

FCC Updates Automated/Prerecorded Telemarketing Rules to Mirror FTC Requirements for Prior Written, Signed Consent, Automated Opt-Outs, and Related Regulations

FCC Also Remedies Confusion in Its Rulemaking Proposal by Ensuring New Rules Do Not Affect Non-Telemarketing Prerecorded Calls and Text Messages, Such as for Debt Collection, Airline and School Notifications, Fraud Alerts, Surveys Calls, and Wireless Usage Data

February 17, 2012 by [Ronald London](#)

The [Federal Communications Commission](#) released a [Report and Order](#) that revises its rules governing automated/prerecorded telemarketing to modify the consent and opt-out requirements for such calls. The rule change eliminates the “established business relationship” exception that previously allowed autodialed/prerecorded telemarketing to residential lines. Meanwhile, the FCC was careful to ensure the new rules cover only automated/prerecorded “telemarketing” calls and text messages, i.e., those that seek to sell or advertise goods or services, while leaving intact preexisting regulations for non-sales prerecorded calls, such as customer-care, surveys, calls by or on behalf of tax-exempt, non-profit entities, etc.

In short, the FCC’s R&O operates to:

- Revise its rules to require prior express written, signed consent for all autodialed/prerecorded telemarketing calls to wireless numbers and residential lines. The consent must specify the phone number to which it applies, be signed (though anything satisfying the E-SIGN Act qualifies), and reflect willingness to receive prerecorded calls in a clear and conspicuous way. The FCC also specified that the consent cannot be required, directly or indirectly, as a condition for purchasing any good/service.
- Adopt rules applicable to all automated/prerecorded telemarketing calls that allow consumers to opt out of future automated/prerecorded calls during the call. This requires “promptly” offering an automated interactive keypress or voice-activated opt-out mechanism that permits the called party to make a company-specific do-not-call request.
- Revise the rules to limit permissible abandoned calls – i.e., live-agent auto- or predictive-dialed telemarketing calls that when answered by the consumer do not connect to a live agent within 2 seconds – by requiring calculating the 3% of such calls that are permissible on a per-campaign basis (rather than across all a telemarketer’s campaign, as previously).



The new regulations mean the FCC prerecorded telemarketing call rules essentially mirror those the FTC adopted in 2008, which we described in detail [here](#), and have been in effect going on several years now.

That said, some entities/industries fall outside the FTC's jurisdiction (i.e., common carriers, banks/credit unions/S&Ls, the business of insurance), and to the extent they have telemarketed without using third-party call centers may not have been complying with the FTC prerecorded telemarketing rules – now, they must commence doing so under the FCC rules. The FCC's R&O also confirms that telemarketing text-messages fall within and must comply with the written, signed consent regime.

For any entity or conduct newly covered by the FCC rules, and to the extent they differ at all from the FTC version, the FCC adopted a phase-in, so compliance with the FCC prior written, signed consent obligation is required 12 months after OMB approval of the new rules appears in the Federal Register, compliance with the FCC automated opt-out rule must occur by 90 days after publication of OMB approval, and compliance with the FCC's revised abandoned call calculation rule is required 30 days after Federal Register publication.

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