



Automobile Dealers Association of Indiana, Inc.

BULLETIN

Bulletin #1304 – November 22, 2013

FCC ROBO-CALL RULES QUESTIONS AND ANSWERS

On October 16, 2013, new Federal Communications Commission (FCC) rules became effective which changed the rules on customer contact by using auto-dialed pre-recorded telemarketing calls to residential consumers. There was an exemption allowed to businesses (including dealers) for calls made to residential consumers with whom the business had a prior or existing business relationship. That has changed. Interestingly enough, even though the new FCC rules clarify some points, there are still questions with regard to the propriety of making live marketing calls to customers where there is no previous business relationship.

Your association published ADAI Bulletin 1303 on November 8, 2013, concerning the new regulations. There have been a number of questions concerning the applicability of these new rules. This memorandum augments the prior bulletin.

1. Question: If we do not use auto-dialed or pre-recorded messages, but instead all of our contact with service customers, parts customers and sales customers is by a live individual person, do these regulations apply?

Answer: No. There is, however, the Indiana state law which may apply to random customer “cold” calls. It would still be wise on service department repair orders to use a slightly modified consent. Since the FCC voided the prior consents that had been widely in use, it would not hurt to have this consent on repair orders as well as sales orders.

Insert: I hereby consent to receive live, personal or autodialed and/or pre-recorded telemarketing calls from or on behalf of [Marketer’s Legal Name] at the telephone number provided above, including my wireless number, if applicable. I understand that consent is not a condition of purchase.

2. Question: Are cell phones covered?

Answer: Yes, to the extent that automated calls are dialed or, in fact, text messaging are sent. Robo-text messaging notifying customers that their vehicle is due for service would be a violation of the rules if the consent was not obtained.

3. Question: Are we prohibited from contacting “ups” that have come into the dealership and have expressed an interest in a vehicle?

Answer: No, as long as those contacts are made by a live individual.

4. Question: Am I prohibited from trying to collect receivables?

Answer: No. Collection efforts established to collect a valid debt are exempted. These should be made by “live” personnel and either written or oral consent is required for robo-calls. You should never rely on oral consent for anything; therefore, either get the written consent or do not use robo-calls.

5. Question: How do I keep a log?

Answer: The log could be kept electronically with consents scanned, in the deal jacket, or separately in a spiral binder. The purpose is to simply show that the consent was obtained. You may want to index, label them by dates as well as alphabetically so that you know when they expire five (5) years after being signed.

6. Question: What about contacting internet leads?

Answer: Your website should have the consent on it. By checking the accept box, the prospective customer agrees to be contacted.

7. Question: What precautions do I need to take with robo or automated call vendors?

Answer: Vendors, particularly in the texted mail context, are becoming more prevalent throughout businesses in general. For example, doctors and dentists are now using patient reminders by text. Many other businesses are beginning to use that mode of confirmation also, i.e., beauty shops, barber shops, etc. You should make sure that your vendor agrees to indemnify you from any violations of these regulations and the negligent use of the consumer information. If the vendor refuses to do that, go on to the next vendor.

8. Question: Are we allowed to fax advertisements to customers?

Answer: Although very few people use faxes anymore, a federal junk fax prevention act passed by Congress in 2005 directed the Federal Communications Commission to amend its rules to pick up fax advertising. Unsolicited faxes are prohibited; however, are permitted if there is an existing business relationship. Any fax must include an opt out provision whereby the consumer can opt out of any future “fax” contact. It is better practice now to have the consent signed so as to eliminate any confusion.

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