



Federal Communications Commission
Washington, D.C. 20554

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Small Entity Compliance Guide

Implementation of the Middle Class Tax Relief and Job Creation Act of 2012; Establishment of a Public Safety Answering Point Do-Not-Call Registry

Report and Order
FCC 12-129
CG Docket No. 12-129

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This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the new rules adopted in the above-referenced FCC rulemaking docket(s). This Guide is not intended to replace the rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide may, perhaps, not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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Background and Objectives of the Proceeding

The “Middle Class Tax Relief and Job Creation Act of 2012” (Tax Relief Act) requires the Commission to establish a registry that allows Public Safety Answering Points (PSAPs), defined below, to register telephone numbers on a Do-Not-Call list and prohibits the use of automatic dialing or “robocall” equipment to contact those numbers. This requirement is designed to address concerns about the use of autodialers, which can generate large numbers of phone calls, tie up public safety lines, and divert critical responder resources away from emergency services.

In order to implement this statutory requirement as set forth in section 6507 of the Tax Relief Act, the Commission has issued regulations to create a specialized Do-Not-Call registry for PSAPs, establish the operation and ongoing maintenance of the registry, and adopt monetary penalties for violations of these regulations. These regulations can be found at 47 C.F.R. § 1.80 and 47 C.F.R. § 64.1202.

Since 1991, the Telephone Consumer Protection Act (TCPA) has prohibited the use of autodialers to make a non-emergency call to any emergency telephone line without prior express consent, including autodialed calls to 911 lines and emergency lines of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency. The Tax Relief Act gives PSAP telephone numbers protection against the use of autodialed equipment beyond that already provided by the TCPA. Under the Commission’s Order implementing the Tax Relief Act, PSAPs have substantial discretion to designate the numbers to include on the PSAP Do-Not-Call registry, as long as such numbers are associated with the provision of emergency services or communications with other public safety agencies. These numbers may include, for example, numbers associated with administrative lines that may be used in some cases for overflow emergency calls.

Operators of Automatic Dialing Equipment (OADEs), defined below, are prohibited from contacting any PSAP number on the PSAP Do-Not-Call registry other than for an emergency purpose. This prohibition includes the use of an autodialer to either make voice calls or send text messages to numbers on the PSAP registry. An “emergency purpose” is a “call made necessary in any situation affecting the health or safety of consumers.”

Some operational details of the registry remain to be resolved, including the precise method for PSAPs to add numbers to the registry, as well as when and how the registry can be accessed by autodialer users. The Commission will issue a public notice announcing the effective date of the rules once the registry becomes operational.

Compliance Requirements

A. Requirements for PSAPs

PSAPs are given discretion to determine who should be designated to register numbers, subject to verification procedures. PSAPs may designate a representative who shall be required to file with the Commission or the designated administrator of the registry a certification, under penalty of law, that he/she is authorized and eligible to add numbers to the registry on behalf of that PSAP. As part of that certification, the representative shall provide contact information, including the PSAP name, contact person, title, address, telephone number, and email address. The Commission or administrator of the PSAP registry may require a follow-up response from a valid PSAP email address or some other means of confirmation to be specified by the Commission or administrator of the registry.

Each verified PSAP shall then be assigned a unique identification number or password that shall be required to be entered every time the PSAP requests that numbers be placed onto the registry. Only PSAP numbers submitted by a verified PSAP shall be allowed on the registry and shall remain on the registry until

such numbers are removed by the PSAP or it is determined during the statutorily-required verification process that such numbers are no longer eligible for inclusion. PSAPs may remove numbers from the registry at any time. PSAP representatives may request removal of numbers by providing the unique identification number or password assigned to the PSAP for purposes of placing numbers onto the registry.

PSAPs will be required to access and review their registered numbers on an annual basis. To aid PSAPs in this process, the designated administrator of the registry shall send an annual notification to each PSAP that has placed numbers on the registry reminding PSAPs of their continuing obligation to verify their registered numbers.

B. Requirements for OADEs

Any person or entity who uses an “automatic telephone dialing system” to make calls qualifies as an operator of “automatic dialing” or “robocall” equipment for purposes of the Tax Relief Act. Section 227(a)(1) of the Communications Act defines “automatic telephone dialing system” as “equipment which has the capacity (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers,” and that definition is used in the Commission’s rules implementing the PSAP Do-Not-Call registry, as well.

OADEs are prohibited from contacting any PSAP number on the PSAP Do-Not-Call registry other than for an emergency purpose. This prohibition includes the use of an autodialer to send text messages or make voice calls to numbers on the PSAP registry. Any OADE that accesses the PSAP registry must provide the Commission or the designated administrator of the registry with a certification, under penalty of law, that it is accessing the registry solely to determine whether any telephone numbers to which it intends to place autodialed calls are listed on such registry for the purpose of complying with section 6507 of the Tax Relief Act.

The first time an OADE accesses the registry, the OADE will be required to establish a profile and provide identifying information about its organization that will include the operator’s name and all alternative names under which the registrant operates, a business address, a contact person, the contact person’s telephone number, the OADE’s email address, and all telephone numbers used to place autodialed calls, including both originating numbers and numbers that are displayed on caller ID (which can be different). The Commission requires that OADEs provide such numbers so that if apparently unlawful autodialed calls are placed to PSAP numbers on the registry, the calling party can be readily traced and the potential violation investigated. We expect that OADEs will know which numbers they are using at any given time and should be able to provide a list of such numbers to the Commission in a prescribed searchable format without significant burden. The rules require that all such contact information be updated within 30 days of the date on which any change occurs. The Commission or administrator will assign every OADE that is granted access to the PSAP registry a unique identification number or password, which must be submitted each time that database is accessed. The Commission or the administrator will use this unique identifier to grant and track access to the secure database of registered PSAP numbers.

The rules require OADEs to refresh the version of the PSAP registry at least once every 31 days. This requirement ensures that PSAP numbers added to the registry are protected from autodialed calls in a timely manner while affording OADEs a reasonable opportunity to remove from their calling lists new numbers as they are added to the registry.

OADEs accessing the registry will be provided the registered PSAP telephone numbers only, and not any additional PSAP contact information. All parties are prohibited from selling, renting, leasing, purchasing, sharing, or using the PSAP registry, or any part thereof, for any purpose except compliance with these rules and any state or Federal law enacted to prevent autodialed calls to telephone numbers in the registry.

It is recommended that OADEs develop a process to ensure that the list of registered numbers obtained from the PSAP Do-Not-Call registry are not disclosed or disseminated for any purpose other than compliance with these rules. Such a process may entail training personnel, recording access to such information in a secure manner, and updating automatic dialing systems to ensure that such equipment is not used to contact numbers on the PSAP registry.

Effective Dates

The rules containing information collections, which require approval by Office of Management and Budget under the Paperwork Reduction Act of 1995, shall become effective after the Commission publishes a notice in the *Federal Register* announcing such approval and the relevant effective dates.

The Commission's Consumer and Governmental Affairs Bureau and Office of the Managing Director are delegated authority to take actions necessary to resolve any operational or administrative details relating to the Public Safety Answering Point Do-Not-Call registry including an announcement of the effective compliance date once the PSAP Do-Not-Call registry has become operational.

The Consumer and Governmental Affairs Bureau will set an effective date for these rules of no less than six months after publication of a Public Notice announcing the date by which interested parties must begin compliance.

Penalties for Non-Compliance

For unauthorized disclosure or dissemination of registered numbers, the Commission has established monetary penalties that are "not less than \$100,000 per incident nor more than \$1,000,000 per incident," as required by section 6507(c)(1) of the Tax Relief Act.

For use of automatic dialing equipment to contact numbers on the registry, the Commission has established monetary penalties that are "not less than \$10,000 per call nor more than \$100,000 per call," as required by section 6507(c)(2).

Section 6507(c)(3) requires the Commission to set amounts within these ranges depending "upon whether the conduct leading to the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offence." The Commission will determine the nature of the violation on a case-by-case basis, consistent with Commission precedent.

It will not be a violation for an OADE, who has accessed the registry no more than 31 days prior to the date any call is made, to contact a number added to the registry subsequent to the last required update of the registry.

In the case of violations of the PSAP Do-Not-Call requirements by an entity that does not hold a Commission license or other authorization, section 503(b)(5) of the Communications Act requires issuance of a warning citation rather than monetary forfeiture for violation of these rules. However, the prior issuance of such a citation can be used as a basis both for imposing a higher penalty for subsequent offences and for imposing a forfeiture for the earlier violation at the same time. This will provide non-regulatees that may be less familiar with the Commission's rules with an opportunity to take corrective action before imposition of substantial monetary penalties required under section 6507(c), while still taking first offences into consideration in imposing monetary penalties for subsequent violations.

Important Definitions

“Public Safety Answering Point” is a facility that has been designated to receive emergency calls and route them to emergency service personnel pursuant to section 222(h)(4) of the Communications Act of 1934, as amended. As used in the regulations created to implement the Tax Relief Act, the Commission interpreted this term to include both primary and secondary PSAPs. A primary PSAP is a PSAP to which 911 calls are routed directly from the 911 Control Office. A secondary PSAP is a PSAP to which 911 calls are transferred from a primary PSAP.

“Operator of automatic dialing or robocall equipment” is defined under the Commission’s implementing rules as any person or entity who uses an automatic telephone dialing system, as defined in section 227(a)(1) of the Communications Act of 1934, as amended, to make telephone calls with such equipment.

The Tax Relief Act does not define “automatic dialing” or “robocall” equipment. The Commission interpreted these terms as equivalent to “automatic telephone dialing system” as defined in the TCPA and commonly referred to as “robocalling” equipment. The TCPA defines “automatic telephone dialing system” as “equipment which has the capacity (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers.” The Commission has used “robocall” to refer both to calls placed using an automatic telephone dialing system and to prerecorded calls without reference to whether such prerecorded calls are made with an autodialer. Because section 6507 of the Tax Relief Act makes no reference to prerecorded calls, however, the Commission interprets the term “robocall” in section 6507(b)(5) to have the same meaning as calls made using “automatic dialing equipment” and adopts the TCPA’s definition of automatic telephone dialing system and the Commission’s relevant interpretations of that term, for purposes of defining “automatic dialing” and “robocall” equipment as used in the Tax Relief Act.

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A copy of the *Report and Order* is available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db1101/FCC-12-129A1.pdf, FCC 12-129 (2012).