

Common Misconceptions of Telemarketing Laws That Put You at Risk

Prepared by PossibleNOW's sister company, CompliancePoint

Understanding the TCPA, TSR, and How They Intersect with State Rules

We can't tell you how many times companies tell us they're not telemarketing. "We only call people who have opted in or given consent" is a common response. Another claim we hear is, "We are calling referrals from our current customers and therefore not telemarketing." These are risky processes because these types of calls could still be considered telemarketing or, at the very least, could fall into the scope of some federal and state rules. Referrals, for example, should be treated as cold calls.

Telemarketing remains one of the most regulated forms of outreach in the U.S. While it's a powerful tool for sales and customer engagement, it's also tightly governed by both federal and state laws. But what exactly is "telemarketing" under federal law—and how does that definition affect compliance?

Telemarketing Under the TCPA

Key TCPA Concepts:

Telemarketing refers to calls or messages initiated for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services.

The Law Distinguishes Between:

- Telemarketing vs. Informational calls (e.g., appointment reminders, delivery updates)
- Robocalls (calls made using an autodialer or a prerecorded/artificial voice)
- Manual calls (calls dialed by a live person without autodialing technology)

TCPA Requirements Vary Based on:

- Consent Type: Express written consent is required for most autodialed or prerecorded telemarketing calls to cell phones.
- Call Method: Stricter rules apply to autodialed or prerecorded calls.
- Call Recipient: Rules differ for landlines, cell phones, and residential vs. business lines.

Even one telemarketing call to a number on the National Do Not Call (DNC) Registry may violate the TCPA, unless there's an existing business relationship or consent, even if that recipient didn't answer the call.

Telemarketing Under the TSR

The Telemarketing Sales Rule, enforced by the Federal Trade Commission (FTC), defines telemarketing as:

“A plan, program, or campaign... to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call.”

Key requirements under the TSR include:

- Restricted calling times between 8 a.m. to 9 p.m. (local time of the consumer). Many states have more restrictive time frames or even attempt limits within a 24-hour period.
- Mandatory disclosures at the start of the call (identity, purpose, and key product/service terms).
- Prohibition on misrepresentations and deceptive tactics.
- Businesses must maintain their own internal Do Not Call list and honor the national registry.

How State Laws Define Telemarketing

Many states have adopted their own definitions of telemarketing, often expanding or duplicating federal rules.

Key differences often include:

- Broader definitions of what counts as a sales or solicitation call (some include political or survey calls).
- Mini-TCPAs like those in Florida, Oklahoma, and Texas add private rights of action and stricter consent requirements.
- Additional DNC registries (e.g., Indiana, Oklahoma, Florida) separate from the national list. There are 11 State DNC lists which often get overlooked.
- Registration and bonding requirements for telemarketers operating within or into the state.
- Stricter time-of-day limits or prohibited call days (e.g., holidays, Sundays).

Why the Definition Matters

Whether a call is classified as telemarketing under these laws dictates:

- The level of consent needed from the consumer.
- What kind of disclosures must be made.
- Whether the business must screen against federal and state DNC lists.
- The penalties for non-compliance – ranging from FTC enforcement to private lawsuits under TCPA (up to \$1,500 per call/text).

Takeaways for Compliance Teams

- Federal definitions (TCPA & TSR) form the baseline, but many states go further.
- Not all calls are created equal – understanding the purpose of each outreach is essential to applying the right compliance rules.
- Telemarketing comes with higher risk if you don't have the proper consent, records, or DNC screening in place.
- State and federal rules overlap – but don't always match. You must comply with the stricter of the two.