



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 12-1476
September 11, 2012
Enforcement Advisory No. 2012-06

FCC ENFORCEMENT ADVISORY

TELEPHONE CONSUMER PROTECTION ACT ROBOCALL RULES

POLITICAL CAMPAIGNS AND PROMOTERS ARE REMINDED OF RESTRICTIONS ON AUTODIALED AND PRERECORDED CALLS

As the 2012 campaign season for national, state, and local elected offices continues, the FCC's Enforcement Bureau issues this Enforcement Advisory to promote more widespread understanding of the restrictions imposed by The Telephone Consumer Protection Act of 1991 (TCPA)¹ and corresponding Commission rules² governing political telephone calls.³ CTIA – The Wireless Association has reported an uptick in complaints to its carrier members about unwanted political messages being sent to consumers' mobile phones, and has asked the FCC to issue a public notice about applicable requirements in the TCPA and the Commission's rules.⁴

The TCPA and the Commission's rules set forth restrictions that govern the use of prerecorded voice messages and automated telephone dialing systems, which may include certain political calls. These restrictions vary according to whether a call is delivered to a business or residential landline telephone, a cell phone, or some other category of protected telephone lines such as toll-free lines, emergency lines, or those lines servicing hospitals, nursing homes, and paging systems.

We expect that this Advisory will lead to greater compliance with the relevant sections of the TCPA and corresponding rules by senders of political prerecorded voice messages and autodialed calls, including text messages.⁵ We also emphasize, however, that the TCPA and corresponding rules provide important consumer protections that we intend to continue to strictly enforce.

¹ Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991) (codified at 47 U.S.C. § 227).

² 47 C.F.R. § 64.1200.

³ By this Enforcement Advisory, the FCC's Enforcement Bureau highlights certain obligations under the TCPA and corresponding Commission rules. Failure to receive this notice does not absolve an entity of the obligation to meet the requirements of the Communications Act of 1934, as amended, or the Commission's rules and orders. Companies, individuals, and other entities should read the full text of the relevant portions of the TCPA and corresponding Commission rules, respectively, at 47 U.S.C. § 227 and 47 C.F.R. § 64.1200. While the citations to 47 C.F.R. § 64.1200 provided below are correct as of the date of this advisory, readers should be aware that the Commission recently amended certain parts of the TCPA rules and renumbered various cited sections. *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 27 FCC Rcd 1830 (2012). These rule revisions have not yet been approved by the Office of Management and Budget and most of the renumbered rules will not take effect before 2013. The revisions do not substantively change provisions involving political calls.

⁴ Letter from Steve Largent, President/CEO, CITA, to FCC Chairman Julius Genachowski and Commissioners Mignon Clyburn and Robert M. McDowell (Jan. 25, 2012).

⁵ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014, 14115 para. 165 (2003) (stating that the TCPA and the FCC's rules apply to both voice calls and text messages).

Prerecorded Voice Messages and Autodialed Calls to Cell Phones and Other Mobile Services. Prerecorded voice messages and autodialed calls (including autodialed live calls, prerecorded or artificial voice messages, and text messages) to cell phones and other mobile services such as paging systems are prohibited, subject to only two exceptions: 1) calls made for emergency purposes, and 2) calls made with the prior express consent of the called party.⁶ This broad prohibition covers prerecorded voice and autodialed political calls, including those sent by nonprofit organizations. Callers contending that they have the prior express consent to make prerecorded voice or autodialed calls to cell phones or other mobile service numbers should know that they have the burden of proof to show that they obtained such consent.⁷

Prerecorded Voice Messages and Autodialed Calls to Landline Telephones. Political prerecorded voice messages or autodialed calls—whether live or prerecorded—to most landline telephones are not prohibited, so long as they adhere to the identification requirements set forth immediately below. However, political prerecorded voice messages or autodialed calls to emergency telephone lines; lines in guest or patient rooms at a hospital, nursing home, or similar establishment; or toll-free lines are prohibited unless the called party has agreed to receive such calls.⁸

Identification Requirements for Prerecorded Voice Messages. All prerecorded voice messages, political and otherwise, that are permissible under section 227 and the Commission’s rules must include certain information to identify the party responsible for the message. In particular, all artificial and prerecorded voice messages must state clearly at the beginning of the message the identity of the business, individual, or other entity that is responsible for initiating the call.⁹ If a business or other corporate entity is responsible for the call, the prerecorded voice message must contain that entity’s official business name (the name registered with a state corporation commission or other regulatory authority).¹⁰ In addition, the telephone number¹¹ of such business, individual, or other entity must be provided either during or after the prerecorded voice message.¹²

Line Seizure by Prerecorded Voice Messages and Autodialed Calls. Automatic telephone dialing systems that deliver prerecorded voice messages must release the called party’s telephone line within five seconds of the time that notification is transmitted to the system that the called party has hung up.¹³ In addition, an automatic telephone dialing system may not be used in a way that simultaneously engages two or more telephone lines of a multi-line business.¹⁴

Senders of political prerecorded voice messages and autodialed calls are also reminded that failure to comply with the relevant sections of the TCPA and corresponding rules may subject them to enforcement action, including monetary forfeitures as high as \$16,000 per violation for any person who does not hold a license or other authorization issued by the Commission.¹⁵

⁶ See 47 U.S.C. § 227(b)(1)(A)(iii); 47 C.F.R. § 64.1200(a)(1)(iii). These provisions also prohibit such calls to any telephone number assigned to a paging service, specialized mobile radio service, or other radio common carrier service.

⁷ See, e.g., *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling, 23 FCC Rcd 559, 565, para. 10 (2008) (concluding that creditors and debt collectors claiming prior express consent to deliver prerecorded voice or autodialed calls to cell phones are responsible for demonstrating such consent was granted); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order and Third Order on Reconsideration, 21 FCC Rcd 3787, 3812, para. 46 (2006) (with respect to junk faxes, concluding that “[i]n the event a complaint is filed, the burden of proof rests on the sender to demonstrate that permission was given”).

⁸ Non-emergency prerecorded voice or autodialed calls to such destinations are permissible only with the prior express consent of the called party. 47 U.S.C. § 227(b)(1)(A); 47 C.F.R. § 64.1200(a)(1).

⁹ 47 U.S.C. § 227(d)(3)(A)(i); 47 C.F.R. § 64.1200(b)(1).

¹⁰ 47 C.F.R. § 64.1200(b)(1).

¹¹ Any telephone number so provided may not be for (1) the autodialer or prerecorded message player that placed the call, (2) a 900 number, or (3) any other number for which charges exceed local or long distance transmission charges. 47 C.F.R. § 64.1200(b)(2).

¹² 47 U.S.C. § 227(d)(3)(A)(ii); 47 C.F.R. § 64.1200(b)(2).

¹³ 47 U.S.C. § 227(d)(3)(B); 47 C.F.R. § 68.318(c).

¹⁴ 47 U.S.C. § 227(b)(1)(D); 47 C.F.R. § 64.1200(a)(5) (formerly codified at 47 C.F.R. § 64.1200(a)(4)).

¹⁵ Section 503(b)(2)(D) of the Act provides for forfeitures of up to \$10,000 for each violation by a person who is not a broadcast station licensee, cable operator, common carrier, or applicant for any broadcast station, cable operator, or common carrier license issued by the Commission. 47 U.S.C. § 503(b)(2)(D). The Commission adjusts this amount for inflation. 47 C.F.R. § 1.80(b)(5). The Commission has made such inflation adjustments and the current maximum forfeiture is \$16,000 for each violation under Section 503(b)(2)(D). 47 C.F.R. § 1.80(b)(5). The penalties for broadcast station licensees, cable operators, common carriers, and applicants for broadcast station, cable operator, and common carrier licenses are higher.

Need more information? For further information regarding requirements for prerecorded voice and autodialed calls, contact: Lloyd Collier at (202) 418-2712 or lloyd.collier@fcc.gov or to Mary Romano at (202) 418-0975 or mary.romano@fcc.gov in the Telecommunications Consumers Division, Enforcement Bureau. To file a complaint, visit www.fcc.gov/complaints or call 1-888-CALLFCC.

Media inquiries should be directed to Neil Grace at (202) 418-0506 or neil.grace@fcc.gov or to Eric Bash at (202) 418-2057 or eric.bash@fcc.gov.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). You may also contact the Enforcement Bureau on its TTY line at (202) 418-1148 for further information about this Enforcement Advisory, or the FCC on its TTY line at 1-888-TELL-FCC (1-888-835-5322) for further information about the Telephone Consumer Protection Act.

Attachments: (1) "At a Glance," Political Calls; (2) Frequently Asked Questions.

Issued by: Chief, Enforcement Bureau

**“AT A GLANCE”
POLITICAL CALLS**

- Political calls are subject to restrictions governing prerecorded voice and autodialed calls.
- There are no restrictions on live manually-dialed political calls, which may be delivered to any landline telephone or cell phone.
- Political prerecorded voice and autodialed calls may NOT be delivered to the following types of landline phones without the prior express consent of the called party:
 - ✓ any emergency line (including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency);
 - ✓ the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or
 - ✓ any service for which the called party is charged for the call such as toll-free lines.
- Prerecorded voice and autodialed calls (including live calls, prerecorded voice messages, and text messages) may NOT be delivered to cell phones, pagers, or other mobile devices without the prior express consent of the called party. This restriction governs all prerecorded voice and autodialed calls, including political ones.
- All prerecorded voice messages—including political messages—must contain the following information:
 - ✓ the name of the person or entity responsible for the call, which must be provided at the beginning of the message;
 - ✓ the telephone number of the person or entity responsible for the call, which must be provided during or after the message.
- The National Do-Not-Call Registry and company-specific do-not-call lists do not apply to political calls.
- Individuals or entities who do not hold (and are not required to hold) FCC licenses responsible for unlawful political prerecorded voice messages or autodialed calls may face forfeiture penalties of up to \$16,000 per violation. (The penalties are higher for FCC licensees, like broadcasters, cable operators, and common carriers.)

FREQUENTLY ASKED QUESTIONS

The following frequently asked questions are addressed in this Enforcement Advisory:

- What are the rules covering political prerecorded voice messages and autodialed calls, and where can I find them?
- What is an autodialed call?
- Are nonprofit organizations exempt from the prohibition against making political prerecorded voice or autodialed calls to cell phones and other mobile service numbers?
- What does it mean to make a prerecorded voice or autodialed call for “emergency purposes”?
- Does the same prohibition against making political autodialed calls to cell phones apply to sending political text messages to cell phones?
- Do the rules allow me to send political prerecorded voice messages to a landline telephone number that is registered on the National Do Not Call Registry?
- Before making a political prerecorded voice or autodialed call, how can I determine whether the target telephone number is associated with a landline phone or a wireless phone?
- What if I have questions?

What are the rules covering political prerecorded voice messages and autodialed calls, and where can I find them?

These calls are subject to the general restrictions on prerecorded voice messages and autodialed calls, found at 47 U.S.C. § 227 and 47 C.F.R. § 64.1200.

What is an autodialed call?

An autodialed call is any type of call or message, including a text message, that is made by an “autodialer” or “automatic telephone dialing system,” which is “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.”¹ The Commission has emphasized that this definition covers any equipment – including predictive dialers – that has the specified *capacity* to dial numbers without human intervention whether or not the numbers called actually are randomly or sequentially generated or come from calling lists.²

Are nonprofit organizations exempt from the prohibition against making political prerecorded voice or autodialed calls to cell phones and other mobile service numbers?

No. Although nonprofit organizations enjoy certain exemptions under the TCPA, there is NO blanket exemption that allows nonprofit organizations to make either prerecorded voice or autodialed calls to cell phones and other mobile service numbers.

¹ 47 C.F.R. § 64.1200(f)(2) (formerly codified at 47 C.F.R. § 64.1200(f)(1)); see also 47 U.S.C. § 227(a)(1).

² *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014, 14092-93, para. 133 (2003). Predictive dialers use automated equipment to dial numbers (either from lists or randomly or sequentially) and then connect the called party to a live person. The distinctive element of a predictive dialer is software that predicts calling patterns to minimize the time live agents spend between calls while also minimizing the incidence of individuals answering a call when no agent is available.

What does it mean to make a prerecorded voice or autodialed call for “emergency purposes”?

Under Commission rules, “emergency purposes means calls made necessary in any situation affecting the health and safety of consumers.” 47 C.F.R. § 64.1200(f)(4) (formerly codified at 47 C.F.R. § 64.1200(f)(3)). Political prerecorded voice messages and autodialed calls are NOT included in this definition.

Does the same prohibition against making political autodialed calls to cell phones apply to sending political text messages to cell phones?

Yes. The Commission has determined that the prohibition against placing autodialed calls to cell phones “encompasses both voice calls and text calls to wireless numbers including, for example, short message service (SMS) calls, provided the call is made to a telephone number assigned to [a wireless] service.”³ Accordingly, only manually placed text messages are permissible.

Do the rules allow me to send political prerecorded voice messages to a landline telephone number that is registered on the National Do-Not-Call Registry?

Yes. Political prerecorded voice messages (as well as live political calls) are not subject to the National Do-Not-Call Registry because such messages (or live calls) do not include telephone solicitations.⁴

Before making a political prerecorded voice or autodialed call, how can I determine whether the target telephone number is associated with a landline phone or a wireless phone?

There are a variety of commercial services that callers may use to identify wireless telephone numbers.

What if I have questions?

For further information regarding requirements for prerecorded voice and autodialed calls, contact one of the following individuals in the Telecommunications Consumers Division, Enforcement Bureau: Lloyd Collier at (202) 418-2712 or lloyd.collier@fcc.gov or to Mary Romano at (202) 418-0975 or mary.romano@fcc.gov. To file a complaint, visit www.fcc.gov/complaints or call 1-888-CALLFCC.

Media inquiries should be directed to Neil Grace at (202) 418-0506 or neil.grace@fcc.gov or to Eric Bash at (202) 418-2057 or eric.bash@fcc.gov.

³ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014, 14115, para. 165 (2003).

⁴ In order to constitute a “telephone solicitation,” a call or message must be “for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services” 47 C.F.R. § 64.1200(f)(14) (formerly codified at 47 C.F.R. § 64.1200(f)(12)); see also 47 U.S.C. § 227(a)(4).