Top Five Telemarketing Risks in 2026

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Agenda

- General Restrictions under Telemarketing Laws
- Top Five Telemarketing Risks
- Business-to-Business Considerations

This is not a beginner course. For background on these requirements, see some of our other webinars and articles:

- Ad Law Tool Kit Chapter on Telemarketing
- Telemarketing and Texting 2.0: A Regulatory Refresher and Federal and State Updates

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Preview: Top Five Telemarketing Risks in 2026

Risk #1: Do Not Call Compliance	National DNC Registry, internal DNC lists, entity-specific rules, enforcement trends
Risk #2: Caller Identification Requirements	Caller ID rules, Truth in Caller ID Act, spoofing prohibitions, third-party dialers
Risk #3: Artificial Intelligence Calls	FCC's AI ruling, AI agents in outbound calls, consent, litigation risks
Risk #4: Calling Hour Restrictions	Federal and state calling windows, time zone challenges, best practices
Risk #5: Carrier Rules and Requirements	STIR/SHAKEN, call blocking/labeling, maintaining deliverability

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Telemarketing Law Restrictions

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The Regulatory Framework: Federal and State

TCPA & FCC Rules

- Governs calls using automatic telephone dialing systems (ATDS) and prerecorded/artificial voices
- Requires prior express consent (or prior express written consent for marketing)
- Establishes National Do Not Call Registry requirements
- FCC enforcement through forfeiture orders and cease-and-desist
- Private right of action: $500–1,500 per violation

FTC Telemarketing Sales Rule

- Applies to interstate telemarketing of consumer goods and services
- Broad definition of "telemarketing" covering calls to sell, solicit, or induce purchases
- Regulates disclosures, misrepresentations, and payment methods
- FTC enforcement via civil penalties, injunctive relief
- State AGs may also enforce TSR provisions

State Telemarketing Laws

- Florida: Expanded private right of action and stricter consent requirements for automated calls (2021 amendments)
- Oklahoma: Independent TCPA-style protections with state-specific enforcement mechanisms
- Washington: State telemarketing statute with heightened disclosure and consent obligations
- Trend: States increasingly enacting more protective statutes than federal law
- States protect their residents, regardless of where caller is located

Multi-state campaigns must comply with the most restrictive applicable law across all jurisdictions.

What is "Telemarketing"?

Voice Calls

Includes calls using automatic telephone dialing systems, prerecorded messages, and robocalls.

Text Messages

Text messages (SMS/MMS) are treated as "calls" under the TCPA and the Telemarketing Sales Rule.

AI-Generated Voices & Agents

Includes AI-generated voices and automated agents used to contact consumers.

Solicitation or Promotion

Covers outbound communications to solicit, sell, or induce the purchase of goods or services.

Certain Informational Calls

May include certain "informational" calls, depending on the context.

"Telemarketing" is broadly defined and can include calls or texts that advertise, market, or otherwise induce the purchase of consumer goods or services.

Reshaping the TCPA

Federal Communications Commission Updates and Court Rulings

- What is happening at the FCC?
  - Some rules remain in flux as the FCC revisits prior rulemakings
  - FCC has extended effective date for the "Revoke All" consent rule until January 31, 2027
- How does the Supreme Court case of *McLaughlin Chiropractic Associates, Inc. v. McKesson Corporation* impact FCC interpretations?
  - Courts are no longer bound by the FCC's interpretations of the TCPA and instead can independently interpret the statute, giving the FCC's views only "appropriate respect"
- Courts diverge on whether a text message is a "call" under the TCPA
  - Before *McKesson*, the First, Second, and Eleventh Circuits each recognized that text messages qualify as "calls" under § 227(b), the TCPA provision governing autodialed and prerecorded-voice calls. The Eleventh Circuit expressly relied on FCC's interpretation that prohibition on autodialed calls encompasses both calls and text
  - In *Steidinger v. Blackstone Medical Services*, the Seventh Circuit held that although the FCC interpreted the Do Not Call provision to apply to text messages, Congress limited § 227(c)(5)'s private remedy to repeated telephone calls, not text messages
  - In *Howard v. Republican National Committee*, the Ninth Circuit held that a text message constitutes a call under § 227(b) because it is an attempt to communicate by telephone and implicates the same privacy interests Congress sought to protect through the TCPA

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Defining an ATDS After *Duguid*

- ***Escano v. Ins. Supermarket Inc.***, No. 2:23-CV-0793, 2023 WL 9023273 (D.N.M. Dec. 29, 2023), report and recommendation adopted, No. 2:23-CV-0793, 2024 WL 5714615 (D.N.M. Jan. 17, 2024)
  - The court stated, "a plaintiff is permitted to rely on indirect allegations, such as the content of the message, the context in which it was received, and the existence of similar messages to raise an inference that an ATDS was used."
  - The court concluded that whether the defendant's system met the ATDS definition was better resolved at a later stage of the litigation and recommended denying the motion to dismiss.
    - Underscores the risk of relying on the "no ATDS used" defense.
- ***Cupp v. TA Fintech, Inc.***, No. 25-CV-07479-TSH, 2026 WL 1538123 (N.D. Cal. June 1, 2026)
  - Plaintiff alleged receiving unsolicited text messages and voice calls over less than 30 days via short codes, arriving in recurring daily patterns at similar times, and with substantially similar or templated wording promoting trading services.
  - The court determined that a plaintiff "need not somehow have inside knowledge of a defendant's operations and equipment to survive dismissal under Rule 12(b)(6)."
  - The court denied the motion to dismiss and held that the allegations regarding the use of short codes, recurring timing, uniform content, and sustained volume plausibly supported a reasonable inference of ATDS use.

ATDS After *Duguid*: Pleading Standards

- ***Walker-Schaut v. Lido Labs Holding Co.***, No. C23-5944 BHS, 2024 WL 2702007 (W.D. Wash. May 24, 2024)
  - Defendant argued that the plaintiff's ATDS claim was implausible because the complaint merely alleged, in conclusory terms, that the text messages were sent using an ATDS without pleading any additional facts to support that allegation.
  - Plaintiff argued that because she never provided her cell phone number to defendant, she plausibly alleged that defendant used an ATDS to generate her phone number.
  - The court agreed and denied defendant's motion to dismiss, citing to other court decisions that have held that whether a sender impermissibly used an ATDS is a question on summary judgment, not to be decided on the pleadings.
  - Further, the court noted that the "the precise source of the number and the text is a fact often within the defendant caller's exclusive possession, and that it is difficult to plead that factual question with specificity absent formal discovery."

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Top Five Risks at a Glance

The issues attracting the most regulatory and litigation scrutiny.

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Do Not Call
Registry & internal list compliance

Caller Identification
Caller ID & spoofing rules

AI Calls
AI-generated voices & agents

Calling Hours
Federal & state time restrictions

Carrier Rules
STIR/SHAKEN & call blocking

Do Not Call, Opt-Outs, and Revocation of Consent

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Do Not Call Compliance

National DNC Registry & Internal DNC Lists

National Do Not Call Registry

- Maintained by FTC; telemarketers must scrub against the registry before calling
- Registrations do not expire (since 2008)
- 31-day safe harbor: must scrub within 31 days before calling
- Established business relationship (EBR) exemption narrowed under TSR
- Penalties up to $53,088 per violation (adjusted annually)

Internal (Company-Specific) Do Not Call Lists

- Must maintain company-specific DNC list of consumers who request no further calls
- Requests must be honored for at least 5 years (TCPA) or 10 years (TSR)
- Must have written DNC policy available on demand
- Training requirements for personnel making calls
- Entity-specific DNC rules require careful coordination across affiliated entities

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Do Not Call: Enforcement & Litigation Trends

Recent Enforcement

- FTC and state AGs continue to bring high-value DNC enforcement actions
- Multi-million dollar settlements for systemic DNC violations
- State AG coordination via the National Association of Attorneys General (NAAG)
- Class actions remain a significant exposure vector; statutory damages of $500–1,500 per call aggregate rapidly

Common Pitfalls

- Failing to scrub against updated DNC lists before each campaign
- Not tracking DNC requests across all affiliated entities
- Vendor/third-party callers ignoring internal DNC lists
- Inadequate record-keeping to prove compliance
- Misunderstanding EBR exemption scope and duration

FCC Rule on Consent Revocation

- September 9, 2026: FCC released a Report and Order And Further Notice of Proposed Rulemaking (NPRM) regarding how consumers may revoke consent to receive automated calls and text messages (referred to collectively as "robocalls" in the Rule).
  - The Rule supersedes the FCC's prior revocation rule and January 31, 2027, effective date. The new Rule becomes effective 30 days after publication in the Federal Register.
- The Rule would:

1. Allow callers to designate an exclusive means to revoke consent. This includes allowing callers to require recipients to:
   - (1) Use an automated interactive voice/key-press; (2) Respond to texts using specific opt-out words; and/or (3) Use a designated website or phone number.
   - The caller must clearly and conspicuously disclose the designated method on the call or within the text message. Otherwise, the caller must process any revocation request made in "any reasonable manner."
2. Allow callers to interpret a revocation request as applying only to the specific category of <u>informational</u> robocalls to which the revocation was directed, and not all robocalls for which consent was given.
   - However, a revocation request to a <u>telemarketing</u> robocall applies to <u>all</u> future telemarketing robocalls / robocalls containing an advertisement from the caller.
3. Modify the exemption from the consent requirement for financial institutions to allow them to more easily alert customers to fraudulent activity on their account.
4. Delegate authority to the Consumer and Governmental Affairs Bureau to review the rules implementing the TCPA to ensure that those rules are clear and easy to understand.

FCC NPRM: What's Still on the Table

- The FCC is separately seeking comment regarding potential updates to TCPA-related rules.
- Topics include:

1. Revisiting the timeframe for callers to honor revocation requests.
   - Considering shortening the timeframe (from the current requirement of 10 business days) and potentially varying the timeframe depending on if the caller designates an exclusive means to revoke consent.
2. Two-way texting functionality to allow for revocation via reply text.
   - Considering requiring senders to provide recipients with the ability to use reply texts to revoke consent.
3. "Revoke all" consent methods.
   - Considering allowing callers to treat a category-specific revocation only if they provide a method to revoke consent for all types of messages where consent is required.
4. Treatment of affiliates, business lines, etc.
   - Considering clarifying how TCPA rules apply to separate affiliates, lines of business, or divisions.

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Opt-out Ambiguity: Key Court Decisions

- ***Stamper v. Manus-Nw. Oral Health Ctr., Ltd.***, No. 23-cv-05660, 2025 WL 2044093 (N.D. Ill. July 17, 2025)
  - When plaintiff replied "stop," to various messages from defendant, she received the following message: "[P]lease reply STOPALL" "if you would like to stop all communications[.]"
  - The court granted defendant's motion to dismiss, holding that the plaintiff's repeated "stop" replies to specific categories of messages did not reasonably communicate a request to revoke consent to all future communications. The plaintiff had subscribed to multiple message categories and never followed the clear instructions to reply "STOPALL" to opt out of all communications.

- ***Natalie Zagury, et al., v. Puragain Water, LLC***, No. 26-cv-20454, 2026 WL 2299332 (S.D. Fla. Aug. 11, 2026)
  - The court noted that "there is reason to believe that either (a) the TCPA generally treats revocations over text as applying to calls as well, or (b) Plaintiff's particular text should have been understood as revoking consent to all forms of communication."
  - The court held that the plaintiff sufficiently alleged that she revoked consent in a manner that applied to all communications by sending "Stop" and "Remove" reply-texts and denied the motion to dismiss.

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Opt-out Ambiguity: The "No Stop" Problem

- ***Bosley v. A Bradley Hosp. LLC***, No. 25-CV-22336, 2025 WL 2686984 (S.D. Fla. Sept. 19, 2025)
  - Plaintiff responded to defendant's telemarketing text messages with "no stop" in an attempt to opt-out of further text message communications. Defendant continued to send plaintiff text messages.
  - Defendant argued that "no stop" did not constitute an "unequivocal opt-out request" and that "no stop" reasonably conveyed to defendant that the plaintiff wished the text messages to continue, not stop, especially in the case where the text messages included express instructions for recipients to reply "STOP" to opt-out.
  - The court ultimately declined to decide whether "no stop" could reasonably be construed as and opt-out or affirmative consent to continue receive additional messages. However, such cases highlight the difficulties defendants face when receiving ambiguous responses from recipients.

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DNC Litigation: National Do-Not-Call Registry

Hall v. Smosh Dot Com (2023)

- Ninth Circuit reversed the District Court's dismissal
- Plaintiff's teenage son was using her cell phone when it received five solicitation text messages from the defendant despite allegedly being registered with the National Do-Not-Call Registry
- Even though the plaintiff wasn't using the phone and didn't herself receive the messages, the court held that she suffered a concrete injury in-fact and had standing under the TCPA
  - The Ninth Circuit held that unwanted telemarketing calls constituted an "inherent[] invasion of privacy."
  - According to the court, the actual recipient of the messages wasn't relevant because the National Do-Not-Call Registry is intended to protect against nuisance and privacy deprivation

SiriusXM TCPA Settlement (2026)

- Class action alleged SiriusXM placed repeated telemarketing calls to consumers whose numbers were on the National Do Not Call Registry or SiriusXM's internal Do Not Call list
- In addition to the **$28 million** settlement fund, SiriusXM agreed to implement enhanced telemarketing compliance measures, including improvements to DNC procedures and oversight of telemarketing practices

King v. Bon Charge, No. 1:25-cv-00105-MN, 823 F. Supp. 3d 508 (D. Del. 2025)

- Plaintiff alleged that Bon Charge continued sending marketing texts after her number had been registered on the National DNC Registry.
- Court held that a plaintiff states a § 227(c)(5) claim by alleging more than one call within 12 months, by or on behalf of the same entity, to a residential number registered on the National DNC Registry, and held that text messages can qualify as "calls" for that purpose.
- Court allowed the National DNC claim to proceed, finding plaintiff plausibly alleged dozens of marketing texts to her registered residential cell-phone number.

DNC Litigation: Company-Specific Do-Not-Call Lists and Vicarious Liability

***Hossfeld v. Allstate Insurance Co.* (2024)**

- Northern District of Illinois granted plaintiff's motion for summary judgment that Allstate *knowingly and willfully* violated the TCPA's internal do-not-call list requirements
- Allstate had a detailed, written policy for maintaining its do-not-call list, which the two agents implicated in the case agreed to follow
- The two Allstate agents engaged a "non-contracted telemarketer," which subcontracted the work to a third agency
- Agents had "no authority to employ persons [or agents] on behalf of Allstate."
- Non-contracted telemarketer also maintained a detailed do-not-call policy
- Allstate was liable because non-contracted telemarketers had no access to its tool for scrubbing numbers against its do-not-call list
- Plaintiff's providing his number to the caller in case they were disconnected did not constitute "express consent" to be called

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Do Not Call: Practice Compliance Tips

01
Scrub early and often

Access and apply the National DNC Registry within 31 days of each call campaign.

02
Centralize internal DNC management

Maintain a single, unified internal DNC database accessible by all calling operations and affiliated entities.

03
Audit vendor compliance

Ensure third-party callers and lead generators contractually commit to DNC compliance and provide regular evidence of scrubbing.

04
Document everything

Maintain records of DNC list access, scrubbing dates, consent records, and DNC policy training for all personnel.

Risk #2

Caller Identification

Caller ID rules, spoofing prohibitions, and compliance for third-party dialers.

Truth in Caller ID Act
FCC Enforcement
State-Level Requirements

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Caller Identification Requirements

Federal & State Framework

Federal Framework

- Truth in Caller ID Act: prohibits transmitting misleading or inaccurate caller ID with intent to defraud, cause harm, or wrongfully obtain anything of value
- TCPA requires disclosure of caller identity and callback number at outset of call
- TSR requires prompt oral disclosure of seller identity and call purpose
- FCC has imposed significant forfeitures for caller ID spoofing violations

State Caller ID Laws

- Many states have enacted independent anti-spoofing and caller ID statutes
- Some states require display of a valid callback number that reaches the seller
- State enforcement has been aggressive, particularly for robocall campaigns
- State laws may impose additional disclosure requirements beyond federal mandates

Federal Caller-ID Rules

- ***Newell v. JR Capital, LLC***, No. 2:25-cv-01419-GAM, 791 F. Supp. 3d 571 (E.D. Pa. 2025)
  - Plaintiff alleged telemarketing texts violated 47 C.F.R. § 64.1601(e) because they failed to identify the seller or telemarketer by name; defendant argued the caller-ID rule did not apply to texts and was not privately enforceable.
  - Court denied dismissal, holding that § 64.1601(e) applies to text messages and is privately enforceable under § 227(c).

- ***Novia v. Mobiz, Inc.***, No. 25-CV-11036-AK, 2026 WL 752181 (D. Mass. Mar. 17, 2026)
  - Plaintiff alleged marketing texts violated § 64.1601(e) because they failed to include required caller-ID information, including the seller's telephone number.
  - Court denied dismissal, following prior cases in holding that § 64.1601(e) was promulgated under § 227(c) and is privately enforceable.

These cases are part of the developing split over private enforcement of § 64.1601(e).

Florida's FTSA Caller-ID Requirements

- **Florida Telephone Solicitation Act (FTSA) Caller-ID Requirements**
  - Expressly requires that any telephone number displayed through caller ID for a telephonic sales call be capable of receiving calls and connect the original recipient back to the telephone solicitor or seller. Fla. Stat. § 501.059(8)(b).
  - Recent class actions have asserted this requirement against marketers whose text-message caller-ID numbers allegedly could not receive return calls.
    - ***Lewis v. Neiman Marcus Group, LLC***, No. CACE-24-009401 (Fla. 17th Jud. Cir. Ct. filed June 15, 2024), alleges that marketing texts violated § 501.059(8)(b)
    - ***Porcelli v. Oscar de la Renta, LLC***, No. 2024CA008336 (Fla. Cir. Ct. filed Sept. 2, 2024), similarly alleges that the number transmitted with marketing texts was not callable.
  - These lawsuits illustrate an emerging theory of FTSA liability focused on the functionality of the caller-ID number itself, rather than solely on consent to receive the underlying communication.

Caller ID: Third-Party Dialers & Best Practices

Key Considerations

- Companies remain liable for caller ID practices of their outsourced calling vendors
- Contractually require accurate caller ID transmission and prohibit spoofing
- Verify that vendor-displayed numbers are valid, callable, and reach the enterprise
- Monitor vendor caller ID practices through regular audits and test calls

Best Practices

- Register numbers with STIR/SHAKEN to improve authentication scores
- Use consistent, recognizable caller IDs to reduce "spam likely" labels
- Implement branded calling programs (e.g., CNAM, Rich Call Data) where available
- Respond promptly to carrier inquiries about your traffic patterns
- Document all caller ID policies, vendor agreements, and audit results

Risk #3

Artificial Intelligence Calls

AI-generated voices, AI agents, and the evolving regulatory framework.

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FCC 2024 AI Ruling
Consent Requirements
Litigation Risk

The FTC's February 2024 AI Declaratory Ruling

- Issued February 8, 2024

- *"Consistent with our statements in the AI NOI, we confirm that the TCPA's restrictions on the use of "artificial or prerecorded voice" encompass current AI technologies that resemble human voices and/or generate call content using a prerecorded voice."*

- Stated that AI generated calls require prior express consent absent an emergency or exemption.

- Also stated that State Attorney Generals were authorized to "go after the bad actors behind these robocalls and seek damages under the law."

FCC 24-17: Declaratory Ruling

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AI Calls: Consent Standards and Call Types

How the FCC Implementing Regulations under 47 CFR § 64.1200 apply to AI chatbot calls

Type of Call	Standard for Consent
Marketing/telemarketing calls to wireless numbers using Automatic Telephone Dialing System (ATDS) or artificial/prerecorded voice.	**Prior express written consent** 47 C.F.R. § 64.1200 (a)(2)
Marketing/telemarketing calls to residential lines using artificial/prerecorded voice.	**Prior express written consent** 47 C.F.R. § 64.1200 (a)(2) and 47 C.F.R. § 64.1200 (a)(3)
Non-telemarketing calls to wireless numbers using ATDS or artificial/prerecorded voice.	**Prior express consent (oral consent is sufficient)** 47 C.F.R. § 64.1200 (a)(1) and 47 C.F.R. § 64.1200 (a)(3)
Non-commercial calls to residential lines (subject to the limitation).	**Exempt with up to 3 calls per consecutive 30-day period** 47 C.F.R. § 64.1200 (a)(3)(i) – 47 C.F.R. § 64.1200 (a)(3)(iii)

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FCC AI-Generated Voices and the TCPA

FCC's February 2024 Declaratory Ruling

The FCC Ruling

- AI-generated human voices are "artificial" under TCPA § 227(a)(1)
- Calls using AI-generated voices require prior express consent (or written consent for marketing)
- Applies regardless of whether the AI voice is cloned, synthesized, or generated from text-to-speech
- Callers and initiators may both face liability

Practical Implications

- AI-enabled IVR, customer service agents, and outbound marketing calls all potentially affected
- Companies must evaluate whether AI components trigger "artificial voice" classification
- Consent frameworks may need updating for AI-augmented communications
- Existing TCPA consent may not cover new AI use cases

Recent Federal AI Rulemaking

- **FCC Declaratory Ruling on AI-Generated Voices (effective Feb. 2024)**
  - FCC confirmed that AI-generated or cloned human voices fall within the TCPA's existing restrictions on "artificial or prerecorded voice" calls.
  - Calls using such technology therefore remain subject to applicable TCPA consent and identification requirements; 26 state attorneys general supported the FCC's interpretation.
- **FTC Government and Business Impersonation Rule (effective Apr. 2024)**
  - Prohibits materially and falsely posing as, or misrepresenting affiliation with, a government entity or business. The FTC has already brought enforcement actions under the rule.
  - In February 2024, the FTC separately proposed extending the rule to impersonation of individuals, expressly citing AI-generated deepfakes and seeking comment on potential liability for firms providing AI tools used for harmful impersonation. That proposal has not become a final rule.
- **FCC Proposed AI Robocall/Robotext Rules (proposed Aug. 2024)**
  - FCC proposed defining "AI-generated calls" and requiring callers to disclose AI use when obtaining consent and, for AI-generated voice calls, at the beginning of the call.
  - The proposed rules have not been finalized and are not current disclosure requirements.

AI Calls: Litigation Trends & Deployment Guidance

Litigation & Enforcement Risks

- Plaintiffs' bar actively targeting companies using AI-generated communications
- Uniform AI deployment across large call populations could make class certification easier
- State AGs pursuing enforcement for AI-based robocalls used in scams and consumer deception
- FTC scrutinizing AI-enabled deceptive practices under Section 5 authority

Guidance for AI Deployment

- Audit existing AI tools to determine if they generate "artificial" voices under the TCPA
- Obtain clear prior express written consent that discloses AI use
- Monitor state-level AI legislation—new disclosure and consent mandates emerging rapidly
- Consider disclosure at the outset of calls when AI is used
- Build compliance documentation for AI systems

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AI-Generated Voice Calls Under the TCPA

- ***League of Women Voters of New Hampshire v. Kramer***, No. 24-cv-73-SM-TSM, 2025 WL 919897 (D.N.H. Mar. 26, 2025)
  - Plaintiffs challenged nearly 10,000 robocalls that allegedly used an AI-generated voice mimicking the president and urging New Hampshire voters not to vote in the presidential primary.
  - Court denied defendants' motion to dismiss the TCPA claim, noting the FCC's determination that AI-generated voices are "artificial" under the TCPA and finding plaintiffs plausibly alleged defendants were sufficiently involved in the calls to potentially face liability.
- ***Lowrey v. Twilio Inc., et al.***, No. 6:25-cv-00116-NKM-CKM (W.D. Va. filed Dec. 29, 2025) (pending)
  - Class action brought in federal court in Virginia alleging unsolicited AI-generated/artificial-voice calls and automated text messages marketing probate services violated the TCPA.
  - Plaintiff sued the telemarketer, Twilio, and others alleging that AI interacted with recipients in real time and Twilio provided the calling infrastructure, such that both "made, initiated, and/or caused" the calls.
  - Case may determine whether AI developers and communication platform providers can face TCPA liability alongside telemarketers.

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Virtual Assistants and the TCPA: Emerging Limits

- ***Trupia v. Bob Moore Enterprises, L.L.C.***, No. 25-6130, 2026 WL 1506611 (10th Cir. May 29, 2026)
  - Plaintiff alleged that marketing texts encouraging him to schedule another vehicle service appointment, sent by “Amber,” whom a dealership employee allegedly identified as an AI virtual assistant, violated the TCPA’s restrictions on calls using an “artificial or prerecorded voice” without the required consent.
  - District court concluded that text messages do not constitute an “artificial or prerecorded voice” under the TCPA; the Tenth Circuit affirmed, but did not substantively review that ruling because plaintiff had waived the issue through inadequate briefing.
  - Together with *Kurmangaliyev*, the case shows that courts have begun confronting attempts to apply the TCPA’s artificial-voice provision to AI-generated or automated text communications.

Eastern District of New York:

- Court dismissed a claim related to text messages sent to a virtual assistant, applying the Second Circuit’s 2024 decision in *Soliman v. Subway*, which held that a text message is not an “artificial voice” because “voice” under the TCPA means something audible.

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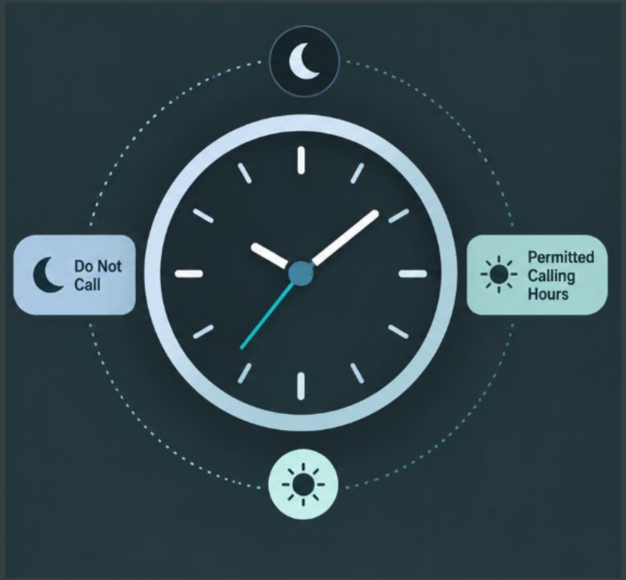
Risk #4

Calling Hour Restrictions

Federal and state calling windows, time zone challenges, best practices



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Calling Hour Restrictions

Federal Limits & State Variations

Federal Rules

- TCPA/FCC: Calls permitted only between 8:00 AM and 9:00 PM (local time of the called party)
- TSR: Same 8:00 AM–9:00 PM window for telemarketing calls
- Time zone must be determined based on the called party's location, not the caller's
- Applies to all telemarketing calls, including prerecorded and automated calls

State Variations

- Some states impose narrower windows (e.g., 9:00 AM–8:00 PM)
- Weekend and holiday restrictions in certain jurisdictions
- Different rules may apply to automated vs. live calls in some states
- Must comply with the most restrictive applicable calling window for each recipient's location

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Quiet Hours Litigation

King v. Bon Charge (2026)

- Delaware district court addressed claims brought by a consumer who subscribed to marketing text messages and received dozens of promotional texts, some during the middle of the night or early morning
- Plaintiff brought a class action asserting, among other claims, that texts violated the TCPA's "quiet hours" regulation, which prohibits telephone solicitations to residential telephone subscribers before 8:00 am or after 9:00 pm local time
- Court dismissed the quiet hours claim, holding that plaintiff's voluntary opt-in constituted prior express invitation or permission, such that the messages were not "telephone solicitations" subject to the quiet hours rule
- Court distinguished the quiet hours rule from the National Do Not Call rules, which expressly require a signed, written agreement to exempt telemarketing communications

Calling Hours: Challenges and Best Practices

Time Zone Challenges

- Area codes do not reliably indicate time zone (ported/VoIP numbers).
- Daylight saving time transitions create temporary compliance gaps.
- Mobile consumers may be physically located in a different time zone from their registered number.
- Regulators and courts generally unsympathetic to time zone ambiguity as a defense.

Best Practices

- Use geolocation data and NPA-NXX databases supplemented by ported number lookups.
- Build automated guardrails into dialer systems to enforce calling windows.
- Apply the most restrictive applicable window when time zone is uncertain.
- Maintain a state-by-state calling hours matrix and update regularly.
- Audit campaigns for calling-time compliance, particularly during DST transitions.

Enforcement Trend

Calling-hour violations are a common element in both class actions and state AG enforcement. Courts are less sympathetic to time zone ambiguity arguments.

Risk #5

Carrier Rules and Requirements

STIR/SHAKEN, call blocking/labeling, maintaining deliverability

Carrier Rules & Call Blocking

STIR/SHAKEN, Analytics-Based Blocking & Deliverability

STIR/SHAKEN Framework

- Caller authentication protocol mandated by FCC for IP-based networks
- Assigns attestation levels (A, B, or C) based on caller verification
- Full (A) attestation: carrier verifies caller's identity and authorization to use the number
- Calls without attestation are increasingly flagged or blocked by terminating carriers

Analytics-Based Blocking

- Carriers use analytics programs to identify and block/label suspected unwanted calls
- Algorithms consider call volume, duration, complaint patterns, and behavioral signals
- "Spam Likely" and "Scam Likely" labels can significantly hurt answer rates
- Legitimate telemarketing campaigns are frequently misidentified as spam

Carrier Rules

The Cellular Telecommunications Industry Association ("CTIA") is the wireless trade association i.e., the industry group representing AT&T, T-Mobile, Verizon, and the rest of the US mobile ecosystem. It is not a government regulator. CTIA's documents function as the operational rulebook for US business texting and branded calling. [Link: A2P. guide - CTIA]

Section 5.1 Consumer states, in pertinent part:

- *The messaging ecosystem should operate consistent with relevant laws and regulations, such as the TCPA and associated FCC regulations regarding Consumer consent for communications.*
- ***Regardless of whether these rules apply and to maintain Consumer confidence in messaging services, Non-Consumer Message Senders are expected to:***
  - ***Obtain a Consumer's consent to receive messages generally;***
  - ***Obtain a Consumer's express written consent to specifically receive marketing messages; and***
  - ***Ensure that Consumers have the ability to revoke consent.*** [Emphasis Added.]
- The CTIA guidelines require documented consent for virtually all commercial messaging programs which is a higher standard than the TCPA which permits certain informational and transactional messages without prior express written consent.

CTIA - Messaging Principles and Best Practices

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Carrier Rules: Maintaining Deliverability

Ensure STIR/SHAKEN compliance	Work with your originating carrier to achieve full (A-level) attestation for all outbound numbers.
Register with labeling ecosystems	Register your numbers with major analytics providers (e.g., Hiya, TNS, First Orion) and carrier programs.
Monitor and remediate labels	Regularly test your outbound numbers for "spam" or "scam" labels. Use monitoring services to catch issues early.
Manage number reputation	Avoid high-volume bursts from single numbers. Maintain healthy call-to-answer ratios.
Engage carriers on disputes	Establish relationships with carrier abuse teams. Use FCC safe harbor dispute resolution processes.

B2B vs. B2C Telemarketing Risk

B2B Considerations

- TSR generally exempts B2B calls, but TCPA restrictions on autodialed/prerecorded calls still apply, and regulators enforce the TSR broadly
- National DNC Registry covers "residential numbers" only—but business contacts often use personal cell phones, blurring the line
- State laws may not distinguish B2B from B2C (e.g., Florida's FTSA covers all calls to FL numbers)
- Financial services B2B: calls to business prospects may trigger TCPA liability if made to personal wireless numbers
- Lower class action volume historically, but growing regulatory scrutiny

B2C Considerations

- Full TCPA and TSR protections apply—prior express written consent required for autodialed/prerecorded marketing calls to wireless numbers
- National and state DNC registries fully applicable
- Highest class action and enforcement exposure—TCPA statutory damages of $500–$1,500 per call
- Financial services B2C: CFPB and state AG enforcement focus on financial product telemarketing (mortgage, credit card, student loan, debt collection)
- Robocall litigation continues to be the #1 driver of TCPA class actions

Financial Services—Specific Enforcement Focus

- CFPB enforcement actions targeting deceptive telemarketing of financial products
- SEC/FINRA considerations for securities-related cold calling (broker-dealer obligations)
- State AG coordinated enforcement on predatory lending and debt relief telemarketing
- Heightened scrutiny on AI-assisted calls in financial services (robo-advisory, loan servicing)
- Gramm-Leach-Bliley Act (GLBA) privacy implications for customer data used in telemarketing campaigns

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Questions?

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