



*This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.*

## **FCC Imposes New Limits and Conditions on Nonprofit Organizations Making Robocalls**

By Margaret Scullin

Does your nonprofit organization contact individuals by phone using prerecorded messages? Perhaps a prerecorded voice message is used to invite people to an event or to remind them to vote in the upcoming election. If so – and if the people you are calling have not previously consented to receiving prerecorded messages from your nonprofit organization – you need to be aware of some recent changes to regulations governing “robocalls”.

The Federal Communications Commission (FCC) recently amended several longstanding exemptions to the restrictions of the Telephone Consumer Protection Act of 1991 (TCPA). The TCPA generally prohibits calls made using an artificial or prerecorded voice message (rather than by a live caller), known as “robocalls”, without the prior consent of the person called.

**Existing Exemptions:** The FCC has authority under the TCPA to exempt certain calls from the ban on robocalls. Exemptions from the TCPA prior consent requirement have long been available for calls made to “residential lines” that fit within any of these four categories:

**calls from a tax-exempt nonprofit organization**

**calls not made for a commercial purpose**

**calls made for a commercial purpose but not telemarketing**

**calls made for a health-related purpose under the Health Insurance Portability & Accountability Act**

The term “residential line” is not defined in the TCPA or implementing regulations. However, the FCC uses the term residential line interchangeably with the term residential landline and in contrast to wireless lines. The exemptions discussed here apply only to robocalls made to residential lines and not those made to wireless lines. Robocalls to wireless lines are not exempt from the TCPA’s prior consent requirement. Therefore, even nonprofit organizations must have prior consent before robocalling a wireless number.

**Residential Line or Wireless Line?** How can a nonprofit organization determine if a phone number in its contacts database is a residential landline or a wireless number? There are resources available, which are fee-based and intended for use by telemarketers, to help identify whether particular phone numbers are assigned to a wireless carrier. A guide containing some available resources is linked below under “Additional Resources”. Nonprofit organizations might prefer to utilize their existing practices and methods for obtaining

Dated: 1/25/2024

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individuals' telephone numbers by making sure to include fields for designating the type of telephone number being provided (landline or wireless/mobile/cell; residential or business).

**Scope:** Tax-exempt nonprofit organizations are permitted, now with some limitations, to make robocalls to residential lines. This article focuses on the TCPA exemption for calls from a tax-exempt nonprofit organization. The changes discussed below also apply to the exemptions for non-commercial purpose calls and non-telemarketing commercial purpose calls. Different changes were made to the exemption for health-related purpose calls; however, those differences are not discussed in this article.

**How Have the Exemptions Changed?** The scope of the exemptions has not changed – the same types of calls and callers remain exempt. What has changed is that the FCC has imposed new limits and conditions on using these exemptions.



**Limit.** The FCC has introduced a limit on the number of robocalls that can be made by a tax-exempt nonprofit organization without the prior consent of the person being called. No more than **three (3) calls** using an artificial or prerecorded voice message may be made to the same residential line **in any consecutive 30-day period**. Prior consent (either oral or written) from the call recipient is required to exceed this limit.



**Conditions:**

**Opt-Out Mechanism and Do-Not-Call List Requirement.** Robocall recipients must be given a way to opt out of future robocalls from the nonprofit organization on whose behalf the robocall was made.

The artificial or prerecorded voice message being used must:

- identify the name of the individual caller, the name of the nonprofit organization on whose behalf they are calling, and a contact telephone number or address for that organization; the telephone number given cannot be a 900 number or any other number for which callers will be charged additional fees
- within 2 seconds after providing the identifying information, include an automated, interactive opt-out mechanism that a call recipient can operate by voice and/or by pressing their telephone keys to make a do-not-call request to the nonprofit organization on whose behalf the robocall was made
- give a brief explanation of how to use the automated, interactive opt-out mechanism
- give a phone number for making a do-not-call request during regular business hours
- if a message may be left on an answering machine or voicemail service, it must provide a toll-free number that connects directly to the automated, interactive opt-out mechanism

If a call recipient elects to opt out of future robocalls from the nonprofit organization using the automated, interactive opt-out mechanism provided, that mechanism must: (1) automatically record the call recipient's telephone number to the nonprofit organization's do-not-call list; and (2) immediately terminate the call.

*Do-Not-Call Request Timeframes.* Nonprofit organizations will have up to 30 days to honor a do-not-call request from a call recipient. Do-not-call requests must be honored for a period of five (5) years from the date the request is made.

*Written Policy Requirement.* Nonprofit organizations relying on an exemption from the TCPA's prior consent requirement must establish a written policy for maintaining their own do-not-call list. This policy must be made available upon demand by the FCC. The FCC has not prescribed the contents of the policy, but presumably it should at a minimum demonstrate that the nonprofit organization is maintaining a do-not-call list, indicate where that list is kept and describe how telephone numbers get added to that list. It would be advisable to include the timeframes for honoring do-not-call requests noted immediately above.

*Training.* Personnel must receive information and training about the existence and use of the nonprofit organization's do-not-call list. The FCC has not prescribed the contents of any required training.

*Recordkeeping Requirement.* Nonprofit organizations relying on an exemption from the TCPA prior consent requirement must keep records to ensure that robocall limits are not exceeded and to keep track of do-not-call requests. The FCC has not specified how long these records must be retained. It would be prudent to keep the required records for at least five (5) years, since that is how long do-not-call requests must be honored.

**When?** The changes outlined here took effect on July 20, 2023.

**Why?** The 2019 Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act) required the FCC to place certain requirements on all exemptions to the ban on robocalls, including to limit the number of calls that may be made.

**Summary.** Nonprofit organizations that had been relying on an exemption from the TCPA's prior consent requirement for robocalls to residential lines will now need to implement new procedures and policies to continue taking advantage of the exemption. These include the technical requirements for providing an automated opt-out mechanism, as well as requirements for maintaining a do-not-call list, writing a policy, developing and delivering ongoing training of personnel, and keeping records of outgoing robocalls and incoming do-not-call requests. If your nonprofit organization determines that compliance with these requirements would be too costly and/or time consuming, you might choose instead to either (1) obtain prior consent from individuals in your contacts database to receiving prerecorded messages from your nonprofit organization or (2) use live callers to make phone calls on behalf of your nonprofit organization.

**Additional Resources.** The FCC published a Small Entity Compliance Guide dated June 5, 2023 to help small business and organizations, including nonprofits, comply with the amendments to the TCPA exemptions discussed here. A copy of that guide may be downloaded from the FCC website Documents page entitled "Robocall Exemptions" located here: [Robocall Exemptions | Federal Communications Commission \(fcc.gov\)](https://www.fcc.gov/document/robocall-exemptions).

The FCC previously published a compliance guide in 2013 that identifies resources for distinguishing between residential line and wireless line telephone numbers, available here:

[Telephone Consumer Protection Act of 1991 | Federal Communications Commission \(fcc.gov\)](https://www.fcc.gov).

Please note, however, that the 2013 compliance guide does not focus on the exemptions discussed in this article and the regulations it does address may have since been amended.

**State Laws May Also Apply.** This note discusses U.S. federal law and regulations only, which apply throughout the United States. Many states have also enacted laws and rules regulating robocalls and other telephone calls made without the prior consent of the person being called. As of the date of this note, Georgia law does not impose any additional regulations on robocalls.