

**Outbound Calling:  
Addressing Complex  
Compliance Requirements**

Options for Different Client Risk  
Profiles

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## Introduction

Today's contact center executives are challenged to maintain compliance with a complex array of outbound dialing regulations instituted by the FTC and the FCC, such as Telemarketing Sales Rule (TSR), the national Do-Not-Call Registry (DNC), and the Telephone Consumer Protection Act (TCPA).

The following paper reviews TSR and DNC rules, and addresses the FCC's changes to the TCPA, effective as of October 16, 2013. It discusses new TCPA regulations for ATDS (automatic telephone dialing system) calls made to consumer cellular telephone numbers. And, this paper presents outbound dialing options available with NICE inContact's cloud contact center solution.

The intent of this paper is to educate and inform, not to provide legal advice or specific outbound calling guidance. NICE inContact understands that each contact center is ultimately responsible for regulatory compliance, and thus, must define its own risk profile and approach to outbound calling operations and campaign protocol.

### A. Telemarketing Sales Rule (TSR) and Do-Not-Call Registry (DNC)

The FTC's TSR legislation, in part, "gives consumers added privacy protections and defenses against unscrupulous telemarketers, and helps consumers tell the difference between fraudulent and legitimate telemarketing".

Source: FTC

## Outbound Calling Regulations

Following is an overview of the FTC's Telemarketing Sales Rule (TSR), which includes the FCC's Do-Not-Call Registry, and the FCC's amended TCPA as of October 16, 2013. Please note that the overview does not cover all details and aspects of the regulations.

TSR guidelines are governing regulations designed to ensure that outbound call centers meet certain criteria, summarized in part below.

1. **The Two-Second Rule:** An agent must be available within two seconds of a consumer's live answer, or a recorded message stating the name and phone number of the caller must be played.
2. **Abandonment:** Sufficient time must be given for the consumer to answer the phone – 15 seconds or four rings. And, call abandonment cannot exceed three percent of all calls placed. Three percent abandonment must be calculated on a 30-day basis for each individual calling campaign; it may not be calculated across multiple campaigns.
3. **Caller ID:** Telemarketers must transmit their phone number to the consumers' caller ID. Outbound calling programs may not block their caller ID information.
4. **Record Keeping:** Businesses are required to keep records of calls and transactions for up to two years.
5. **Unauthorized Billing:** Telemarketers and sellers may not invoice through utility or mortgage accounts.
6. **Prerecorded Messages or Robocalling:** As of September 1, 2009, telemarketers need a signed, written agreement from a consumer before they may call with prerecorded telemarketing messages. This required written agreement supersedes the existence of an established business relationship. The law does not apply to purely informational prerecorded messages defined as appointment reminders, updates on prior sales transactions such as order status notifications, and recall notifications. Businesses that use robocalls must tell consumers at the beginning of messages how they can stop future calls, and must provide opt-out options.
7. **National Do-Not-Call Registry (DNC):** As of October 1, 2003, it became illegal for most telemarketers to call a number listed on the National Do-Not-Call Registry. DNC applies to any campaign, program, or plan to sell goods or services through intrastate and interstate phone calls.

DNC does not cover:

- Live agent calls from organizations with which consumers have an established business relationship
- Prerecorded calls made to consumers with which the calling company has prior written permission
- Calls which are not commercial in nature
- Calls by or on behalf of tax-exempt non-profit organizations

## Potential Liability

Understanding and complying the legislation is important, especially given that TCPA litigation has significantly increased.

On average, the FTC (Federal Trade Commission) receives 250,000 complaints regarding [TCPA \(Telephone Consumer Protection Act\)](#) violations **per month**.

From 2010 to 2015, TCPA lawsuits increased tenfold, from 354 to 3,710. From just 2014 to 2015, there was a 45 percent increase.

These soaring numbers are due to a number of factors, including a boost in public awareness of the TCPA and the expansion and strengthening of the Act.

Violations can lead to lawsuits, which often lead to settlements. Over the past few years, for the reasons noted above, [TCPA settlements](#) have grown exponentially larger and more frequent.

Furthermore, monetary damages awarded may add up quickly. The TCPA provides for a private right of action for violations of the Act and calls for statutory damages of \$500 for each violation and \$1500 for each willful violation.

Source: 47 U.S.C. § 227(b)(3)

### B. Telephone Consumer Protection Act (TCPA) Cellular Telephone Restrictions

The Telephone Consumer Protection Act (TCPA) restricts the use of automated telephone dialing systems (ATDS) and prerecorded telemarketing calls. On October 16, 2013, new TCPA rules went into effect.

Learn more at the Federal Communications Commission's website:

<https://www.fcc.gov/document/telephone-consumer-protection-act-1991>

## Prior Express Written Consent Replaces Established Business Relationship Exemption for Calls to Cellular Telephone Numbers

Perhaps the most significant change to the TCPA was a rule that impacts telemarketing calls to cellular telephone numbers. This update to the TCPA eliminated the established business relationship exemption for automatic telephone dialing system (ATDS) and prerecorded telemarketing calls made to consumer cellular telephone numbers.

Businesses are now required to obtain express written consent, with a physical or electronic signature, prior to placing ATDS and prerecorded telemarketing calls to consumer cellular phone numbers. This includes SMS/text messages.

This physical or electronic signature of written consent must clearly authorize calls to be made by the specified business, to the signed party's specified cellular phone number. Express written consent may not be required as part of a purchase; the consumer's signature must be optional. Additional TCPA updates were made to make it consistent with certain TSR rules, including prohibiting prerecorded telemarketing calls to consumer residences without prior express written consent.

### Where Express Business Relationship Still Stands

#### Residential Numbers:

The change requiring prior express written consent does not apply to live agent telemarketing calls – manual or via ATDS - to residential numbers. In this case, established business relationship is still an exemption to the National DNC Registry, except for prerecorded calls as noted above.

#### Cellular Numbers:

The change to prior express written consent does not apply to manually dialed telemarketing calls made to cellular telephone numbers. In this case, established business relationship is still an exemption to the National DNC Registry. The definition of manually dialed is critical, and is addressed in the "What is an ATDS?" section.

It is important to note that five states ban all telemarketing calls to cellular phones, regardless of the dialing method. These states are: Arizona, Louisiana, New Jersey, Texas, and Wyoming. In addition, some states may have blanket laws that forbid all ATDS/autodial calls to both cellular and residential telephone numbers.

Sources: Contact Center Compliance TCPA Havoc Webinar, September 16, 2013

## What is ATDS?

An automated telephone dialing system (ATDS), according to the statute, is “equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator; and to dial such numbers.”

(Source: [47 U.S.C. § 227\(a\)\(1\)](#)).

The critical word in the statute is “capacity”, which broadly defines ATDS. Given precedent to date, it is safe to conclude that “ATDS” applies to any hardware or software that has the capacity or functionality to store, produce, and automatically dial numbers, whether it is actually used to dial or not. And, the FCC has concluded that predictive dialers fall within the definition of ATDS

(Source: In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, 18 F.C.C. R. 14014, 14093 (July 3, 2003) (the “2003 Order”).

## Definition of Telemarketing Calls

The FTC’s definition of telemarketing is broad and includes “a plan, program, or campaign... to induce the purchase of goods or services or a charitable contribution” involving more than one interstate telephone call. (The FCC regulates both intrastate and interstate calling.)”

Source: [Complying with The Telemarketing Sales Rule](#)

This definition includes any call with a present or future intent to sell. So, if the call is part of a campaign ultimately intended to result in a sale, it is considered telemarketing even if it does not contain a solicitation.

## Uncertainty Regarding VoIP, Business Cellular Phones

The amended TCPA specifies ATDS calls made to consumer cellular telephone numbers. It is not clear, however, if ATDS telemarketing calls made to consumer Voice over Internet Protocol (VoIP) phone numbers are covered under the law or exempt from it. This is particularly an issue if VoIP customers are charged for time incurred by the calling party.

It is also unclear if ATDS telemarketing calls to business cellular phone numbers are exempt. The TCPA covers consumers and not necessarily businesses, but there is no legal precedence in place that excludes regulation of ATDS or prerecorded calls made to business cellular telephones.

### Positive Business Outcomes of Personal Connection

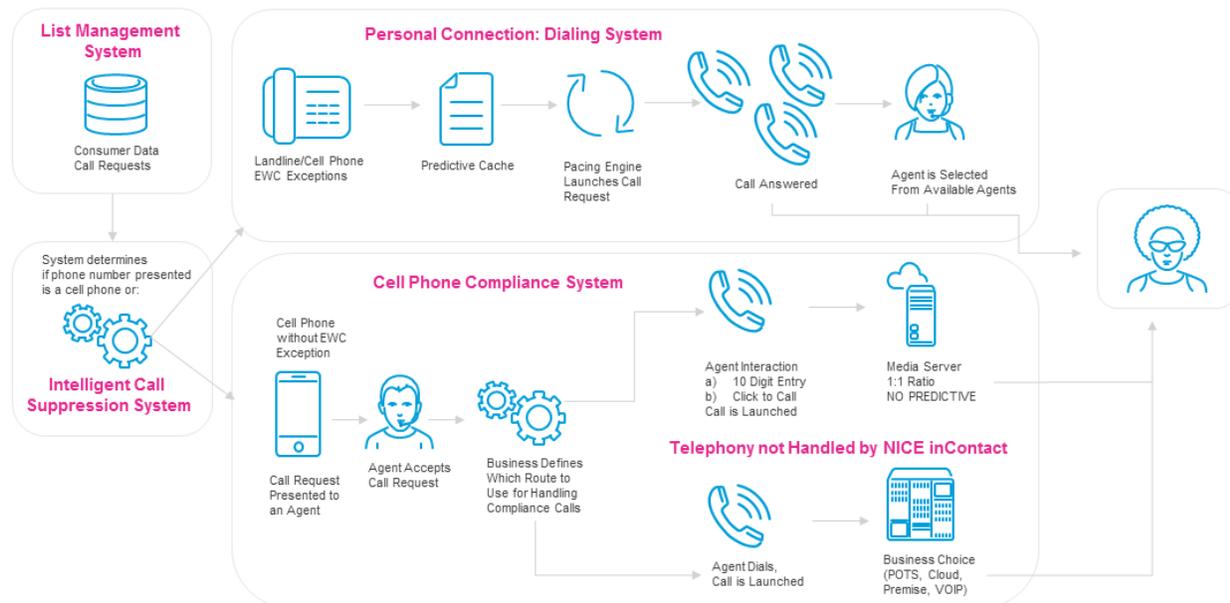
- Stronger personal relationships with customers
- Maximized agent productivity
- Improved list penetration
- Increased customer satisfaction
- More positive perception of brand and company
- Stronger brand loyalty
- Lower customer churn and higher customer retention
- Reduce customer acquisition costs and increased profitability
- Increased likelihood for additional purchases
- Increased likelihood for referrals
- Increased likelihood for incremental revenue from outbound sales, collections, and referrals

## Complex Regulations and Different Contact Center Risk Profiles Call for Outbound Dialing Options

Government regulations for outbound dialing, and, in particular, for calling consumer cellular numbers, can be quite complex. NICE inContact recommends that contact centers carefully consider potential liability related to FTC and FCC regulations, and develop a risk profile to help define and determine outbound dialing operational procedures.

To support contact center compliance efforts, NICE inContact provides a cloud contact center solution with multiple options for placing calls to consumer cellular telephones. NICE inContact offers a bifurcated, non-integrated call center solution that addresses the TCPA's restrictions on the use of auto-dialers and predictive dialing devices for the placement of calls to cellular telephone numbers. The NICE inContact solution consists of individual, discrete, and separate systems for placing calls to landline and cellular numbers. The NICE inContact solution is illustrated and explained below.

TCPA Cell Phone Compliance & NICE inContact Outbound Dialing Options



## Creating Outbound Dialing Options: How the NICE inContact Solution Works

1. The List Management System, noted on the far left of the illustration, houses the customer's consumer data and originates call requests to customer agents.
2. From the List Management System, the call request is then handled by NICE inContact's Intelligent Call Suppression System which determines if the call request matches a suppression request.

This system can also work with a third-party service to identify cell phones and handle them appropriately. The system ensures that all records marked as cell phones and do not have EWC exemption are segregated from the rest of the traffic. They are handled by a different system than the one used to handle the predictive call requests.

3. Predictive dialing requests are handled by the Personal Connection Dialing System, is noted in the upper-portion of the illustration.
4. Cellular phone call requests are handled by a separate Cell Phone Compliance System, which is noted in the lower portion of the illustration. The Cell Phone Compliance System does not use the predictive dialing capability of the system. Contact center customers may configure the Cell Phone Compliance System to handle the call in one of three ways: preview, which contains two options, or manual mode.
  - a. In preview mode, the call is ultimately placed through NICE inContact's telephony service, but the agent has two options to place the call.

### **Option 1: Click-to-Call Mode**

The agent uses "click-to-call" mechanism to place the call, that is, the agent clicks on a prompt to proceed on the computer screen in order to dial the call.

### **Option 2: Preview Mode (10 digit)**

The record is presented to the agent and the agent has to manually dial the ten-digit number in order to place the call.

- b. In manual mode, a third option is introduced which is found in the lower-right-hand corner of the illustration.

### **Option 3: Manual Mode**

The agent will not automatically use NICE inContact's telephony system to place the call. Specifically, in manual mode, the record is presented to the agent for calling, and the agent uses a telephony option of the call center's choosing. For Example, the call can be placed using the existing PBX, VoIP, POTS, or a cell phone. This provides a clear demark in the handling of these calls which should satisfy the most stringent of interpretations. The agent is presented with drop down choices to inform NICE inContact of the call outcome and provides seamless reporting of these calls within the campaign.

In manual mode there is no call control through the agent interface, as the system has no control over the telephony device chosen to make the call.

Ultimately, with NICE inContact's solution, cell phone numbers are routed to agents through a pathway that does not use our predictive dialing (ATDS) capability. Each option carries a different degree of risk of exposure to liability for non-compliance with the TCPA. NICE inContact's solution provides customers with the flexibility to satisfy their own interpretation of compliance, and tailor it in the future as additional case law is enacted.

## Conclusion

While there is no absolute solution to insulating contact centers from liability under the TCPA, there are certain protective measures that can be implemented to reduce or mitigate risk of liability. With this in mind, NICE inContact developed an outbound dialing solution that gives clients three different outbound dialing options for consumer cellular phone calls from which to choose, depending on their particular risk tolerance profile.

## Additional Information

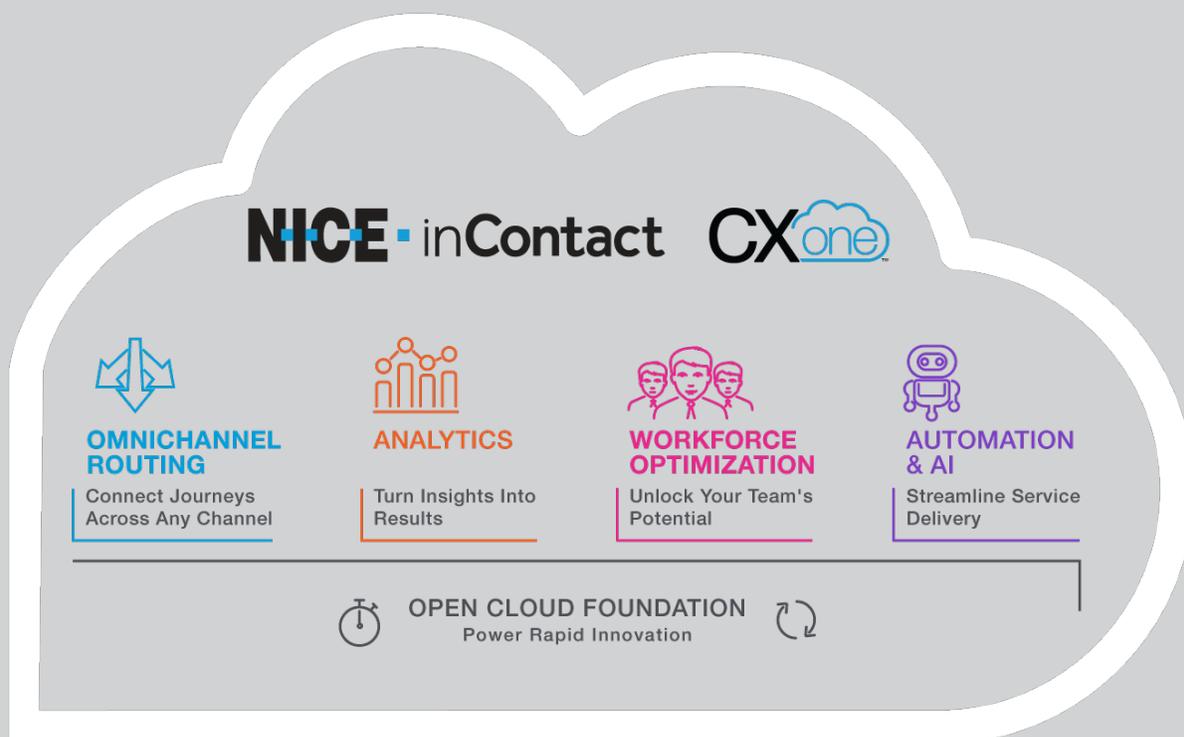
- [Personal Connection online video](#)
- Executive Brief: [Improving Collections Efforts with Innovative Cloud Contact Center Technology](#)
- Information about the [NICE inContact Trust Office](#)

## Sources and for more information, please see:

- [Complying with the Telemarketing Sales Rule](#)
- [The Telemarketing Sales Rule](#)
- [Do Not Call Registry](#)
- [FCC Encyclopedia, Do Not Call List](#)
- [New Rule Prohibiting Unwanted "Robocalls" to Take Effect on September 1](#)

## Transforming One-on-One Experiences in the Contact Center

NICE inContact CXone, the world's #1 cloud customer experience platform, helps organizations be first in their industry by powering exceptional experiences for customers and employees. CXone is the first and only platform unifying best-in-class Omnichannel Routing, Analytics, Workforce Optimization, Automation and Artificial Intelligence –all built on an Open Cloud Foundation. CXone helps organizations of all sizes be first and stay first, empowering your teams to move faster and work smarter. Be the first choice of customers, first to innovate, first choice employer. Only CXone delivers one unified experience, on one cloud native platform, along one proven path, from one leader.



## CONTACT

**Americas, North America,**

T +1 866-965-7227

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## ABOUT NICE inContact

NICE inContact is the cloud contact center software leader, empowering organizations to provide exceptional customer experiences with the world's #1 cloud customer experience platform, NICE inContact CXone™. CXone combines best-in-class Omnichannel Routing, Workforce Optimization, Analytics, Automation and Artificial Intelligence on an Open Cloud Foundation to help companies act smarter and respond faster to consumer expectations. NICE inContact, a NICE company, is recognized as a market leader by Gartner, IDC, Frost & Sullivan, Ovum and DMG, and serves customers in more than 150 countries, including over 85 of the Fortune 100 companies. [www.niceincontact.com](http://www.niceincontact.com)

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