Disclaimer

The purpose of this document is to offer companies guidance on how the Aspect solutions can be used to aid in complying with each ruling in the FCC Report and Order. All companies are advised to consult their legal counsel to interpret the FCC Report and Order and assess the impact to their business process and operations.
On February 15, 2012 the Federal Communications Commission of the United States issued a Report and Order in the matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 (CG Docket No. 02-278). In the report, the FCC indicated steps to protect consumers from telemarketing calls pursuant to the Telephone Consumer Protection Act of 1991 (TCPA). The protections target unwanted autodialed or prerecorded telemarketing calls, also known as “telemarketing robocalls”, and maximize consistency with the Federal Trade Commission’s (FTC) analogous Telemarketing Sales Rule (TSR), as contemplated by the Do-Not-Call Implementation Act (DNCIA).

The FCC's Report and Order set forth the following new standards for all autodialed or prerecorded telemarketing calls to wireless numbers and residential lines:

1. Prior express written consent is now required (which is a departure from the old rules that established a business relationship exemption for such calls and provided a less strict prior consent standard);
2. All prerecorded telemarketing calls must allow consumers to opt out of future robocalls during a robocall and, to the extent a voice message is left, be provided a toll free number that will enable them to opt out of future robocalls;
3. The limit of permissible abandoned calls must now be calculated on a single calling campaign over a 30-day period basis; and
4. Any prerecorded calls to residential lines made by health care-related entities governed by the Health Insurance Portability and Accountability Act of 1996 shall be exempt from TCPA requirements.

The FCC also established time periods for compliance (all times effective from the day of publication of OMB approval in the Federal Register, which will likely occur in the next two to four weeks):
- Twelve-month period for implementation of the requirement that prior express consent be in writing for telemarketers employing autodialed or prerecorded calls or messages.
- 90-day implementation period for the automated, interactive opt-out mechanism for telemarketing calls.
- 30-day implementation period for the revised abandoned call rule.

It is important to note that the FCC's Report and Order only applies to autodialed or prerecorded telemarketing calls and does not seek to alter the FCC’s determination with respect to non-commercial calls (e.g. debt collection, bank account fraud, non-profit calls, informational messages, notification calls, emergency calls or any other non-telemarketing/non-commercial calls). The chart below summarized and clarifies what changes have occurred as a result of the FCC’s recent action and what standards remain the same.

<table>
<thead>
<tr>
<th></th>
<th>Residential Landline Number</th>
<th>Wireless Number</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Telemarketing calls</strong></td>
<td>Prior express written consent (new rule, clarified that consent can be electronic)</td>
<td>Prior express written consent (no change, clarified in new rules that consent can be electronic)</td>
</tr>
<tr>
<td><strong>Informational calls</strong></td>
<td>No prior consent required (no change)</td>
<td>Prior express consent, either oral or written (no change, clarified in new rules that consent can be electronic)</td>
</tr>
<tr>
<td><strong>Emergency calls</strong></td>
<td>No prior consent required (no change)</td>
<td>No consent required (no change)</td>
</tr>
<tr>
<td>Calls “made for a commercial purpose but does not include or introduce an advertisement or constitute telemarketing,”</td>
<td>No prior consent required (no change)</td>
<td>Prior express consent, either oral or written (no change, clarified in new rules that consent can be electronic)</td>
</tr>
<tr>
<td>Calls by or on behalf of tax-exempt non-profit organizations</td>
<td>No prior consent required (no change)</td>
<td>Prior express consent, either oral or written (no change, clarified in new rules that consent can be electronic)</td>
</tr>
<tr>
<td><strong>Political Calls</strong></td>
<td>No prior consent required (no change)</td>
<td>Prior express consent, either oral or written (no change, clarified in new rules that consent can be electronic)</td>
</tr>
<tr>
<td><strong>“Health care” call</strong></td>
<td>No prior consent required (new rule)</td>
<td>No prior consent required (new rule)</td>
</tr>
</tbody>
</table>
**FCC Rule and Order 1**

Requires prior express written consent for all autodialed or prerecorded telemarketing calls to wireless numbers and residential lines and eliminates the established business relationship exemption.

*Which Calls are Affected by this Order?*

All autodialed calls or prerecorded telemarketing calls made to wireless numbers and residential lines are affected by this order.

*Which Calls are Exempt?*

- Any calls that are non-commercial (e.g. debt collection, bank account fraud, non-profit calls, informational messages, notification calls, emergency calls or any other non-telemarketing/non-commercial calls, etc.) to residential and wireless numbers.

*Company Requirements to Comply with this Order*

Companies must have a signed, written agreement from the consumer which states that the consumer agrees to be contacted by them, and includes the telephony number to which the calls may be placed. In addition, the written agreement must be obtained “without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service.” Alternatively, the written agreement can be in a form that is in compliance with the E-SIGN ACT (email, website form, text message, telephone keypress, or voice recording).

The company bears the burden of proving that a clear and conspicuous disclosure was provided, and that an unambiguous consent was obtained.

An important change from prior standards is that “Telemarketing calls to residential lines will require prior written consent, even where the caller and called party have an established business relationship.”

*Advantages Offered by Aspect to Enable Compliance with this Order*

The prior express written consent requirement must fundamentally be supported by the company policy and business processes. The Aspect Unified IP solution can however be configured to ensure that consumers who have not given prior express written consent are not contacted. Companies using Aspect Unified IP with Advanced List Management can add a “Consent Received” field to the download records and execute a filter as part of each campaign that excludes any records that do not indicate YES for consent. Companies leveraging our solutions for Telemarketing purposes are advised to take this precautionary measure, using the Aspect Unified IP solution to avoid unintended violations of the FCC Rules and Order.

**FCC Rule and Order 2**

Requires telemarketers to implement an automated, interactive opt-out mechanism for telemarketing robocalls, which would allow a consumer to opt out of receiving additional calls immediately during a robocall.

*Company Requirements to Comply with this Order*

The FCC Report and Order specifies that:

- Any artificial or prerecorded message call that could be answered by the consumer in person must provide an interactive opt-out mechanism that is announced at the outset of the message and is available throughout the duration of the call. In addition, the opt-out mechanism, when invoked, must automatically add the consumer’s number to the seller’s do-not-call list and immediately disconnect the call.

- Where a call could be answered by the consumer’s answering machine or voicemail service, the message must also include a toll-free number that enables the consumer to subsequently call back and connect directly to an autodialed opt-out mechanism.
Advantages Offered by Aspect to Enable Compliance with this Order

The Aspect Unified IP solution offers a number of capabilities that enable companies to comply with the automated, interactive opt-out mechanism requirement.

1. Aspect Unified IP provides not outbound dialing capabilities but also includes a self-service interactive voice response (IVR) component. Companies that configure the Aspect Unified IP system to announce upon connection of the call that the consumer can “press 1 at any time to opt-out of receiving future calls”. If the consumer selects this option, an IVR script within Aspect Unified IP can be initiated to confirm the consumer’s selection following which the call will be immediately disconnected. The consumer's number will also be added to the intermediary do-not-call list within Aspect Unified IP. As part of the company’s list cleanup process, the records in the intermediary do-not-call list can be added to the permanent do-not-call record of the company.

2. Aspect Unified IP can also be configured to detect an answering machine or voicemail service and to leave a message that can include a toll-free number for the consumer to callback if they choose to opt-out of receiving future contacts.

3. The Aspect Unified IP IVR process can be configured to process incoming calls from consumers that desire to opt-out from receiving future contacts and automate the process for these consumers to opt out. The phone numbers of consumers who opt-out through this automated process can be added to the intermediary do-not-call list within Aspect Unified IP. As part of the company’s automated list cleanup process, the records in the intermediary do-not-call list can be added to the permanent do-not-call record of the company.

FCC Rule and Order 3

Requires that the permissible three percent call abandonment rate be calculated for each calling campaign, so that telemarketers cannot shift more abandoned calls to certain campaigns, as is possible if calculation is made across multiple calling campaigns.

Company Requirements to Comply with this Order

A company must maintain an abandoned rate of 3% or lower for each calling campaign over a 30 day reporting period. In the event that a single campaign exceeds a 30 day period, the FCC now requires that the abandonment rate be calculated each successive 30-day period or portion thereof during which the calling campaign continues.

The FCC Report and Order specifies that:

- An outbound telephone call is deemed “abandoned” if a person answers the telephone and the caller does not connect the call to a sales representative within two seconds of the called person’s completed greeting.

- A seller or telemarketer is not liable for violating the prohibition on call abandonment if, among other things, the seller or telemarketer employs technology that ensures abandonment of no more than three percent of calls answered.

- The FTC defines “campaign” as the offer of the same good or service for the same seller. So long as a telemarketer is offering the same good or service for the same seller, the FTC regards the offer as part of a single campaign, irrespective of whether telemarketing scripts used to convey the offer use or contain different wording.

The Report and Order requires that companies revise their campaign strategies to ensure that they are not abandoning more than 3% of the calls over a 30 day reporting period for each campaign. Companies that in the past were tracking abandoned rates across multiple campaigns will need to ensure that the proper controls and operational disciplines are in place to ensure that the 3% abandoned threshold is not violated on a per-campaign basis.

Advantages offered by Aspect to enable compliance with this order

The Aspect Unified IP solution can be configured to operate at or below the 3% abandoned threshold on a per-campaign basis. Aspect Unified IP provides an operating construct known as Service and a campaign can be defined to match 1 to 1 with a Service in Aspect Unified IP. An operations manager or administrator can configure a Service to comply with the 2 second threshold from the point of a completed greeting and with a max abandoned percentage of 3%. The Aspect Unified IP system will then pace the calling rate appropriately to stay within the boundaries set by these thresholds.
FCC Rule and Order 4

Exempts from TCPA requirements prerecorded calls to residential lines made by health care-related entities governed by the Health Insurance Portability and Accountability Act of 1996.

Company Requirements to Comply with this Order

Companies that are health-care related entities and that are governed by HIPAA do not have to have express prior written consent to make prerecorded calls to residential lines of their consumers. A level of consent is still required for calls to wireless numbers.

Advantages Offered by Aspect to Enable Compliance with this Order

Companies that are health-care related entities governed by HIPAA can configure the Aspect solutions to dial according to the calling strategy that best meets their business objectives.

Conclusion

As a leading provider of solutions to enable proactive outreach for sales, customer service and collections processes, Aspect has developed solutions that are designed to enable companies to achieve the optimum level of productivity while complying with the TCPA rules. Our unified solution, Aspect Unified IP, offers a number of advantages to enable compliance, including filters that can be configured to avoid calling consumers who have not given express prior written consent, parameters that control the pacing of the system to operate within the 2 second and 3% abandoned rules, and a built in IVR self-service component that enables consumers to opt-out in an automated fashion. We encourage Aspect customers to contact their account representatives or appropriate Aspect partners for further information on how to best configure their environments to comply. We also encourage companies that are not Aspect customers to also contact us as we offer a solution that can enable compliance with TCPA.