

## Delivery of Recording Laws: Are Established Business Relationship Calls Exempt from Federal and State Bans<sup>1</sup>?

Jurisdiction (Statutory Citation)	Are Calls to Existing Customers regarding Previously Purchased Goods or Services Exempt from Ban? <sup>2</sup>	Are Calls to Existing Customers for the Sale of Additional Goods or Services (i.e. upsells) Exempt from Ban? <sup>3</sup>	Are Informational Calls to Existing Customers Exempt from Ban? <sup>4</sup>	Are Calls Made with Express Consent Exempt from Ban? <sup>5</sup>
Federal-TCPA (47 USC 227; 47 CFR 64.1200)	Yes.	Yes.	Yes.	Yes.
Federal-TSR <b><u>effective until Sept. 1, 2009</u></b> (16 CFR 310.4(b)(5))	Yes. <sup>6</sup>	Yes <sup>6</sup>	Yes.	Yes.

<sup>1</sup> Even if these types of calls are exempt from ban, restrictions such as abandonment, caller identification, curfew, permit, disconnect, disclosure, calls to cell phones and other requirements can apply.

<sup>2</sup> Calls to existing customers regarding previously purchased goods or services do not include calls for the sale of additional goods or services (e.g. upsells or cross-sells).

<sup>3</sup> See statutes for specific definitions of established business relationship.

<sup>4</sup> Informational calls include calls that provide information to a consumer regarding an existing debt or contract.

<sup>5</sup> If an exemption for established business relationship calls exists, it is not necessary to review express consent exemption as express consent is included in the definition of established business relationship. This exemption is only relevant if established business relationship calls are not allowed.

<sup>6</sup> **Until December 1, 2008**, a seller or telemarketer must, for each such telemarketing call placed, allow the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call; and within two (2) seconds after the person's completed greeting, promptly play a prerecorded message that:(a) presents an opportunity to assert an entity-specific Do Not Call request at the outset of the message, with only the prompt disclosures required by § 310.4(d) or (e) (please see disclosure requirements chart for specific disclosures) preceding such opportunity; and (b) complies with all other federal requirements under the TSR.

**Effective December 1, 2008**, a seller or telemarketer must, for each such telemarketing call placed, allow the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call; and within two (2) seconds after the person's completed greeting, promptly play a prerecorded message that: **(1) (for calls answered by live persons)** allows the person called to use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a DNC request at any time during the message; the mechanism must automatically add the number called to the seller's entity-specific DNC list, immediately disconnect the call once invoked, and be available for use at any time during the message; **(2) (for calls answered by an answering machine)** provides a toll-free telephone number so that the person called can assert a DNC request; the number must connect directly to an automated interactive voice or keypress-activated opt out mechanism that automatically adds the number called to the seller's entity-specific DNC list, immediately disconnects the call, and is accessible at any time throughout the duration of the telemarketing campaign. See 16 CFR 310.4(b)(1)(V)(B)

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Federal-TSR ( <i>effective Sept. 1, 2009</i> ) (16 CFR 310.4(b)(1)(v))	No.	No.	Yes.	Yes. <sup>7</sup>
Alabama (No State Statute)	Yes.	Yes.	Yes.	Yes
Alaska (45.50.475)	Yes.	Yes.	Yes.	Yes
Arizona (13-2919; 44-1278)	No.	No.	Yes.	No.
Arkansas (5-63-204)	No.	No.	Yes.	Yes.
California (Civ. Code 1770(a)(22); Pub. Util. 2872(f))	Yes.	Yes	Yes.	Yes.

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<sup>7</sup> **Effective Sept. 1, 2009**, prerecorded messages for the sale of goods or services are only allowed with the express **written** consent of the person called. Written consent must: a) include a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to place prerecorded calls to such person; b) be obtained without requiring, directly or indirectly, that the agreement is a condition of purchasing any good or service; c) evidence the willingness of the recipient of the call to receive prerecorded messages by or on behalf of the specific seller; and d) include such person's telephone number and signature (an electronic or digital signature which is recognized as a valid signature under federal law or state contract law will meet this requirement).

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Colorado (18-9-311)	No.	No.	Yes.	Yes.
Connecticut (52-570c)	Yes.	Yes.	Yes.	Yes.
Delaware (No State Statute)	Yes.	Yes.	Yes.	Yes.
DC (34-1701)	Yes.	No.	Yes.	Yes, if calls regard goods or services previously purchased.
Florida (501.059)	No.	No.	Yes.	No
Georgia (46-5-23)	No.	No.	Yes.	Yes.
Hawaii (No State Statute)	Yes.	Yes.	Yes.	Yes.
Idaho (IDAPA 31.51.02)	Calls allowed but state restrictions apply.	Calls allowed but state restrictions apply.	Calls allowed but state restrictions apply.	Yes.
Illinois (815 ILCS 305/20)	Yes.	Yes.	Yes.	Yes.

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Indiana (24-5-14-5)	Yes.	Yes.	Yes.	Yes.
Iowa (476.57)	Calls allowed but state restrictions apply.	Calls allowed but state restrictions apply.	Calls allowed but state restrictions apply.	Yes.
Kansas (No State Statute)	Yes.	Yes.	Yes.	Yes.
Kentucky (367.461)	Yes.	No.	Yes.	Yes.
Louisiana (LA Pub. Serv. Comm. Gen Order R-27021 II.H.3., La. R.S. 45:816)	Yes.	Yes.	Yes.	Yes.
Maine (10 MRS 1498)	Yes.	Calls allowed but state restrictions apply.	Yes.	Yes.
Maryland (8-204)	Yes.	Yes.	Yes.	Yes.
Massachusetts (Mass. Ann. Law Chapt. 159C, § 3; 159, § 19B)	Yes.	Yes.	Yes.	Yes.

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Michigan (445.111; 484.125)	Yes.	No.	Yes.	Yes.
Minnesota (325E.26, 4)	Yes.	Yes.	Yes.	Yes.
Mississippi (77-3-453; 77-3-723)	Yes.	Yes.	Yes.	Yes.
Missouri (407.1085)	Yes.	Yes.	Yes.	Yes.
Montana (45-8-216)	Yes.	Yes.	Yes.	Yes.
Nebraska (86-242)	Yes.	Yes.	Yes.	Yes.
Nevada (597.814)	Yes.	Yes.	Yes.	Yes.
New Hampshire (RSA 359-E:1)	Yes.	Yes.	Yes.	Yes.
New Jersey (48:17-28)	Yes.	Yes.	Yes.	Yes.

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New Mexico (57-12-22)	Yes	No.	Yes.	Yes.
New York (NY Gen. Bus. Law § 399-p)	Calls allowed but state restrictions apply.	Calls allowed but state restrictions apply.	Calls allowed but state restrictions apply.	Yes.
North Carolina (75-104)	No.	No.	Yes.	Yes.
North Dakota (51-28-02; 51-18-01)	Yes. <sup>8</sup>	Yes. <sup>8</sup>	Yes.	Yes.
Ohio (No State Statute)	Yes.	Yes.	Yes.	Yes.
Oklahoma (15 Okl. Sta. 755.1(C)(3)(b); 21 Okl. Stat. 1847a(3)(b))	Yes.	No.	Yes.	Yes. <sup>9</sup>
Oregon (646A.372)	Calls allowed but state restrictions apply.	Calls allowed but state restrictions apply.	Calls allowed but state restrictions apply.	Calls allowed but state restrictions apply.

<sup>8</sup> Interpretation of North Dakota Attorney General to allow calls to current customers only (no past purchases).

<sup>9</sup> In Oklahoma, written consent is required.

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Pennsylvania (52 Pa Code 63.60)	Calls allowed but state restrictions apply.	Calls allowed but state restrictions apply.	Yes	Yes.
Rhode Island (5-61-3.4)	Restrictions only apply if “prize” representation is made. <sup>10</sup>	Restrictions only apply if “prize” representation is made.	Yes.	Yes
South Carolina (16-17-446)	Yes.	Yes.	Yes.	Yes.
South Dakota (SD Stat. § 37-30-24)	Yes.	Yes.	Yes.	Yes.
Tennessee (47-18-1507)	Yes.	No.	Yes.	Yes
Texas (Tex. Util. Code § 55.121)	Calls allowed but state restrictions apply and permit required.	Calls allowed but state restrictions apply and permit required.	Yes	Calls allowed but state restrictions apply and permit required.
Utah (13-25a-102)	Yes.	Yes.	Yes.	Yes.
Vermont (No State Statute)	Yes.	Yes.	Yes.	Yes.

<sup>10</sup> Please see “prize” chart for specific representations included in this restriction.

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Virginia (18.2-425.1)	Yes.	Yes.	Yes.	Yes.
Washington (80.36.400)	No.	No.	Yes.	Yes.
West Virginia (No State Statute)	Yes.	Yes.	Yes.	Yes.
Wisconsin (100.52; ATCP 127.83(2)(b))	No.	No.	Yes.	Yes.
Wyoming (6-6-104; 40-12-303)	Yes.	No.	Yes.	Yes.

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