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New FCC Ruling on Autodialer Calls to Cell Phones: Are You in Compliance?

By Howard Fienberg, Director of Government Affairs
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On January 4, the Federal Communications Commission (FCC) issued a new "declaratory ruling" on the Telephone Consumer Protection Act (TCPA). As it applies to the research profession, the TCPA is the federal law that prevents us from using an automatic telephone dialing system to call a cell phone, any emergency line, or more than two lines of the same business at the same time, without "prior express consent".

The new ruling clarifies that debt collector calls to debtors using an autodialer or prerecorded or artificial voice message are assumed to have prior express consent. While this clarification should prompt a sigh of relief to that industry, survey and opinion research professionals should take this moment to remember the various restrictions for research calls.

Autodialers & Cell Phones Don't Mix

Autodialers, including predictive dialers, may not be used to contact numbers assigned to cell phones without prior express consent. This rule applies to all uses of autodialers, *including survey and opinion research* calls and applies to intra-state, interstate calls and international calls. Accidental calls are not exempt.

The TCPA regulations state that, "(a) No person or entity may: (1) Initiate any telephone call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice ... (iii) To any telephone number assigned to ... cellular telephone service".

Such restrictions pose a growing problem for the research profession because of the increasing number of American households that have abandoned their landlines. The latest data from the National Center for Health Statistics* indicate that at least 13.6% of American homes are cell phone only. Furthermore, since 2003, the public has been able to port or take their landline number with them when they change carriers - including change to a wireless carrier - meaning that a landline number one day, can be a respondent's cell number the next.

Identifying Cell Numbers

Although sampling companies can remove cell phone prefixes from samples, and NeuStar has a useful service for recognizing wireless numbers that have been "ported" from landlines, their methods may not be a perfect solution to the problem. CMOR suggests that researchers keep in mind these identified limitations whenever using autodialers.

For further information about the issue of identifying cell numbers see <http://www.cmor.org/ga/ganews.cfm?aid=0104>

Consent

How do you acquire consent? In its 1992 Report, the FCC acknowledged that express prior consent would be in evidence if the person provided their cell phone number as a number at which they wanted to be reached. "However, if a caller's number is 'captured' by a Caller ID or an automated number identification device without notice to the residential telephone subscriber, the caller cannot be considered to have given an invitation or permission to receive autodialer or prerecorded voice message calls."

CMOR recommends that the **only certain method** to ensure compliance with this federal law, in the absence of express prior consent, is to **manually dial** cell phone numbers (where a human being physically touches the buttons on the phone to dial the number).

Autodialers & Emergency Lines are Bad News

The TCPA also prohibits autodialer calls without express prior consent to "any emergency telephone line, including any 911 line and any emergency line of a hospital, medical

physician or service office, health care facility, poison control center, or fire protection or law enforcement agency ... [or] To the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment”.

While it can be difficult to scrub completely calling lists of cell phone numbers, avoiding these kind of emergency and hospital lines can be more taxing. Although prefixes used by cell phone providers are publicly known, and the NeuStar service can provide researchers with most landline numbers that have been “ported” to cell phone lines, no such databases exist for emergency and hospital lines.

According to Linda Piekarski, Vice President for Vice President Database and Research at Survey Sampling International (and a member of CMOR’s Telephone Subcommittee), main lines belonging to medical facilities are usually found in yellow page directories or on business lists and can be suppressed as non-residential numbers. Associated unlisted numbers, like those in hospital rooms are usually assigned within the same prefix or 1000-block as the primary number.

Most such institutional numbers would not be on a list-assisted frame since all the numbers would be unlisted and determined to be in non-working 100-blocks. Unfortunately, says Piekarski, “to the extent that FEMA, medical and/or burglar alarm emergency numbers have been assigned in 100-blocks with directory-listed residential numbers, they can appear in RDD samples.”

Researchers must be mindful of all these limitations and ask careful questions about their samples they develop, or those with which they are provided.

For more information on autodialers, cell phones, and other laws and best practices impacting telephone research at the state and federal level, consider purchasing the [CMOR Compliance Guide's](#) Telephone Component.

* “Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January – June 2007” by Stephen J. Blumberg and Julian V. Luke:
<http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200712.pdf>

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