partner.
31 15 U.S.C. §7706 (a) Violation is unfair or deceptive act or practice. Stating that "[e]xcept as provided in subsection (b), this chapter shall be enforced by the Commission as if the violation of this chapter were an unfair or deceptive act or practice proscribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B))."
32 As of 2024.
33 The provision allowing for state action includes the potential for statutory damages of $250 for each violation, up to $2 million, and attorney fees. See 15 U.S.C § 7706 (f).
34 Dealers should consult with their attorneys about any potential state claims or actions.
35 15 U.S.C. §7704.
36 15 U.S.C. 6101-6108. Subsequently, the USA PATRIOT Act, Public Law 107-56, 115 Stat. 272 (Oct. 26, 2001),

expanded the Telemarketing Act's definition of "telemarketing" to encompass calls soliciting charitable contributions, donations, or gifts of money or any other thing of value.

37 Other statutes enacted by Congress to address telemarketing fraud during the early 1990s include the Telephone Consumer Protection Act of 1991, 47 U.S.C. 227 et seq., which restricts the use of automated dialers, bans the sending of unsolicited commercial facsimile transmissions, and directs the FCC to explore ways to protect residential telephone subscribers' privacy rights; and the Senior Citizens Against Marketing Scams Act of 1994, 18 U.S.C. 2325 et seq., which provides for enhanced prison sentences for certain telemarketing-related crimes.

38 15 U.S.C. 6102(a).

39 15 U.S.C. 6102(a)(3).

40 5 U.S.C. 6103, 6104.

41 Telemarketing Sales Rule Statement of Basis and Purpose and Final Rule, 60 FR 43842 (Aug. 23, 1995) (hereinafter TSR Final Rule 1995); Amended Telemarketing Sales Rule Statement of Basis and Purpose, 68 FR 4580 (Jan. 29, 2003) (hereinafter TSR Amended Rule 2003); Amended Telemarketing Sales Rule Statement of Basis and Purpose, 73 FR 51164 (Aug. 29, 2008) (hereinafter TSR Amended Rule 2008); Amended Telemarketing Sales Rule Statement of Basis and Purpose, 75 FR 48458 (Aug. 10, 2010) (hereinafter TSR Amended Rule 2010), 89 FR 26783 (Apr. 16, 2024) (hereinafter TSR Amended Rule 2024).

42 15 U.S.C. 6105(b); 16 CFR 310.2(cc) (using the same definition as the Telemarketing Act, 15 U.S.C. 6106).

43 15 U.S.C. 45(a)(2) (setting forth certain limitations to the FTC's jurisdiction with regard to its authority to prohibit unfair or deceptive acts or practices). These entities include banks, savings and loan institutions, and certain federal credit unions. It should be noted, however, that although the Commission's jurisdiction is limited with respect to the entities exempted by the FTC Act, the Commission has made clear that the Rule does apply to any third-party telemarketers those entities might use to conduct telemarketing activities on their behalf. See TSR Proposed Rule, 67 FR 4492, 4497 (Jan. 30, 2002) (citing TSR Final Rule 1995, 60 FR 43843) ("As the Commission stated when it promulgated the Rule, '[t]he Final Rule does not include special provisions regarding exemptions of parties acting on behalf of exempt organizations; where such a company would be subject to the FTC Act, it would be subject to the Final Rule as well.'").

44 For example, § 310.6(a) exempts telemarketing calls to induce charitable contributions from the National Do Not Call Registry provisions of the Rule, but not from the Rule's other requirements. In addition, there are exceptions to some exemptions that limit their reach. See, e.g., 16 CFR 310.6(b)(5)-(6).

45 The TSR requires that telemarketers soliciting sales of goods or services promptly disclose several key pieces of information: the identity of the seller; that the purpose of the call is to sell goods or services; the nature of the goods or services being offered; and in the case of prize promotions, that no purchase or payment is necessary to win. 16 CFR 310.4(d). Telemarketers also must disclose, in any telephone sales call, the cost of the goods or services and certain other material information. 16 CFR 310.3(a)(1).

In addition, the TSR prohibits misrepresentations about, among other things, the cost and quantity of the offered goods or services. 16 CFR 310.3(a)(2).

46 16 CFR 310.4(a)(7); 16 CFR 310.3(a)(3).

47 16 CFR 310.4(a)(2).

48 16 CFR 310.4(a)(3).

49 16 CFR 310.4(a)(4).

50 16 CFR 310.4(a)(5).

51 16 CFR 310.3(c).

52 16 CFR 310.3(b).

53 16 CFR 310.4(b).

54 16 CFR 310.4(a)(8).

55 16 CFR 310.4(b)(1)(iv).

56 16 CFR 310.4(b)(1)(v).

57 The FTC States that:

"... any businesses or individuals that take part in "telemarketing" must comply with the Rule. This is true whether, as "telemarketers," they initiate or receive telephone calls to or from consumers, or as "sellers," they provide, offer to provide, or arrange to provide goods or services to consumers in exchange for payment. It makes no difference whether a company makes or receives calls using low-tech equipment or the newest technology . . .[or] ... . whether the calls are made from outside the United States; so long as they are made to consumers in the United States, those making the calls, unless otherwise exempt, must comply with the TSR's provisions. If the calls are made to induce the purchase of goods, services, or a charitable contribution, the company is engaging in "telemarketing." See the FTC's Complying with the Telemarketing Sales Rule.

58 Telemarketing also can occur during calls you receive in response to your catalog solicitations in certain circumstances, and direct mail solicitations (whether

sent by U.S. mail, fax, email or "other similar methods of delivery") that involve prize promotions (and other categories of transactions the FTC has identified as particularly subject to abuse by telemarketers) or that fail to set forth certain material information.

59 This includes the prohibition on telemarketing calls to consumers who have registered on the National Do Not Call Registry or who have asked your dealership not to call them; telemarketing calls outside of the hours of 8 a.m. to 9 p.m.; blocking or failing to transmit Caller ID information; and call abandonment.

60 16 CFR 310.5.

61 This exception would seem to apply to the vast majority of dealership telemarketing, but the exact scope of the exception is somewhat unclear. Dealers should consult with counsel before relying solely on this exception for compliance with the FTC rules.

62 To assist you with understanding whether the FCC consent rules apply we have set forth an FCC Quick Reference Chart in Appendix A.

63 68 Fed. Reg. 44,144 (Jul. 25, 2003).

64 47 U.S.C. § 227(c)(3)(2003).

65 Throughout this guide we will discuss restrictions and obligations with reference to "dealers." Such reference is intended as a reading aid only, as the restrictions and obligations imposed under the federal marketing laws apply to all marketers, not just dealers.

66 47 U.S.C. § 227(c)(3); however, note also that the TSR definition defines "telemarketing" as "a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call."

67 Here is what the FCC tells consumers about the National DNC list:

The national do not call list protects landline and wireless phone numbers. You can register your numbers on the national do not call list at no cost by calling 1-888-382-1222 (voice) or 1-866-290-4236 (TTY). You must call from the phone number you wish to register. You can also register at donotcall.gov. 16 CFR 310.2(gg). Telemarketers must remove your numbers from their call lists and stop calling you within 31 days from the date you register. Your numbers will remain on the list until you remove them or discontinue service – there is no need to re-register numbers.

Under FCC rules, telemarketers calling your home must provide their name along with the name, telephone number, and address where their employer or contractor can be contacted. Telemarketing calls to your home are prohibited before 8 a.m. or after 9 p.m., and telemarketers are required to comply immediately with any do not call request you make during a call.

Whether you are on the National Do Not Call Registry or not, tell unwanted callers that you do not consent to the call and to put you on their internal do not call list. Make a record of the caller's number and when you made your request not to be called, and file a complaint with the FCC if the caller does not comply with your request.

FAQs

What is a telephone solicitation?

A telephone solicitation is a telephone call that acts as an advertisement. However, some phone solicitations are permissible under FCC rules, including calls or messages placed with your express prior permission, by or on behalf of a tax-exempt non-profit organization, or from a person or organization. However, having an established business relationship no longer meets the rules for permissible unsolicited calls to your land line phone. Companies and telemarketers must have your express permission to call.

Are there any other lists I can register my number with? Yes. Additionally, many states now have statewide do not call lists for residents. Contact your state's public service commission or consumer protection office to see if your state has such a list, and to find out how to register your number or numbers. For contact information for your state public service commission, check the government listings or blue pages of your local phone directory.

68 Several states allow businesses to place their telephone numbers on the state DNC list; therefore, when placing calls to businesses in these states scrubbing against the state DNC registry will be required unless an exemption applies.

69 47 CFR § 64.1200(a)(4)(i).

70 47 CFR § 64.1200(c)(2)(ii).

71 47 CFR § 64.1200(c)(3).

72 47 CFR § 64.1200(c)(2)(ii).

73 15 U.S.C. § 7001, et seq.

74 68 FR 44144.

75 Note also that the FTC does not recognize a personal relationship exemption to any of the prohibitions contained in the Telemarketing Sales Rule. Consequently, it is a violation of the FTC rules to rely solely on this exemption when engaging in interstate telemarketing.

76 68 FR 44144.

77 68 FR 44144.

78 89 FR 5177 (01/26/2024)

79 Dealers who have provided the required information and certification, and paid the appropriate fee (there is no fee to subscribe to five or fewer area codes) will be allowed to use the DNC lookup feature to check a small number of telephone numbers (10 or less) at a time via interactive Internet pages. Dealers who use this feature to screen their outgoing telephone solicitations are not required to either conduct an initial or subsequent download of the entire database. See FTC Q&A for Telemarketers, Question 20, at https://www.ftc.gov/business-guidance/resources/qa-telemarketers-sellers-about-dnc-provisions-tsr-0, and FCC Order 04-204, at https://docs.fcc.gov/public/attachments/FCC-04-204A1.pdf.

80 Complying with the Telemarketing Sales Rule | Federal Trade Commission (ftc.gov).

81 See 15 U.S. Code § 6152—Telemarketing Sales Rule; do not call registry fees.

82 47 CFR 64.1200(c)(2)(i); 16 CFR 310.5(b)(3).

83 https://www.ftc.gov/business-guidance/resources/complying-telemarketing-sales-rule#DNCprovisions.

84 47 CFR 64.1200(d); 16 CFR 310.

85 16 CFR 310.4 (b)(1)(iii)(A); 47 CFR 64.1200(d).

86 47 CFR 64.1200(d)(3). The TCPA was revised from 30 days to 10 days in 2024. See https://docs.fcc.gov/public/attachments/FCC-24-24A1.pdf.

87 47 CFR 64.1200(d)(6).

88 47 CFR 64.1200(d)(4).

89 47 CFR 64.1200(d)(6); 16 CFR 310(b)(1)(iii)(A).

90 47 CFR 64.1601(e); 47 CFR 64.1604(a); 47 CFR 64.122(f)(2); 16 CFR 310.4(a)(8); 16 CFR 311.2(gg).

91 47 CFR 64.1200(d)(6); 16 CFR 310(b)(1)(iii)(A).

92 This includes VIOP phone systems that charge customers by the minute for inbound calls. Vexatious litigators are known to maintain such VOIP services in order to have standing to bring a TCPA lawsuit or demand.

93 *Facebook, Inc. v. Duguid*, 592 U.S. 395 (2021).

94 47 U.S.C § 227(a)(9).

95 47 U.S.C § 227(b)(3).

96 47 U.S.C § 227(b)(3)(C).

97 "The TCPA has become the poster child for lawsuit abuse, with the number of TCPA cases filed each year skyrocketing from 14 in 2008 to 1,908 in the first nine months of 2014." Dissenting statement of FCC Commissioner Ajit Pai, Re: In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, WC Docket No. 07-135 ("Omnibus Order").

98 Internet-to-phone text messaging technology enables the sending of messages from a computer to a wireless phone. The messages originate as email sent to a combination of the recipient's unique telephone number and wireless provider's domain name. They are automatically converted by the wireless provider into a text message format that is delivered to the consumer's wireless phone over the wireless provider's network. Alternatively, the message enters the wireless provider's network via the carrier's web portal and is then converted to a text message format and delivered to the consumer's wireless phone over the wireless provider's network.

99 15 U.S.C. § 7712(b).

100 47 U.S.C § 227(b)(1)(A); 47 C.F.R. § 64.1200(a).

101 47 C.F.R. § 64.1200(a).

102 https://api.ctia.org/wp-content/uploads/2023/05/230523-CTIA-Messaging-Principles-and-Best-Practices-FINAL.pdf.

103 This applies to consumer and business telemarketing calls and text messages.

104 47 CFR 64.1200.

105 15 U.S.C. § 7001, et seq.

106 16 CFR 310.5(a).

107 89 FR 5098.

108 57 FR 48333.

109 https://docs.fcc.gov/public/attachments/FCC-24-24A1.pdf.

110 https://docs.fcc.gov/public/attachments/FCC-24-24A1.pdf.

111 89 FR 15756.

112 Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Declaratory Ruling, CG Docket No. 02-278, FCC Docket No. 07-232, (July 10, 2015)).

113 Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Declaratory Ruling, CG Docket No. 02-278, FCC Docket No. 07-232, (July 10, 2015)).

114 *Facebook, Inc. v. Duguid*, 592 U.S. 395.

115 In addition, employee use of personal devices to contact consumers raises a number of non-telemarketing-related practical and compliance concerns, such as privacy, security, ownership/control of customer contact information, potential advertising compliance issues, and more. Dealers should consider prohibiting, or at least closely controlling, such use through their own sanctioned systems.

116 Reassigned Numbers Database | Federal Communications Commission (fcc.gov).

117 This requirement was added with the TRACED Act. As noted below, the FCC rule implementing these requirements is awaiting final approval as of the date of this publication.

118 FCC-22-85A1.pdf; 47 CFR 1600(f)(9).

119 The TRACED Act additionally requires the FCC to report

to Congress to ensure expeditious implementation of the Reassigned Number Database.

120 STIR/SHAKEN uses digital certificates, based on common public key cryptography techniques, to ensure the calling number of a telephone call is secure. In simple terms, each telephone service provider obtains its digital certificate from a certificate authority that is trusted by other telephone service providers. The certificate technology enables the called party to verify that the calling number is accurate and has not been spoofed.

121 https://docs.fcc.gov/public/attachments/FCC-20-186A1.pdf.

122 Before proposing a monetary forfeiture penalty against a party that does not, or should not, hold an FCC license, permit, certificate, or other authorization, the FCC must first issue a warning citation. 47 U.S.C. § 503(b)(5). If a party continues to violate the Communications Act or the Commission's rules after receiving a citation, the FCC may impose a monetary forfeiture penalty covering both violations that occur after the citation and those violations that were addressed in the citation. See S. Rep. No. 95-580, 95th Cong., 1st Sess. at 9 (1977), reprinted in 1978 U.S.C.C.A.N. 109 (If a person or entity that has been issued a citation by the Commission thereafter engages in the conduct for which the citation of violation was sent, the subsequent notice of apparent liability "would attach not only for the conduct occurring subsequently but also for the conduct for which the citation was originally sent.")

123 15 U.S.C. 6105(b).

124 15 U.S.C. § 6103.

125 47 U.S.C. § 227(f).

126 15 U.S.C. 6104.

127 Any person who has received more than one call from the same entity in violation of the National Do Not Call Registry may bring a lawsuit based on the violation, and may attempt to recover damages "for actual monetary loss from such violation, or to receive up to $500 dollars in damages for each such violation, whichever is greater." 47 U.S.C. 227(c)(5). The Supreme Court has held that TCPA actions may be brought in state or federal court. See Mims v. Arrow Fin. Services, LLC, No. 10-1195, 565 U.S. 368, 132 S. Ct. 740, 745 (Jan. 18, 2012).

128 47 U.S.C. § 227(c)(5).

129 47 U.S.C. § 227(c)(5)(c).

130 47 U.S.C. § 227(b)(3).

131 Pub. L. No. 102-243, 105 Stat. 2394 (1991) (codified at 47 U.S.C. § 227).

132 H.R. Rep. No. 317, 102d Cong., 1st Sess. 10 (1991). See Missouri ex. rel. Nixon v. Am. Blast Fax, Inc., 323 F.3d 649 (8th Cir. 2003).

133 Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991, 10 FCC Rcd 12391, 12405 29 (1995); see also Landsman & Funk PC v. Skinder-Strauss Assocs., 640 F.3d 72, 76 (3d Cir. 2011); Am. Blast Fax, 323 F.3d at 654-55.

134 47 U.S.C. § 227(b)(1)(C).

135 47 U.S.C. § 227(a)(5).

136 See DA-19-1247A1.pdf (fcc.gov).

137 Junk Fax Prevention Act of 2005, Pub. L. No. 109-21, 119 Stat. 359.

138 47 U.S.C. § 227(b)(1)(C)(i).

139 See Junk Fax Prevention Act of 2005, Pub. L. No. 109-21, § 2(h).

140 See Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991; Junk Fax Prevention Act of 2005, 21 FCC Rcd 3787 (2006) ("Junk Fax Order"), (petition for review dismissed), Biggerstaff v. FCC, 511 F.3d 178 (D.C. Cir. 2007).

141 And, as the statute of limitations under the TCPA is four years, dealers should consider keeping all written permission and consent forms for a minimum of four years.

142 Id. ¶ 46.

143 71 FR 25967.

144 47 C.F.R. § 64.1200(f)(5).

145 § 227(b)(2)(D).

146 47 C.F.R. § 64.1200(a)(4)(iv). See id. & id. §1200(a)(4)(iii).

147 Federal Communications Commission, Report and Order and Third Order on Reconsideration, CG Docket Nos. 02-278 and 05-338, FCC 06-42, 71 Fed. Reg. 25967 (May 3, 2006).

148 47 USC § 227 (b)(3).

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