

## THE TCPA RAISES QUESTIONS CAN YOUR COLLECTION AGENCY ANSWER?

by Brian Eggert



Do you have a landline? If so, you are part of a growing minority. Results from a study last year by the National Health Interview Survey suggest that more than half of all U.S. households have cancelled their landlines and now use just their cell phones. The percentage is even higher among twentysomething adults, and about two-thirds in that demographic live in cell-only households. Not that there's anything wrong with having a landline, per se. But chances are a large percentage of your consumers do not use landlines, and such trends create a challenge for revenue cycle professionals to effectively recover past due balances.

Though cell phones represent roughly 50% of every outbound call and result in connection rates three-times higher than landlines, the Telephone Consumer Protection Act (TCPA)—at least as it exists today—does not allow the use of automatic dialers to call cell phones, unless the consumer has given prior permission to do so. This means, if the account goes to a collection agency, the safest legal way to dial a cell phone is with a manual call. From a sheer production standpoint, this is not the most efficient approach, and it may impact the rate of recoveries.

It's no secret that laws are always a few steps behind current technological trends. The TCPA is no different; it treats cell phones as the exception, instead of the growing standard. Finding the balance between what makes sense for the industry yet complies with federal law can be tricky. On one hand, a collection agency is less effective if it cannot use a dialer of some kind. But until the TCPA catches up with technological trends, the importance the industry has placed on this relatively new law is hard to ignore. So are the potential penalties.

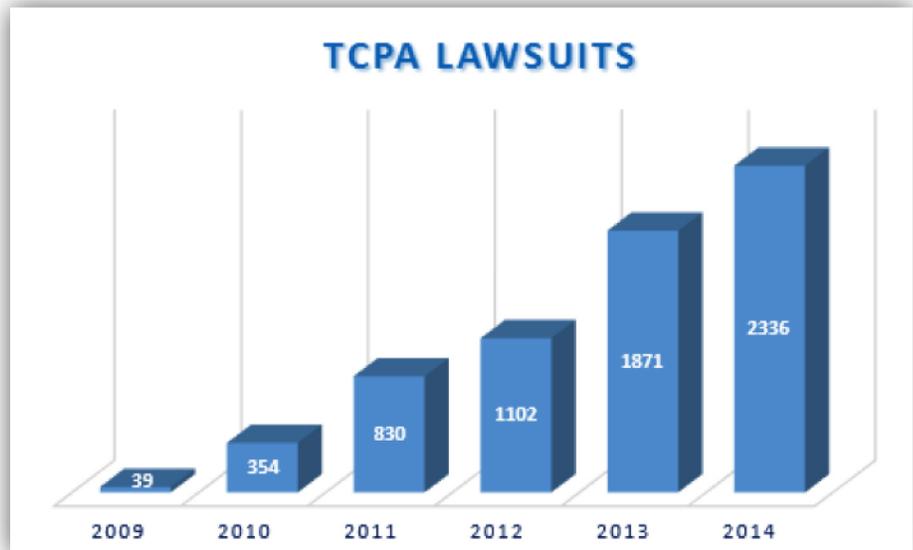
### WHAT ARE THE RISKS?

Violations of the TCPA could result in a hefty lawsuit or even a class action lawsuit. In such a suit, each unauthorized call made to a cell phone has its penalty under the law. Certain provisions apply to collection agencies, while further provisions apply to other parties without exception. For each call that unknowingly violates the TCPA, violators can be assessed a \$500 fine, along with any statutory damages and monetary costs to the consumer. For knowing or willful violations, the fine increases to \$1,500 per call. Even in the unknowing example, ten calls to cell phone can quickly add up to \$5,000. Imagine the damages in a class action suit.



## THE INDUSTRY IS WATCHING. ARE YOU?

What's more, according to [this recent article on WebRecon LLC](#) by way of [insideARM.com](#), TCPA lawsuits are steadily increasing, whereas lawsuits for violations of the Fair Debt Collection Practices Act (FDCPA) are trending downward. This data suggests that collection agencies are taking greater care to pursue debt within the bounds of the FDCPA, which results in declining violations, thus fewer lawsuits. But the data also suggests that consumers and attorneys have a sharp eye open for TCPA violations. As a result, the risk to both collection agencies and their clients is increasing.



Managing your internal office staff's compliance with the TCPA is relatively easy—at least when compared to ensuring your collection agency's compliance. Certainly, your office cannot afford to be sued for something your agency did on your behalf. So the question becomes: What steps should I take to confirm



my collection agency is compliant with the TCPA? The solution, as usual, begins with good communication. In other words, talk to your collection agency and ask the right questions. Doing this will help you avoid undue risk or a potential lawsuit following a TCPA violation.



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## IS YOUR COLLECTION AGENCY PROTECTING YOU?

To determine if your agency is proactive in taking the steps necessary to protect you, here are some simple YES/NO questions you should be asking about your collection agency:

- Does your agency have an attorney, and does that attorney demonstrate their concerns about the TCPA through proactive communication about your/their cell phone policies?
- Does your agency have a system in place to identify numbers you send them to determine if the number is a cell phone or landline?
- Has your agency asked to review your consumer contract or suggested language you could add to allow automatic dialer calls?
- Does your agency's attorney write their TCPA policies and help train the staff on those policies?
- Does your agency record 100% of their calls, and then monitor a cross-section of those calls within an established call quality program?
- Is your agency aligned with ACA International, and with them lobbying for changes in collection law when they are needed, monitoring changes in the law, and implementing change as soon as it occurs in the industry?
- Overall, does your agency take the TCPA seriously?

IC System, Inc. prides itself on being able to answer the above questions confidently (and with a resounding "YES!"). But the gap between TCPA laws and majority cell phone usage remains, and that gap makes the laws on this subject become even more important for your internal office to understand.

## IC System has the Solution You Need

Because the TCPA prohibits the use of auto-dialers from being used to contact consumers on cell phones without consent, and because the benefits of contacting consumers on cell phones are so apparent, IC System relies on a robust combination of operational, legal, and audit procedures to remain compliant yet still deliver efficient, effective service.

We begin our solution with advanced Audit, Compliance, and Legal Teams, which monitor the industry and ensure that our internal processes remain compliant with current trends. This team also conducts regular audits on agent calls (all of which are monitored) through an award-winning Call Quality Program, making certain that our agents deliver the best possible customer experience.





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Knowledge is power. And so, every IC System agent is tested on the TCPA laws and industry knowledge semi-annually. These rigorous tests include individual exams on the Fair Debt Collection Practices Act, HIPAA laws, Gramm-Leach Bliley Act, and of course the TCPA.



Additionally, every IC System client is encouraged to have an ironclad consumer contract that allows our agency to contact consumers on their cell phones. When accounts are sent to our office, we use a number of scrubs to identify cell phone numbers that require compliance-friendly handling.

Once the cell phones have been identified, IC System uses an advanced dialer platform called LiveVox, an Aspect affiliate, to mitigate the risk for both our clients and our company without sacrificing performance. Whereas manual calls require an inefficient use of agent time, and auto-dialers risk breaches in compliance, IC System's approach combines manual and automated systems into a unique platform that allows for the efficiency of an auto-dialer, but without the predictive process that would render it non-compliant with TCPA standards.

In this approach, a queuer agent confirms the cell phone and consumer information of each call before the record is supplied to the calling agent. From there, each number is presented to an agent, who then launches the call. In this scenario, no auto-dialer processes are used, nor can they be implemented for safety. This system employs a fast, resourceful method of dialing and lessens the risk, and it has resulted in increased connection rates by five-times over standard manual dials.

Rest assured, IC System takes the TCPA very seriously. We continue to implement and investigate new and exciting methods that keep in line with this ever-changing industry, enabling us to continue to deliver the upper echelon experience our clients expect.

