

Census Reminders and TCPA Compliance: Basic Overview

1. TCPA only applies when calls or texts are sent using a prerecorded voice or an *automated telephone dialing system (ATDS) to a cell phone.*
2. Texts are considered a subset of calls – so the same rules apply to both.
3. TCPA does not apply at all to calls to home or business landlines *unless* the calls are made for the purposes of selling goods or services.
4. If the caller has consent for the call or text, TCPA requirements are satisfied.
5. Consent has been obtained by the caller if the called party has –
 - a. Provided specific consent to be contacted about the subject matter of the call; or
 - b. Provided his/her phone number to the caller in relation to a subject matter that includes that addressed in the call.
6. Consent can be revoked at any time, in any reasonable manner by the called party (such as a “stop” request made in response to a text, or a “please stop calling me” verbal request made in response to a call).
7. The determination of whether a particular call or text is covered by the TCPA is *not* based on how each call or text was made (in other words whether it was sent by a human), but on whether the system from which the call or text was sent has the *capacity* to automatically dial and send messages.
8. P2P texts and P2P calls are marketed as “TCPA compliant” because each text is supposedly sent by a human being who presses the send button. However --
 - a. There is a petition pending before the FCC to decide whether these in fact are exempted from the TCPA requirements for consent. The petition is strongly opposed by national consumer groups (because if it were granted, the protections from robocalls in the TCPA would be seriously undermined). No decision in the near future seems likely.
 - b. There are a number of class action lawsuits pending in the courts challenging the notion that P2P technology need not comply with the TCPA.
9. Calls or texts dialed and sent by hand from an individual’s smartphone are not sent from an ATDS, and do not require consent (unless they sent using a special App that allows multiple texts to be sent at once).