

Telephone Consumer Protection Act (TCPA) Update: Federal Protection from Telemarketers and Scammers

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National Consumer Law Center

The telephone is a favorite tool of telemarketers and scammers seeking to convince older consumers to part with their money. The Telephone Consumer Protection Act (TCPA)¹ is a federal law that helps consumers challenge abusive solicitation methods. Among its provisions, the TCPA limits robocalls, robotexts, and junk faxes. Its protections are especially crucial for older adults who receive frequent calls from medical providers but may be dissuaded from picking up the phone due to excessive or unwanted solicitations.

The TCPA restrictions that are most important to older consumers are:

- A prohibition against making autodialed or prerecorded calls to cell phones and other sensitive numbers without the prior express consent of the party called, applicable both to voice calls and text messages;²
- A prohibition against certain prerecorded calls (primarily telemarketing calls) to residential lines without prior express written consent;
- A requirement that telemarketers maintain company-specific do-not-call lists, and refrain from calling consumers who ask that particular caller to stop calling;
- A prohibition against telemarketing calls to consumers who place their names on the nationwide do-not-call list;
- Disclosure requirements regarding the purpose of telemarketing calls;
- Restrictions on abandoned calls³ and calling times;
- A prohibition against caller ID blocking; and
- A prohibition against faxing unsolicited advertisements.

The TCPA also prohibits using an automatic telephone dialing system or an artificial or prerecorded voice to call a patient or guest room at a nursing home, hospital, or similar health facility.⁴

1 47 U.S.C. § 227. The Federal Communications Commission (FCC) administers the TCPA. Calls by or on behalf of tax-exempt nonprofit organizations are allowed. Solicitors for tax-exempt nonprofit organizations must, however, comply with the FCC's company-specific do-not-call list rule, although the nonprofit organizations themselves need not.

2 When an auto dialer is not used, the TCPA does not prevent live calls to a cell phone, but consumers can place their cellular telephone numbers on the national do-not-call list, which telemarketers must honor.

3 Abandoned calls occur when telemarketing companies use automatic dialing equipment that calls too many numbers for their employees to handle. Consumers rush to answer the phone, but no one is at the other end of the call. FCC rules limit disconnection before the consumer has time to reach the phone.

4 47 U.S.C. § 227(b)(1)(A).

Consumers can bring class and individual claims against telemarketers, debt collectors, banks, and other businesses. Each unwanted telephone call or text can result in \$500 statutory damages (\$1,500 if the violation was willful or knowing). Most of the litigation in this area has centered around the TCPA's prohibition of autodialed calls and texts to cell phones without the called party's consent. Specifically, many cases focus on whether the definition of the term "autodialer" (more formally, "automatic telephone dialing system" or "ATDS") is broad enough to cover the dialing systems used today. In *ACA International v. Federal Communications Commission*,⁵ the D.C. Circuit set aside a broad definition of the term autodialer that the FCC issued in 2015, and the current FCC is working on a revised interpretation.

Until the FCC issues its interpretation, the outcome of TCPA cases will depend on how courts interpret the term. Several federal district court decisions have upheld a broader interpretation of the term "autodialer" based on earlier FCC definitions. Other post-*ACA International* decisions have been less favorable. [The latest court decisions and developments on the definition of "autodialer," are summarized in an article from the National Consumer Law Center \(NCLC\)](#). The article also discusses the limited impact of arbitration requirements on TCPA litigation, and revocation of consumer consent for robocalls where consent is part of a contract. Advice for consumers wishing to stop robocalls is available online and at NCLC's "[Six Top Tips for Consumers to Stop Illegal Robocalls](#)."

Additional Resources

- National Consumer Law Center, *Federal Deception Law* (3d ed. 2017)
- National Consumer Law Center, [Robocalls & Telemarketing](#)
- National Consumer Law Center, "[Six Top Tips for Consumers to Stop Illegal Robocalls](#)"
- Federal Communications Commission (FCC) [Consumer Complaint Center](#)
- Federal Trade Commission (FTC), [Consumer Information: Phone Scams](#)

The National Consumer Law Center provides legal professionals with advice on consumer issues as part of NCLER's case consultation service. Through this service, Justice in Aging, the National Consumer Law Center, and the ABA Commission on Law and Aging provide free case consultations to legal and aging network professionals on a range of legal issues impacting older adults.

Please contact ConsultNCLER@acl.hhs.gov for free case consultation assistance. Sign up for our email list and access more resources at NCLER.acl.gov.

⁵ 885 F.3d 687 (D.C. Cir. 2018).