From reference sheet to learning system
The funder matrix is typically where the brokerage's relationship with a funding source begins. It captures stated criteria, but the broker's experience with that source goes beyond the matrix and needs a place to reside. The three-record system described above provides a reference and a learning layer at the same time while keeping the broker in control of both.

A brokerage can start small with the above five fields: Decision, Decision reason, Conditions, Final disposition, and Non-close reason. Then make sure the funder record and deal record use consistent categories for the characteristics that matter most to the business. The learning system can become more sophisticated later; the first step is simply making the experience reusable.

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LEGAL CORNER



THE TELEPHONE CONSUMER PROTECTION ACT: A TRAP FOR THE UNWARY

By Ken Greene

The Telephone Consumer Protection Act (TCPA) and its state counterparts are presumably a well-meaning attempt by the government to put the kibosh on all those annoying, unwanted calls and texts from spammers. You know the ones. Your “Medicare officer.” Or the “Deputy Sheriff’s Widows and Orphans Charity.” They usually come during dinner.

It doesn’t really fulfill that goal, does it? In fact, it has had the presumably unintended side effect of creating a new area of liability for many businesses, particularly those that engage in outbound calling campaigns.

While the TCPA is often associated with consumer telemarketing, the statute continues to present significant compliance challenges in the commercial equipment finance and leasing industry. As the attorney for funders and a broker in three different cases alleging TCPA violations, I can tell you matter-of-factly that they are no picnic. As lenders and brokers increasingly rely on automated communications, text messaging, and calling campaigns to market products, service accounts, and collect delinquent receivables, understanding TCPA requirements has become an essential component of risk management.

Enacted in 1991, the TCPA regulates certain telephone calls and text messages made using automated dialing technology and prerecorded voice messages. The statute is enforced by the Federal Communications Commission and provides consumers with a private right of action. This means an aggrieved consumer can sue. Violations can result in statutory damages of $500 per call or text message and up to $1,500 per violation for willful or knowing misconduct. Given the volume of communications generated by finance companies, even a relatively small compliance failure can result in a multi-million dollar hit.

For equipment finance companies, TCPA issues arise in several common business activities. Marketing departments frequently use telephone and text message campaigns to promote financing programs, equipment leasing opportunities, vendor finance arrangements, and refinancing options. Customer service departments may utilize automated systems to communicate account information or payment reminders. Collection personnel often employ dialing technology to contact delinquent customers and guarantors regarding past-due obligations.

Although many equipment finance transactions involve commercial rather than consumer borrowers, TCPA compliance concerns should not be overlooked. Individual guarantors, sole proprietors, small business owners, and other natural persons may still be protected under certain provisions of the statute. Moreover, calls and text messages directed to personal cell phones can create TCPA risk regardless of the commercial nature of the underlying transaction.

The legal landscape shifted significantly following the 2021 decision of the Supreme Court of the United States in Facebook, Inc. v. Duguid. The Court adopted a narrower definition of an automatic telephone dialing system, reducing some litigation exposure for businesses using modern customer relationship management ("CRM") platforms and targeted dialing technologies. Nevertheless, TCPA litigation remains active, with plaintiffs increasingly focusing on prerecorded messages, text marketing campaigns, revocation-of-consent disputes, and failures to honor do-not-call requests.

Equipment finance companies should pay particular attention to consent management. Financing applications, lease documents, guaranties, and online customer portals often provide opportunities to obtain and document customer consent for communications. Maintaining clear records of consent can be invaluable when defending TCPA claims. Equally important is implementing procedures to promptly process opt-out requests and maintain accurate do-not-call lists.

Third-party vendor management also deserves careful scrutiny. Many finance companies engage outside marketing firms, collection agencies, and servicing providers to communicate with customers. Courts have frequently examined whether a company may be held liable for TCPA violations committed by third parties acting on its behalf. Accordingly, vendor contracts should contain appropriate compliance representations, indemnification provisions, and audit rights.

As equipment finance companies continue to adopt digital communication strategies and automated technologies, TCPA compliance should remain a key component of risk management. Regular compliance reviews, employee training, robust consent procedures, and careful oversight of third-party service providers can significantly reduce the risk of costly litigation and regulatory scrutiny while preserving effective customer communication practices.

ABOUT THE AUTHOR

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