



Consent, Preferences, Insights, Compliance

TRUST  
Be Human

# A BEGINNER'S GUIDE TO TCPA

Prepared by CompliancePoint, a PossibleNOW Company

Enabling responsible interactions between customers and the marketplace.

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## Origin of the TCPA

The Federal Communications Commission (FCC) was formed in 1934 when the Communications Act was signed into law. The FCC was created primarily to:

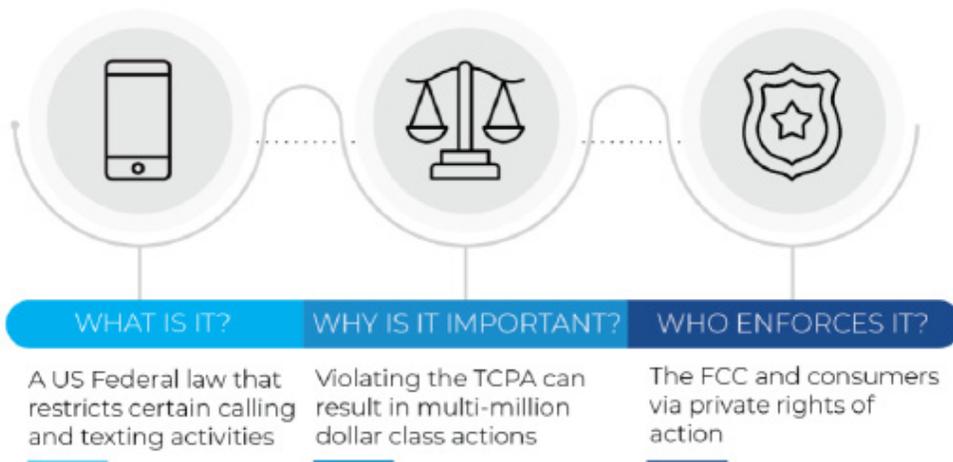
*"...regulate interstate and foreign commerce in communication by wire and radio, so as to make available, so far as possible, to all the people of the United States...for the purpose of the national defense and for the purpose of promoting safety of life and property through the use of wire and radio communication."*

Since 1934, the FCC has become much more wide-reaching. The Telephone Consumer Protection Act (TCPA) of 1991 amended the original Communications Act to place prohibitions on calling and texting, especially when using automated technology.

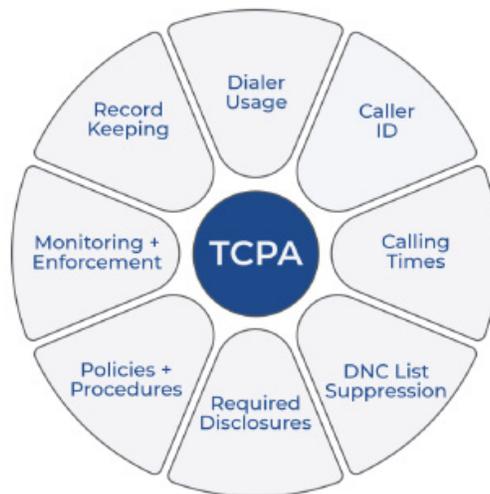
# What is the Telephone Consumer Protection Act (TCPA)?

The TCPA was signed into law in 1991 and became one of two key federal rules (the other being the FTC's Telemarketing Sales Rule) covering telephone communications in the United States. The TCPA is a law that prohibits, among other things, telemarketers, banks, debt collectors, and other companies from using an automatic telephone dialing system (ATDS) to call consumers on a cell phone without their consent. The intended purpose of the TCPA was to ban all automated or prerecorded calls except when the receiving party consents to receiving the call or when the call is made for emergency purposes.

## The Telephone Consumer Protection Act (TCPA)



## Components of the TCPA



## What is an ATDS?

An Automatic Telephone Dialing System (ATDS), widely known as an “autodialer”, is generally a dialing system that has the capacity to dial or text numbers without human intervention. Note that the term “capacity” means that, in many US Districts, it doesn’t matter if a company uses this mode on an autodialer. Rather, if the autodialer has the capacity to dial without human intervention, then all calls (even 1-to-1 calls) placed from that system are subject to ATDS rules – namely, express written consent.

## Obtaining Consent to Utilize an ATDS

When utilizing an ATDS to place marketing calls/texts to cellphones or send prerecorded marketing messages to any phone, companies must obtain prior express written consent from consumers before contacting them. Simply obtaining a number from customers should not be confused with consent – companies still must ask for their permission before using an autodialer for sales purposes. Any type of written consent disclosure should be clear and conspicuous and include the following requirements:

- **Affirmative Action** – The consumer should take some affirmative action to indicate his or her consent (signature, unchecked checkbox, submit button, etc.)
- **Mandatory Disclosures** – The agreement must clearly disclose
  - The purpose of consent to be contacted
  - The calls will be made using automated technology
  - The person is not required to provide consent as a condition of purchase
  - The seller(s) to whom consent is being provided
  - The number at which the person consents to receive calls

## Key TCPA Rules to Follow

In addition to autodialer rules, there are other rules to follow when making a sales call outlined in the TCPA:

- Obtaining prior express written consent for marketing calls/texts to cellphones when those communications are initiated using an ATDS
- Suppressing against the National Do Not Call (DNC) registry when no exemption is available
- Accepting and honoring DNC requests from consumers
- Ensuring a name and number is displayed on Caller ID
- Placing calls/texts only during the hours of 8 AM to 9 PM, local time to the consumer
- Treating texts the same as calls when utilizing an ATDS
- Disclosing certain material facts
- Making sure the call abandonment rate does not exceed 3%
- Monitoring for compliance both internally and for third-parties

## What Exemptions Can Be Claimed for the National DNC Registry?

- Prior written consent
- Calls by a non-profit organization
- Calls which are not commercial or do not include unsolicited advertisements
- Established Business Relationship (EBR)
  - Three months for inquiries (prospective customers)
  - 18 months for past transactions (former customers/current customers)

## TCPA Safe Harbor

The TCPA provides a Safe Harbor that is similar to the Federal Trade Commission's (FTC) Telemarketing Sales Rule's Safe Harbor, but varies slightly. It outlines that an entity making telephone solicitations will not be liable for violating the TCPA if they can demonstrate that the violation is the result of an error and that the violation is not part of a routine practice. In order to claim a Safe Harbor, the following standards must be met:

- Maintain written procedures to comply with the rules
- Train personnel, and any entity assisting in its compliance, on these procedures
- Maintain a list of telephone numbers that the seller may not contact
- Maintain a process to prevent telephone solicitations to any telephone numbers on the National DNC Registry or company-specific DNC list
- Monitor for compliance with the rules on company procedures
- Keep records to demonstrate compliance

## Call Abandonment

Companies using technology to dial consumers with an autodialer in modes not requiring human intervention must follow call abandonment protocol. An abandoned call occurs if a live consumer answers a telemarketer's call, and the telemarketer does not connect the call to a live agent within two seconds of the consumer's completed greeting. The Abandoned Call Safe Harbor protects a telemarketer that violates this rule if it:

- Ensures that no more than three percent (3%) of all calls answered by a live consumer are abandoned
- Allows the telephone to ring for at least 15 seconds or four rings before disconnecting
- Plays a message when a call is abandoned that provides a name and telephone number of the telemarketer, the purpose of the call, and an automated opt-out mechanism

## Conclusion: Why is TCPA Compliance Important?

The greatest risk for companies subject to the TCPA is class action lawsuits. TCPA class actions often result in multi-million dollar settlements. The TCPA provides consumers with a private right of action, which has resulted in thousands of lawsuits against companies related to non-compliant calls and text messages.

Both the Federal Communication Commission (FCC) and state Attorneys General can enforce the TCPA, and may bring lawsuits in federal court for actual damages or fines of \$500, whichever is greater. If a company knowingly violated the law, that amount can be tripled to \$1,500 per willful violation.

It's important to keep in mind the possibility of PR damage to your organization. The effects of negative publicity can be worse for a company long-term than the fine. Professional plaintiffs tend to target companies with a history of TCPA cases.

PossibleNOW is the pioneer and leader in customer consent, preference, and regulatory compliance solutions. We leverage our MyPreferences technology, processes, and services to enable relevant, trusted, and compliant customer interactions. Our platform empowers the collection, centralization, and distribution of customer communication consent and preferences across the enterprise. DNCsolution addresses Do Not Contact regulations such as TCPA, CAN-SPAM and CASL, allowing companies to adhere to DNC requirements, backed by our 100% compliance guarantee.

PossibleNOW's strategic consultants take a holistic approach, leveraging years of experience when creating strategic roadmaps, planning technology deployments, and designing customer interfaces.

PossibleNOW is purpose-built to help large, complex organizations improve customer experiences and loyalty while mitigating compliance risk.

# CONTACT

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