



Calling cell phones - the FCC makes a bad regulation worse

As the need to include cell phone users in telephone research samples continues to grow, so have the challenges involved in reaching them. The latest comes from the Federal Communications Commission (FCC), which early this year announced it would be harmonizing its regulations for telemarketing “robocalls” with those of the Federal Trade Commission (FTC).

Existing FCC rules¹ prohibit the use of an “automatic telephone dialing system” to contact “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” without “express

prior consent” on the part of the party being called.

The new FCC rule proposes that “prior express written consent” must be obtained from the recipient of the call. That agreement must:

- include a “clear and conspicuous disclosure that the purpose of the agreement is to authorize the delivery of calls to the recipient using an automatic telephone dialing system” and that the “agreement be executed” without any requirement that the recipient purchase “any good or service”;
- evidence “the willingness of the recipient of the call to receive calls using an automatic telephone dialing system”; and

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- include “the telephone number to which such calls may be placed in addition to the recipient’s signature.”

Will hurt research

As the Marketing Research Association explained to the FCC in comments filed on May 21, researchers need to be able to include cell phone users in their studies in order to have viable coverage in their samples. The FCC’s proposal will hurt research, research users and the public.

Decreased response rates. The new rule will decrease response rates since it entails burden on respondents. Further, many respondents suffer apprehension at the prospect of signing a consent form which they may or may not fully understand.

Increased cost of research.

snapshot

The MRA’s Howard Fienberg details why a new proposed FCC rule intended to spare cell phone users from autodialers will hurt research, research users and the public.

Researchers seeking to include cell phone users in their study samples already estimate that it costs two to four times as much as an ordinary study. The new rule will increase that cost exponentially.

Increased time required to complete studies. In situations where timely data is as critical as accurate data, information will not be readily deliverable to companies, government agencies and other entities that need to make swift decisions. Time-sensitive studies, like most political and public opinion polling, would be imperiled.

Privacy and data security threat of added recordkeeping and data retention. The FCC admitted that the proposed consent requirement “may entail additional recordkeeping requirements.” Given that the standard in research is to keep identifiable records only as long as necessary for the completion of a study, the proposed rule will place serious new recordkeeping burdens upon the profession and increase risks to information security and confidentiality.

No demonstration of harm. The FCC didn’t demonstrate any harm from the existing consent standard that would demand raising the bar. While the FCC claims the proposed rule enhances the agency’s efforts to protect “both consumers and industry from erroneous claims that consent was or was not given,” MRA is unaware of any cases of a cell phone user contesting the express prior consent for a bona fide survey and opinion research call to their cell phone. This is distinctly different from

continuing consumer complaints of commercial or political robocalls.

Decreased representativeness of survey and opinion research. Almost 40 percent of American households can only be reached on their cell phones.² Without following arduous (in many cases impossible) procedures to obtain consent, such numbers must be separately identified, sampled and then dialed manually. It is unlikely that these populations would wish to be disenfranchised from research studies (which serve as an ombudsman for the American public).

Harder to reach the prepaid cell phone market. Cell phone numbers assigned to prepaid plans change subscribership frequently, making it more challenging to reach such users in a timely fashion. CTIA-The Wireless Association estimates that one in five Americans with a cell phone had a prepaid plan at the end of 2009, compared with 15 percent in 2007.³ CTIA also claims that some markets have up to 30 percent of subscribers in prepaid plans.

Government agency study requirements. Many federal government agencies, seeking to avoid coverage bias, require the inclusion of cell phone-only and cell phone-mostly households in the research studies they conduct or commission. The FCC would thus balloon the cost and time required to conduct federal research studies.

Research is not the focus of the rule or the law. The most important reason the FCC should not impose the proposed rule on the research profession is that

research calls are not the intended focus of the rule or the Telephone Consumer Protection Act (TCPA). The FCC speaks almost exclusively of sales and telemarketing calls throughout the proposed rule, neglecting to mention or even consider the negative impact of the rules changes on non-commercial calls. The legislative history of the TCPA demonstrates the same focus. Given that this change is buried in a rule focused on telemarketing and robocalls, it is unlikely that the FCC gave consideration to the negative impact the change would have on non-commercial calls.

Clarion call

The FCC’s proposed rule should serve as a clarion call to the research profession to demand a change in the TCPA – not a tightening of consent standards but the full exclusion of bona fide survey and opinion research calls from the restrictions on autodialer calls to cell phones. As the lobbyist for the research profession in the U.S., I’m working to secure that exclusion and need your help to make it happen. Will you answer the call? | Q

References

¹ 47 CFR 64.1200

² Blumberg S.J., Luke J.V. “Wireless substitution: Early release of estimates from the National Health Interview Survey, July-December 2009.” National Center for Health Statistics. May 2010. Available online: www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201005.htm

³ Niraj Sheth and Roger Cheng. “As Growth Slows, Phone Rivals Start Dialing Prepaid Services.” *Wall Street Journal*. May 14, 2010. Page B1.

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