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SMALL ENTITY COMPLIANCE GUIDE

Limits on Telephone Consumer Protection Act of 1991 (TCPA) Robocall Exemptions

**FCC 20-186
CG Docket No. 02-278
Adopted December 29, 2020**

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although the Commission has attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

**1-888-CALL-FCC (1-888-225-5322)
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Videophone: 1-844-4-FCC-ASL (1-844-432-2275)
Fax: 1-866-418-0232**

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I. OBJECTIVES OF THE PROCEEDING

The Telephone Consumer Protection Act of 1991 (TCPA) restricts certain calls to residential telephone numbers absent the prior express consent of the called party, but authorizes the Federal Communications Commission (Commission) to exempt certain calls from this restriction.¹ The Commission adopted exemptions pursuant to this statutory authority, for example, calls made to residential lines that are not made for a commercial purpose, calls made for a commercial purpose that do not contain an unsolicited advertisement, calls from tax-exempt nonprofit organizations, and health-care related calls.² The 2019 Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act) directs the Commission to ensure that any exemption the Commission grants includes certain requirements.³

The December 2020 *TCPA Exemptions Order*⁴ adopts measures to implement section 8 of the TRACED Act to ensure that any exemption from the TCPA's ban on any person making calls using artificial or prerecorded voice messages in telephone calls to residential lines includes requirements with respect to: (1) the classes of parties that may make such exempted calls; (2) the classes of parties that may be called; and (3) the number of such exempted calls that may be made to a particular called party. Calls using artificial or prerecorded voice messages are those calls that convey a voice message without a live person speaking on the call. On January 23, 2023, the Commission announced that these rules would become effective July 20, 2023.⁵

II. COMPLIANCE REQUIREMENTS

The rule amendments imposed by the *TCPA Exemptions Order* establish numerical limits and opt-out requirements on callers that make artificial or prerecorded voice calls to residential lines without the prior express consent of the called party. The Commission confirmed that consent to exceed the numerical limits imposed on exempted calls can be obtained from the consumer orally or in writing. The *TCPA Exemptions Order* adopts rules for exempted calls, opt-out requirements, and do-not-call practices.

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

² *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 35 FCC Rcd 15188, 15192 (2020) (*TCPA Exemptions Order*).

³ Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274, § 8 (2019) (TRACED Act).

⁴ *TCPA Exemptions Order* at 15188.

⁵ *CGB Announces Compliance Date for Amended Telephone Consumer Protection Act Rules on Prerecorded Calls*, CG Docket No. 02-278, Public Notice, DA 23-56 (CGB Jan. 23, 2023), 2023 WL 369965 (*TCPA Exemptions Order Public Notice*). After the Commission released the *TCPA Exemptions Order*, two parties asked the Commission to reconsider the new requirements. *See ACA International et al, Petition for Partial Reconsideration*, CG Docket No. 02-278 (filed Mar. 29, 2021); *Enterprise Communications Advocacy Coalition (ECAC), Petition for Reconsideration*, CG Docket No. 02-278 (filed Mar. 17, 2021). On December 27, 2022, the Commission released an Order on Reconsideration and Declaratory Ruling amending the rules to allow callers the option of obtaining either oral or written consent if they wish to make more calls than the numerical limits on exempted artificial or prerecorded voice message calls to residential telephone lines and affirming the numerical limits and opt-out requirements on such calls. *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; ACA International, the Edison Electric Institute, the Cargo Airline Association, and the American Association of Healthcare Administrative Management Petition for Partial Reconsideration; Enterprise Communications Advocacy Coalition Petition for Reconsideration*, CG Docket No. 02-278, Order on Reconsideration and Declaratory Ruling, FCC 22-100 (rel. Dec. 27, 2022) (*2022 TCPA Reconsideration Order*).

A. EXEMPTED CALLS (47 CFR § 64.1200(a))

1. Non-Commercial Calls (47 CFR § 64.1200(a)(3)(ii))

This exemption limits the number of calls that can be made to a particular residential line to three artificial or prerecorded voice calls within any consecutive 30-day period. This includes, for example, callers conducting research, market surveys, political polling, or similar noncommercial activities.

2. Commercial Calls that Do Not Constitute an Advertisement or Telemarketing (47 CFR § 64.1200(a)(3)(iii))

Under this exemption, the Commission limits the number of calls that can be made to a particular residential line to three artificial or prerecorded voice calls within any consecutive 30-day period. This includes, for example, calls regarding prescription refill reminders, power outage updates, and data security breaches.

3. Calls by Tax Exempt Nonprofit Organizations (47 CFR § 64.1200(a)(3)(iv))

Under this exemption, the Commission limits the number of calls that a tax-exempt nonprofit organization can make to a particular residential line to three artificial or prerecorded voice calls within any consecutive 30-day period.

4. Health Care-Related Calls (47 CFR § 64.1200(a)(3)(v))

Under this exemption, the Commission limits the number of calls that can be made to a particular residential line to one artificial or prerecorded voice call per day up to a maximum of three artificial or prerecorded voice calls per week. These include, for example, calls by health care providers and health insurance plans about prescription refills, immunization reminders, and post-hospital discharge follow-up.

B. OPT-OUT REQUIREMENTS (47 CFR § 64.1200(b)(2),(3))

For any calls made pursuant the exemptions described in Section A above, the artificial or prerecorded voice message must include a telephone number that permits any individual to make a do-not-call request during regular business hours. Additionally, for any calls made where the artificial or prerecorded voice telephone message is made pursuant to the exemptions described in Section A, callers must provide an automated, interactive voice- and/or key press-activated opt-out mechanism for the consumer to make a do-not-call request, and briefly explain how to use such mechanism, within two (2) seconds of providing the identification information including the identity of the business or individual responsible for initiating the call. When the called person elects to opt out of future calls using such mechanism, the mechanism must automatically record the called person's number to the caller's do-not-call list and immediately terminate the call. When the artificial or prerecorded-voice telephone message is left on an answering machine or a voicemail service, this message must also provide a toll-free number that allows the called person to call back at a later time and connect directly to the opt-out mechanism mentioned above and automatically record the called person's number to the caller's do-not-call list.

C. DO-NOT-CALL PRACTICES AND PROCEDURES (47 CFR § 64.1200(d))

Callers must establish a process for maintaining a do-not-call list, comprised of a list of persons who request not to receive such calls made by or on behalf of that person or entity, before they can make any calls pursuant to the exemptions described above. Persons or entities making artificial or prerecorded-voice telephone calls pursuant these exemptions must meet the minimum standards discussed below.

1. Written Policy (47 CFR § 64.1200(d)(1))

Callers must establish a written policy, available upon demand, for maintaining a do-not-call list.

2. Training of Personnel (47 CFR § 64.1200(d)(2))

Callers must provide personnel information and training on the existence and use of the do-not-call list.

3. Recording, Disclosure of Do-Not-Call requests (47 CFR § 64.1200(d)(3))

Callers must record the do-not-call request and place the subscriber's name, if provided, and telephone number on the do-not-call list at the time the request is made from a residential telephone subscriber. Callers, and those making calls on their behalf, must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made, not to exceed 30 days from the date of the request. If the request is recorded or maintained by a party other than the caller, the person or entity on whose behalf the call is made will be liable for any failures to honor the do-not-call request. Callers must obtain a consumer's prior express permission to share or forward the consumer's request not to be called to a party other than the person or entity on whose behalf a call is made or an affiliated entity.

4. Identification of Callers and Telemarketers (47 CFR § 64.1200(d)(4))

Callers must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long-distance transmission charges.

5. Affiliated Persons or Entities (47 CFR § 64.1200(d)(5))

Absent a specific request by the consumer to the contrary, a residential subscriber's do-not-call request applies to the particular entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and (for telemarketing calls) the product being advertised.

6. Maintenance of Do-Not-Call lists (47 CFR § 64.1200(d)(6))

Callers must maintain a record of a consumer's request not to receive further calls. A do-not-call request must be honored for five years from the time the request is made.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The *TCPA Exemptions Order* contains new information collection requirements for callers that make telephone calls to residential lines using an artificial or prerecorded voice message without the prior express consent of the called party, as discussed above.

Callers must keep records in connection with the numerical limits on the number of calls that can be made under the exemptions for non-commercial calls to a residence; commercial calls to a residence that do not include an advertisement or constitute telemarketing; tax-exempt nonprofit organization calls to a residence; and healthcare-related calls to a residence. Exempted callers must maintain records to ensure that they do not exceed the limitation on the number of such calls that can be made to a called party within the specified timeframes. Callers that wish to exceed the numerical limits imposed on exempted calls must maintain records of the consumer's oral or written consent.

The Commission's rules require that callers making artificial or prerecorded voice message calls pursuant to any of the exemptions described above offer an automated, interactive opt-out mechanism so that consumers can avoid any unwanted calls in the future. In such cases, a caller will need to have opt-out mechanisms in place to accept do-not-call requests and to record and track such opt-out requests in order to avoid making any additional calls to those consumers. Callers must provide a telephone number in the message to allow a consumer to register his or her do-not-call request in response to that call. As outlined in the rules, callers will have up to 30 days to honor a residential subscriber's do-not-call request and ensure that they no longer call the residential subscriber's telephone number. While these rules will

require callers keep records associated with the number of calls they make to a particular called party and to track opt-out requests from consumers, callers are not required to routinely report these records to the Commission.

IV. IMPLEMENTATION DATE

The rules in the *TCPA Exemptions Order* shall become effective on July 20, 2023.⁶

V. INTERNET LINKS

A copy of the *TCPA Exemptions Order*, is available at:

<https://www.fcc.gov/document/fcc-further-limits-robocalls-pursuant-traced-act>.

A copy of the Federal Register Summary of the *TCPA Exemptions Order* is available at:

<https://www.govinfo.gov/content/pkg/FR-2021-02-25/pdf/2021-01190.pdf>.

A copy of the *TCPA Exemptions Order on Reconsideration* is available at:

<https://www.fcc.gov/document/fcc-affirms-three-call-limit-robocalls-residential-lines>.

A copy of the Federal Register Summary of the *TCPA Exemptions Order on Reconsideration* is available at:

<https://www.govinfo.gov/content/pkg/FR-2023-01-20/pdf/2023-00635.pdf>.

A copy of the Public Notice announcing the effect date of the amended rules is available at:

<https://www.fcc.gov/document/fcc-announces-compliance-date-amended-tcpa-rules>.

⁶ *TCPA Exemptions Order Public Notice*, *supra* note 5.