



# White Paper

**FTC TCPA Regulation Revisions  
Calling Wireless Devices after “Written Prior Express Consent” is Required**

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# FCC TCPA REVISIONS 2013 – Wireless Devices

## INTRODUCTION:

This white paper describes issues related to the FCC regulations (TCPA) governing calling wireless devices effective as of October 16<sup>th</sup>, 2013. The findings contained within are based on input from telemarketing industry experts, opinions provided by leading attorneys in the practice of Teleservices law and the opinion of iPacesetters' internal counsel advising on Wireless Dialing Strategy. This paper has been broken into a series of sections and includes an overview of the underlying issues insourced and outsourcing providers face currently and post October's FCC regulation changes.

## EXISTING WIRELESS DEVICE CALLING REGULATIONS

The Federal Communications Commission (FCC) has made significant revisions this year to regulations that govern calls to wireless devices using autodialing technology. Prior to the regulatory changes that are scheduled to take effect in October of 2013, the FCC stated that, "It shall be unlawful for any person...to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any [ATDS] or an artificial or prerecorded voice...to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.

The 9th Circuit Court also ruled in 2008 that debt collectors could call wireless devices if the debtor/consumer provided the phone number of the wireless device at the time of the transaction for which they were collecting the debt. This has been widely interpreted by the Teleservices Industry to mean that if a consumer provides a wireless device number at the time of the transaction with a company and is still a customer of that company (Established Business Relationship), it is permissible to call that consumer's wireless device. More specifically, current practices have applied the Existing Business Relationship exemptions in their strategies dialing wireless devices. Many major corporations have been operating under that interpretation without an increased level of negative consequences; legally or via direct consumer complaints. Additionally, many leading Attorneys specializing in Teleservices law have endorsed this interpretation as well.

## DEFINITION OF AN ATDS

The prohibition to calling a wireless device without the “Prior Express Consent” of the called party only applies to calls made with an “ATDS – Automated Telephone Dialing System”. There are no prohibitions to calling any wireless device using manually dialed systems. Furthermore, the FCC strictly defines an ATDS as "equipment which has the capacity-- (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers."

Additionally, based on the definition of the term ATDS as defined above, the FCC has expressly held that “a predictive dialer constitutes an [ATDS] and is subject to the TCPA’s restrictions on the use of autodialers.” In reaching this conclusion, the FCC rejected the argument put forth by ACA International in its case that a predictive dialer meets the definition of an ATDS only when it randomly or sequentially generates telephone numbers, not when it dials numbers from customer telephone lists. According to the FCC, the basic function of a predictive dialer, which dials numbers on a customer list, is the same as equipment that randomly or sequentially dials telephone numbers -- "the capacity to dial numbers without human intervention." Pursuant to this ruling, a predictive dialer cannot be used to make calls to cell phones unless the call recipient has provided prior express consent.

## REVISED WIRELESS DEVICE CALLING REGULATIONS

The FCC made significant changes to the requirements governing the calling of wireless devices that take effect October 16th, 2013. The FCC now states that, “It shall be unlawful for any person...to make any call (other than a call made for emergency purposes or made with the written prior express consent of the called party) using any [ATDS] or an artificial or prerecorded voice...to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.

The significant change in regulation requires that written prior express consent must now specifically be provided in writing prior to any call being made by an ATDS to a wireless number. The marketer can no longer rely on the previously utilized interpretation that appropriate consent was obtained when the customer provided their wireless device number as the primary means of contact. The customer under this scenario is only providing “Prior Express Consent” and not “Written Prior Express Consent.” Therefore calling any wireless device using an “ATDS” or “Predictive Dialer” in any mode (Predictive or Preview) without the appropriate level of consent is strictly prohibited after the regulations become effective.

## THE STANDARD INDUSTRY SOLUTION

The Teleservices Industry has an obvious; albeit sub-optimal solution to this issue. Pick up a manual phone and call the customer. As long as there is not an ATDS or predictive dialer with the capacity to randomly or sequentially dial telephone numbers or the capacity to dial numbers without human intervention then there is no regulatory violation. The difficulty here is that this method is inefficient and does not easily lend itself to accurate and timely reporting.

## THE iPACESSETTERS' SOLUTION

iPacesetters has created a proprietary, efficient, and legally compliant solution to this potentially crippling issue. This solution has been reviewed and approved by Nick Whisler - a leading Teleservices Industry Attorney with MacMurray, Peterson and Shuster confirming iPacesetters confidence that its solution provides our client's with an efficient, technically sound, and legal method to dial wireless devices in compliance with the revised FCC regulations. The opinion letter from Attorney Whisler is attached to this document.

The key to fully complying with the revised regulation lies in the ability to utilize an efficient manual system that does NOT have "the capability to randomly or sequentially dial telephone numbers," nor the "the capacity to dial numbers without human intervention."

Under the iPacesetters' proprietary process, agents are presented with a telephone number on their computer screen that requires the agent to click a "dial" button to place a call to a wireless number. This one-touch dialing method allows agents to make calls via an Avaya PBX system that does NOT have the capacity to dial numbers in a random, sequential or predictive manner. The system does not have the capacity to make any telephone calls without human intervention (i.e. without the agent clicking the "dial" button). iPacesetters sequesters this system entirely from other systems which may have the capacity to dial telephone numbers in a random, sequential and/or predictive manner creating a "wall" between compliant and non-compliant technologies. Furthermore, iPacesetters is able to adequately distinguish calls that are made via a dialer and those that are manually dialed via the Avaya PBX system.

iPacesetters' wireless dialing solution provides 100% call recording and all required recordkeeping to ensure absolute compliance with the revised regulations. In addition, we provide the same reporting suite that is available through our automated dialing platforms as well as customized reporting.

## ABOUT IPACESETTERS

iPaceseeters provides outsourced multilingual customer interaction and data services to a wide array of industry segments. With 1,600 employees serving customers through over 5 million interactions per year we are strategically deployed across the U.S., India, and the Dominican Republic. iPaceseeters helps client's power growth through customer engagement. Its broad and deep portfolio of contact center and data management solutions enable clients to interact with their customers across a variety of touch points in real time. Its unique combination of cutting-edge technology, performance-driven contact centers and sector-specific expertise ensures that every customer contact becomes an opportunity for clients to improve customer engagement, increase customer loyalty and capture new revenues.

## Media Contact

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