

THE CREDIT TIMES



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Robocalling - Proceed with Caution

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The Telecommunications Consumer Protection Act makes it unlawful to make a telephone call to any cell phone or residential telephone line using an artificial or prerecorded voice without the prior express consent of the called party. It provides a private right of action that subjects violators to actual damages or \$500 for each violation, whichever is greater. A court can award treble damages for any violation it determines to be willful or knowing. The underlines are mine, but the message couldn't be more clear. Cross the ever-moving TCPA line, and be prepared to pay. Big time. In this recent case, the penalty was over \$925 million as a result of repeated violations. For the record, that's \$500 per call, not per campaign.

Here is the bottom line: If any sort of automated platform that has the CAPACITY to store or produce numbers to be dialed is used to make outbound calls, either by generating numbers randomly or sequentially, there is a real potential for TCPA violations. Calls that are made through systems that are not considered ATDS are largely exempt from these rules.

Be advised that there is an aggressive class action bar that's ready to jump on anyone who disregards the obligations (defined as a moving target for sure) imposed by TCPA as found in 47 C.F.R. § 64.1200(a)(1) (see https://www.ecfr.gov/cgi-bin/text-idx?rgn=div6&node=47:3.0.1.1.11.12#se47.3.64_11200).

Here are the critical elements.

1. What is a call?

TCPA clearly prohibits prerecorded voice calls made by ATDS (non-human initiated calls) to both mobile devices and residential landlines, although calls to business landlines are not included. Text messages are considered calls, as are calls that go directly to mobile device voicemail without the phone ever ringing (ringless calls, i.e., Slydial).

2. What is an ATDS?

An ATDS is defined as "equipment which has the capacity to store or produce telephone numbers to be called without human intervention." The word "capacity" is critical to the definition, as the outbound calling system does not need to actually USE that capability, but so long as the capability is part of the system making calls, the system is considered "ATDS."

3. Is there a distinction between telemarketing calls and calls made for the purpose of collecting a debt?

YES! Calls whose sole purpose is debt collection and that do not contain any telemarketing or up-sale messages, and which are made strictly for collection purposes to residential landlines are subject to a lower level of scrutiny. Such messages may or may not be lawful, but the bar is lower to be compliant, thus leading to less-if any-litigation and/or settlements

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Congratulations to Maureen Watson from Sunbelt Rentals & Andrea Lockhart from GMA Garnet on winning an Echo Dot in our drawing.

Make sure to enter this month's drawing by using your Special Placement form. For every claim you place you will be entered for a chance to win one of two Echo Dots.



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4. What is express written consent?

Express written consent is clear and open acknowledgment by the creditor that it has permission to use the debtor's mobile device as a point of contact. This notice should be clear and open and not buried in the back of a document in tiny font. Absent express and clear written consent, the calling party is deemed to NOT have permission to make such contacts.

Please note that simply by providing a mobile number on an application or other document, a consumer has NOT provided consent. It is the caller's responsibility to know that a number dialed is a residential landline and not a mobile line.

5. Who bears the responsibility?

The burden falls to the creditor (and indirectly to the party that is making the calls) to prove that it obtained consumer's consent to call a mobile device. Absent such proof, the calling party may find itself on the wrong side of TCPA enforcement. And that's a place no one wants to be.

Employee of the Quarter

By co-authors Bridget Newlove & Debra Edwards

The minimal criteria for CCC of New York's Employee of the Quarter is one who displays a professional **Attitude** in dealing not only with CCC clients, but with their colleagues as well. The employee must show a readiness of **Participation**, one who will step up not only with ideas, but also ways of implementation. Last, but certainly not least, the CCC Employee of the Quarter must be someone who is attuned to providing premier **Customer Service**. Luz Colon embodies all of these standards and more.

We hope you enjoy learning a little more about Luz through the following Q & A:

Q. What do you like most about working at CCC?

Feeling valued and appreciated. I think this is an important part of any life experience, but it is especially important in your working life. CCC makes you feel valued and appreciated by offering positive feedback and supporting your efforts to learn and improve.

Q. Why do you think customer service is the most important priority for CCC?

CCC can never place too much emphasis on its customers. The customer is the foundation of any business' success. Superior customer service at all stages helps CCC to ensure greater customer satisfaction and increase its goal of long-term client partnerships.

Q. What was your first job?

My very first job was a cashier at a fast food restaurant. Working in the fast food industry taught me many things, but it all went back to great customer service.



Believe It or Not

The 2019 NACM Credit Congress has come and gone!

We had a great time and look forward to attending next year's convention in Las Vegas.

We hope to see everyone again in 2020!



For more information on any of CCC's services...

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