

Make experiences *flow*

OUTBOUND CALLING FACES CHANGES & COMPLEX COMPLIANCE REQUIREMENTS

Options for Different Client
Risk Profiles

WHITE PAPER

About NICE

With NICE (Nasdaq: NICE), it's never been easier for organizations of all sizes around the globe to create extraordinary customer experiences while meeting key business metrics. Featuring the world's #1 cloud native customer experience platform, CXone, NICE is a worldwide leader in AI-powered self-service and agent-assisted CX software for the contact center—and beyond. Over 25,000 organizations in more than 150 countries, including over 85 of the Fortune 100 companies, partner with NICE to transform—and elevate—every customer interaction.

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Outbound Calling Faces Changes & Complex Compliance Requirements

Introduction

Today's contact center executives are challenged to maintain compliance with a complex array of outbound dialing regulations instituted by the FTC and the FCC, such as Telemarketing Sales Rule (TSR), the national Do-Not-Call Registry (DNC), and the Telephone Consumer Protection Act (TCPA).

The following paper reviews TSR and DNC rules, and addresses the FCC's changes to the TCPA, that became effective on October 16, 2013. It discusses TCPA regulations for ATDS (automatic telephone dialing system) calls made to consumer cellular telephone numbers. And, this paper presents outbound dialing options available with the CXone Contact Center platform.

The intent of this paper is to educate and inform, not to provide legal advice or specific outbound calling guidance. NICE understands that each contact center is ultimately responsible for regulatory compliance, and thus, must define its own risk profile and approach to outbound calling operations and campaign protocol.

Telemarketing Sales Rule (TSR) and Do-Not-Call Registry (DNC)

The FTC's TSR legislation, in part, "gives consumers added privacy protections and defenses against unscrupulous telemarketers, and helps consumers tell the difference between fraudulent and legitimate telemarketing". Source: FTC

Outbound Calling Regulations

Following is an overview of the FTC's Telemarketing Sales Rule (TSR), which includes the FCC's Do-Not-Call Registry, and the FCC's amended TCPA as of October 16, 2013. Please note that the overview does not cover all details and aspects of the regulations.

TSR guidelines are governing regulations designed to ensure that outbound call centers meet certain criteria, summarized in part below.

- 1. The Two-Second Rule:** An agent must be available within two seconds of a consumer's live answer, or a recorded message stating the name and phone number of the caller must be played.
- 2. Abandonment:** Sufficient time must be given for the consumer to answer the phone—15 seconds or four rings. And, call abandonment cannot exceed three percent of all calls placed. Three percent abandonment must be calculated on a 30-day basis for each individual calling campaign; it may not be calculated across multiple campaigns.
- 3. Caller ID:** Telemarketers must transmit their phone number to the consumers' caller ID. Outbound calling programs may not block their caller ID information.
- 4. Recordkeeping:** Businesses are required to keep records of calls and transactions for up to two years.
- 5. Unauthorized Billing:** Telemarketers and sellers may not invoice through utility or mortgage accounts.
- 6. Prerecorded Messages or Robocalling:** As of September 1, 2009, telemarketers need a signed, written agreement from a consumer before they may call with prerecorded telemarketing messages. This required written agreement supersedes the existence of an established business relationship. The

law does not apply to purely informational prerecorded messages defined as appointment reminders, updates on prior sales transactions such as order status notifications, and recall notifications. Businesses that use robocalls must tell consumers at the beginning of messages how they can stop future calls, and must provide opt-out options.

- 7. National Do-Not-Call Registry (DNC):** As of October 1, 2003, it became illegal for most telemarketers to call a number listed on the National Do-Not-Call Registry. DNC applies to any campaign, program, or plan to sell goods or services through intrastate and interstate phone calls. DNC does not cover:
 - a.** Live agent calls from organizations with which consumers have an established business relationship
 - b.** Prerecorded calls made to consumers with which the calling company has prior written permission
 - c.** Calls which are not commercial in nature
 - d.** Calls by or on behalf of tax-exempt non-profit organizations

Potential Liability

Telephone Consumer Protection Act (TCPA) Update: Cellular Telephone Restrictions

The Telephone Consumer Protection Act (TCPA) restricts the use of automated telephone dialing systems (ATDS) and prerecorded telemarketing calls. On October 16, 2013, new TCPA rules went into effect.

Learn more at the Federal Communications Commission's website:

<https://www.fcc.gov/document/telephone-consumer-protection-act-1991>

Understanding and complying with the legislation is important, especially given that TCPA litigation has significantly increased.

On average, the FTC (Federal Trade Commission) receives 250,000 complaints regarding TCPA (Telephone Consumer Protection Act) violations per month.

From 2010 to 2015, TCPA lawsuits increased tenfold, from 354 to 3,710. From just 2014 to 2015, there was a 45 percent increase.

These soaring numbers are due to a number of factors, including a boost in public awareness of the TCPA and the expansion and strengthening of the Act.

Violations can lead to lawsuits, which often lead to settlements. Over the past few years, for the reasons noted above, TCPA settlements have grown exponentially larger and more frequent.

Furthermore, monetary damages awarded may add up quickly. The TCPA provides for a private right of action for violations of the Act and calls for statutory damages of \$500 for each violation and \$1500 for each willful violation. (Source: 47 U.S.C. § 227(b)(3))

Express Written Consent (EWC) Replaces Established Business Relationship (EBR) Exemption for Calls to Cellular Telephone Numbers

Perhaps the most significant change to the TCPA was a new rule that impacts telemarketing calls to cellular telephone numbers. This update to the TCPA eliminates the established business relationship exemption for automatic telephone dialing system (ATDS) and prerecorded telemarketing calls made to consumer cellular telephone numbers.

Businesses are now required to obtain express written consent, with a physical or electronic signature, prior to placing ATDS and prerecorded

telemarketing calls to consumer cellular phone numbers. This includes SMS/text messages.

This physical or electronic signature of written consent must clearly authorize calls to be made by the specified business, to the signed party's specified cellular phone number. Express written consent may not be required as part of a purchase; the consumer's signature must be optional. Additional TCPA updates were made to make it consistent with certain TSR rules, including prohibiting prerecorded telemarketing calls to consumer residences without prior express written consent.

Where Express Business Relationship Still Stands

Residential Numbers

The change requiring prior express written consent does not apply to live agent telemarketing calls—manual or via ATDS—to residential numbers. In this case, established business relationship is still an exemption to the National DNC Registry, except for prerecorded calls as noted above.

Cellular Numbers

The change to prior express written consent does not apply to manually dialed telemarketing calls made to cellular telephone numbers. In this case, established business relationship is still an exemption to the National DNC Registry. The definition of manually dialed is critical, and is addressed in the “What is an ATDS?” section.

It is important to note that five states ban all telemarketing calls to cellular phones, regardless of the dialing method. These states are: Arizona, Louisiana, New Jersey, Texas, and Wyoming. In addition, some states may have blanket laws that forbid all ATDS/autodial calls to both cellular and residential telephone numbers.

Sources: Contact Center Compliance TCPA Havoc Webinar, September 16, 2013

What is ATDS?

An automated telephone dialing system (ATDS), according to the statute, 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.” (Source: 47 U.S.C. § 227(a)(1))

The critical word in the statute is “capacity”, which broadly defines ATDS. Given precedent to date, it is safe to conclude that “ATDS” applies to any hardware or software that has the capacity or functionality to store, produce, and automatically dial numbers, whether it is actually used to dial or not. And, the FCC has concluded that predictive dialers fall within the definition of ATDS. (Source: In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, 18 F.C.C. R. 14014, 14093) (July 3, 2003) (the “2003 Order”)

Definition of Telemarketing Calls

The FTC’s definition of telemarketing is broad and includes “a plan, program, or campaign... to induce the purchase of goods or services or a charitable contribution” involving more than one interstate telephone call. (The FCC regulates both intrastate and interstate calling.)” (Source: [Complying with The Telemarketing Sales Rule](#))

This definition includes any call with a present or future intent to sell. So, if the call is part of a campaign ultimately intended to result in a sale, it is considered telemarketing even if it does not contain a solicitation.

Uncertainty Regarding VoIP, Business Cellular Phones

The amended TCPA specifies ATDS calls made to consumer cellular telephone numbers. It is not clear, however, if ATDS telemarketing calls

made to consumer Voice over Internet Protocol (VoIP) phone numbers are covered under the law or exempt from it. This is particularly an issue if VoIP customers are charged for time incurred by the calling party.

It is also unclear if ATDS telemarketing calls to business cellular phone numbers are exempt. The TCPA covers consumers and not necessarily businesses, but there is no legal precedence in place that excludes regulation of ATDS or prerecorded calls made to business cellular telephones.

Complex Regulations and Different Contact Center Risk Profiles Call for Outbound Dialing Options

Positive Business Outcomes of Personal Connection

- Stronger personal relationships with customers
- Maximized agent productivity
- Improved list penetration
- Increased customer satisfaction
- More positive perception of brand and company
- Stronger brand loyalty
- Lower customer churn and higher customer retention
- Reduce customer acquisition costs and increased profitability
- Increased likelihood for additional purchases
- Increased likelihood for referrals
- Increased likelihood for incremental revenue from outbound sales, collections, and referrals

Government regulations for outbound dialing, and, in particular, for calling consumer cellular numbers, can be quite complex. NICE

recommends that contact centers carefully consider potential liability related to FTC and FCC regulations, and develop a risk profile to help define and determine outbound dialing operational procedures.

To support contact center compliance efforts, NICE has developed a cloud contact center solution with multiple options for placing calls consumer cellular telephones. NICE offers a bifurcated, non-integrated call center solution that addresses the TCPA's restrictions on the use of auto-dialers and predictive dialing devices for the placement of calls to cellular telephone numbers. The NICE CXone solution consists of individual, discrete, and separate systems for placing calls to landline and cellular numbers. The NICE CXone solution is illustrated and explained below.

Creating Outbound Dialing Options: How the NICE CXone Solution Works

1. The List Management System, noted on the far left of the illustration, houses the customer's consumer data and responds to requests for additional records to call based on agent availability.
2. From the List Management System, the call request is then handled by NICE CXone's Intelligent Call Suppression System which determines if the call request matches a suppression request.
3. This system can also work with a third-party service to identify cell phones and handle them appropriately. The system ensures that all records marked as "compliance required"

are segregated from the rest of the traffic and handled by our compliant system, rather than the one used to handle the predictive call requests.

4. Users configure the compliance system to handle the call in the manner defined by the user as meeting their compliance policy. In preview mode, the call is ultimately placed through NICE's telephony service, but the agent has two options to place the call to demonstrate that human intervention was required to complete the call:
 - **Option 1: Click-to-Accept.** The agent clicks on an "accept" prompt in order to proceed to dialing the call.
 - **Option 2: Two forms of Dial 10-digit Number.** The record is presented to the agent and the agent has to manually enter the ten-digit number in order to place the call, duplicating the effort to manually dial the number.

Manual Compliant Mode. The agent will not use NICE telephony system to place the call. The record is presented to the agent for calling, and once the agent determines they wish to make a call, the agent uses a user defined compliant telephony option to place the call. For Example, the call can be placed using a PBX, VoIP, POTS, or a cell phone. This approach provides a clear demark in the handling of these calls which should satisfy the most stringent of interpretations. The agent is presented with drop down of choices to inform NICE CXone of the timing of the dial attempt, whether the call was answered and the final call outcome. This provides detail for seamless reporting of these calls within the campaign.

Ultimately, with NICE solution, cell phone numbers are routed to agents through a pathway separate from our predictive dialing (ATDS) capability. NICE's solution provides users with the flexibility to satisfy their own interpretation of compliance, and modify it in the future as the statutes evolve or interpretations change through additional case law.

Conclusion

While there is no guaranteed configuration to insulate contact centers from liability under the TCPA, there are certain protective measures that can be implemented to reduce or mitigate the risk. With this in mind, NICE developed an outbound dialing solution that gives clients a configurable outbound dialing solution for managing consumer cellular phone calls.

Additional Information on NICE CXone Personal Connection

- NICE CXone Personal Connection: [Demo video](#)
- NICE CXone Personal Connection: [Customer testimonial video](#)
- White paper: [Outbound Call Center Software for Superior Productivity](#)
- [Security and Reliability](#)

Sources and More Information

- Federal Trade Commission: [Complying with the Telemarketing Sales Rule](#)
- Do Not Call Registry
- Federal Communications Commission: [Consumer Guide—Stop Unwanted Robocalls and Texts](#)
- Federal Trade Commission: [News Release—Rule Prohibiting Unwanted "Robocalls"](#)

