

Consumer Alert for Elder Advocates

March 2012

FCC TIGHTENS RESTRICTIONS ON TELEMARKETING

The Federal Communications Commission (FCC) has significantly tightened its restrictions on telemarketing robocalls to consumers' homes. The changes are set forth in an order announced February 15, 2012, that revises the FCC's rules under the Telephone Consumer Protection Act.

How Elders Can Protect Themselves from Telemarketers under the New Rule

To protect themselves from telemarketers, consumers should list their telephone numbers on the nationwide do-not-call list by calling toll-free 888-382-1222 or [register online](http://www.donotcall.gov/register/reg.aspx) (www.donotcall.gov/register/reg.aspx). Once the new rule goes into effect in early 2013, placing one's name on the nationwide do-not-call list stops both telemarketing robocalls and telemarketing calls with a live caller.

A company can still make telemarketing calls to a consumer whose number is on the nationwide do-not-call list if the company has an "established business relationship" with the consumer—for example, if the consumer has bought goods or services from it within the past eighteen months. To stop receiving these calls, the consumer should tell the telemarketer to add the consumer's number to its company-specific do-not-call list.

The Revised Rule

- ***No Telemarketing Robocalls Without Consumer's Express Written Consent***

Under the revised rule, telemarketers can make robocalls—calls that use an artificial voice or a prerecorded message—**only to consumers who have given express written consent to receive them**. Oral consent or an existing business relationship with the telemarketer will no longer be sufficient. This change will go into effect in early 2013, twelve months after the announcement is published in the Federal Register.

The FTC's parallel telemarketing rule already prohibits telemarketing robocalls without the consumer's express written consent, but there are major gaps in its coverage: it does not apply to banks, other financial institutions, common carriers, insurance companies, airlines, and intrastate telemarketers. The FCC's revised rule will apply to all of these entities.

The FCC did not change the regulation's existing exemption for non-telemarketing calls, such as debt collection calls and informational calls. These calls can be made without the consumer's written or oral consent, unless the call is placed to a cell phone. There is also an exception for health care messages. Tax-exempt non-profit organizations will need prior express consent to make telemarketing calls, but the consent need not be in writing.

A separate provision of the Telephone Consumer Protection Act prohibits autodialed calls or calls using an artificial voice or prerecorded message to cell phones. This prohibition applies to all telephone calls, not just telemarketing calls, except for emergency calls or where the called party has given prior express consent. The revised rule makes no change to this prohibition except that it allows health care messages to cell phones regardless of consent.

- ***Automated Opt-out Mechanism for Telemarketing Robocalls; Abandoned Calls***

A second significant improvement for consumers is a new requirement that every telemarketing robocall provide, within the first few seconds, an automated, interactive voice- or keypad activated opt-out mechanism for the called person to make a do-not-call request. A called party who uses this mechanism must be automatically placed on the caller's company-specific do-not-call list. (Telemarketers must maintain company-specific do-not-call lists as well as complying with the nationwide do-not-call list). For artificial or prerecorded messages that could be answered by a consumer's answering machine or voicemail, a toll-free number must be given to allow the consumer to call back and opt-out.

Formerly, the FCC rule merely required the robocall to give a number the consumer could call to ask to be placed on the company-specific do-not-call list. The FCC did not require the number to be toll-free, or prohibit the telemarketer from making a telemarketing sales pitch to consumers who called. This portion of the revised rule will be effective in just 90 days after publication in the Federal Register.

The FCC's new rule also tightens up the restrictions on abandoned calls—calls where the consumer answers the phone only to hear “dead air.”

Consumers should report unwanted telemarketing calls to the FCC's toll-free complaint line, 888-225-5322, or through [the do-not-call website](http://www.donotcall.gov/register/reg.aspx) (www.donotcall.gov/register/reg.aspx).



Free case consultation for elder advocates is provided by the National Senior Citizens Law Center and NCLC through the [National Legal Resource Center](http://www.nlrc.aoa.gov) (www.nlrc.aoa.gov)

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