2018 TCPA Texting Rules Every Car Dealership Needs to Know.

Advantage txt. – Providing your customers the communication options they demand.

Today's reality regarding real time communication is proven in the data. On average smart phone users in the United States send 764 text messages and place 164 phone calls per month. Without a doubt younger users skew the data, but even people aged 55 to 64 text on average 80 times per month and 65+ text on average 32 times per month. Based on this information we can say, “When in Rome do as the Romans do.” Texting has become the most efficient form of communication when immediacy (of a response) is needed. Why should a dealership’s service advisor, sales person or your BDC text? A dealership must put themselves in their client’s shoes. A teacher can text while class is in session, the carpenter can text with work in full swing and a lawyer can text while in a meeting. The data supports this as texts are replied to, on average, within 4 minutes. The expectation for a return call to a voicemail is the same day and the expectation for an email is 24 hours. Continue reading to better understand the rules as they apply to automobile dealerships in the United States.

AdvantageTec has all the proper DMS integration and texting solutions required for your staff to abide to the rules discussed below.
Do TCPA regulations allow businesses to text customers?

YES, businesses and their employees may market & communicate via text. However, there are rules businesses need to adhere to.

The salient points car dealerships need to know regarding texting in the United States.

Definitions:
TCPA – Telephone Consumer Protection Act
FCC – Federal Communications Commission
ATDS – Automatic Telephone Dialing System or Auto-Dialer
Text Messages – Text messages are “calls” for the purposes of the TCPA
Telemarketing – the initiation of a call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services

1- Prior Express Written Consent. Prior to October 16, 2013, you could text based on having an established business relationship with a customer. This is no longer the case. The TCPA rule no longer allows the “established business relationship” clause to circumvent written authorization. This means automobile dealerships must attain “prior express written consent” before telemarketing, advertising or texting from an auto-dialer, prerecorded device or software solution. Written consent must be clear and conspicuous and must specify that consent is a condition of purchasing any goods or services. Written consent can be attained with a written signature, through email, by checking a box on a website form, or by a voice recording. You may not, however, send an ATDS text message requesting a person to opt-in.

2- AdvantageTec Texting vs. employees using personal phones. Both AdvantageTec’s solution and even an employee’s personal smartphone could be considered an ATDS under the TCPA (any technology with the potential capacity to dial random or sequential numbers, regardless of whether the technology has the current capacity to make the call in issue & equipment to send Internet-to-phone text messages) and the FCC’s broad interpretation of an ATDS. Therefore to be 100% safe, a dealership employee should attain proper authorization prior to initiating a text conversation. AdvantageTec does this via an op-code DMS in fixed operations, by providing the proper disclaimer language on a dealership’s website for website text leads, and proper disclaimer language for sales personnel. When a dealership employee communicates with a client via a personal smartphone, the dealership exposes itself to the additional risk of not being able to monitor, control and manage those communications.

3- Transactional and informational texting vs. marketing texts. Some texting vendors state non-commercial text messages from a business to an individual specific to an agreed upon relationship (for example a customer in the service drive) where a mobile number is provided do not require written consent. Although minimal, there is some risk in cases where a text message does not only concern services that were already purchased. For
example, when a customer brings a car in to get windshield wipers replaced, but a dealer texts the customer that her tires need to be replaced for $200. Some plaintiffs’ attorneys could argue that these messages are not within the scope and/or are marketing messages to sell other automotive services/products. With AdvantageTec’s solution, compliance is assured via DMS integration and written authorization.

FAQs:

What are the highlights for car dealerships regarding recent TCPA regulations?

- TCPA regulations are aimed at restricting unsolicited phone calls and text messages.
- A caller must have unambiguous prior express written consent before sending telemarketing calls or text messages via automated technology or artificial and/or prerecorded voice and must disclose that consent is not required as a condition of purchasing any goods or services. Effective as of Oct. 16, 2013.
- Unsolicited telemarketing messages (phone & text) must have an automated opt-out mechanism. Effective as of Jan. 14, 2013.

What are the positives for auto dealerships in the recent TCPA & FCC rulings?

There is a big positive in the most recent ruling. “Consent for non-telemarketing, non-advertising calls can be demonstrated by the called party giving prior oral or written consent, or by the caller giving their wireless number to the person initiating the autodialed call/text. This ruling is a positive for businesses, as it reaffirms (at least in the non-telemarketing context) previous FCC Orders which recognize that by providing a business with a wireless number, the consumer has given prior express consent to receive a call.”

Can a dealership send automated text appointment reminders?

Yes. If the customer provided the dealer with a phone number in connection with her service appointment, the dealer can send a text message reminder of the appointment without prior express written consent.

Can a service advisor text a one to one personal message using texting software to help them get approval for job repairs or to notify a customer about vehicle status?

Since the repair message is likely not a marketing message, written consent based on the repair order is not required. The provision of a cell phone number is sufficient consent for service advisors to call/text customers relating to a repair order - including status, updates, vehicle ready, automated payonline texts and thank you texts. There is some risk

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What is the difference between Text Marketing, Transactional Texting and Immediate One-Time Text Messages?

Text Marketing is the name usually associated with a one-time blast and marketing message to a list of mobile phone numbers. This is the type of text marketing the TCPA is trying to prevent from happening. Prior express written consent is required.

Transactional texting examples specific to automotive dealerships would be a text appointment reminder, a thank you follow-up text, or vehicle ready notification text. These types of text messages do not require prior express written consent as they are specific to a business relationship and do not fall into the scope of marketing messages. Prior express written consent is not required.

Immediate One-Time Text messages refer to one-time automated text messages sent immediately to a consumer’s request for information as part of an ad campaign. For example, “text 'Camry' to 888-800 to receive a Toyota special offer.” According to the FCC, this sort of text messaging is not “telemarketing” or “advertisement” texting, but merely the fulfillment of the consumer’s request for information. The FCC states that in order to qualify as a one-time automated text message it must (1) be requested by the consumer, (2) be sent one-time only immediately in response to a specific consumer request, (3) contain only the information requested by the consumer without other marketing or advertising information.

Can a sales person text a customer with vehicle information, pictures or video using texting software in follow-up to a potential purchaser’s visit to the dealership if the potential purchaser gave the salesperson their mobile number?

It depends. If it is a purely informational message and the text message is within the scope of the number being provided, there is no issue with a salesperson texting the customer. However, if a salesperson texts pictures/videos of a car to a customer, those messages could be seen as marketing even though the customer previously expressed an interest in that vehicle. Under the TCPA, a message is characterized as “telemarketing” if it is issued “for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services.” Thus, there is a risk that the pictures, videos and vCards could be characterized as marketing messages that promote the purchase of the vehicle.

Can a dealership follow up on an email lead with a text to that person?
This would be a violation of the TCPA if the device used to text a customer is considered an ATDS and the text was made for marketing purposes. Prior express written consent on the lead form would be required.

Can a dealership follow up on a phone lead or voicemail with a text to that person?
This would be a violation of the TCPA if the device used to text a customer is considered an ATDS and the text was made for marketing purposes. Prior express written consent on the lead form would be required. However, courts may rule that a person leaving a dealership a voicemail probably wants to be contacted. As long as the response is timely, includes opt out instructions and is not telemarketing in nature then it is not likely to be a TCPA issue.

Can a dealership follow up on a chat lead with a text to that person?
This would be a violation of the TCPA if the device used to text a customer is considered an ATDS and the text was made for marketing purposes. The dealership must have (recorded) written confirmation in the chat asking if the dealership can call or text the number provided using automated technology and must inform the customer that consent is not required for the purchase of goods or services.

Can a dealership follow up on a text lead with a text to that person?
It is unlikely prior express written consent will exist, so texting the person under the strictest interpretation of the TCPA is not allowed. However, common sense and the initiation of a text communication say the person is looking for a response to their text. As long as the response is timely, includes opt out instructions and is not telemarketing in nature then it is not likely to be a TCPA issue.

Can a dealership initiate an outbound text to a mobile phone number obtained from the DMS or CRM?
Yes, if prior express written consent was received from the person with the entry of the phone number into the DMS or CRM. As outlined above, a service advisor has latitude to text one on one without prior express written consent if it is not a telemarketing text.

Can a dealership initiate an outbound text to a mobile phone attained from a marketing list or other mobile phone list?
No. This feels like text marketing and prior express written consent is needed. No dealer should do this.

How can a dealership show and track written consent?
Your texting solution provider should be able to show electronic written consent documentation and produce records of written consent.
Can an ATDS text to a customer ask if it is okay to text them or ask them to opt-in?
No. You cannot text a customer to ask them if it is okay to text them without prior express written consent, unless you obtained prior express consent and are not sending marketing messages.

What about Internet-to-Phone Messaging?
The FCC addressed the status of Internet-to-phone text messaging and qualified this technology as an auto-dialer (ATDS) under the TCPA. This is technology that allows a party to send an email to an address that combines a recipient’s mobile telephone number with the mobile provider’s domain name resulting in the delivery of an email message. Such a text requires prior express written consent.

Are there any exceptions to the TCPA texting rules?
The FCC has granted limited exceptions to TCPA liability for certain free “pro-consumer” calls and text messages about time-sensitive financial issues, health care messages and automotive recalls.

What are the fines or violations fees?
If there is a violation, the statutory penalty is $500 per violation (call/text). If a plaintiff can show the violation was knowing or willful, a court can increase the penalty up to $1,500 per violation.

Why are these TCPA regulation so complicated? Why do I hear different rules from different vendors?
On July 10, 2015, the FCC issued a 166 page Declaratory Ruling and Order. The rules are subject to interpretation. With time the courts will determine the interpretations in the rulings. A recent example is *Luna v. Shac LLC*, 122 F. Supp. 3d 936 (N.D. Cal. 2015), a case in the U.S. District Court for the Northern District of California. The *Shac LLC* court granted summary judgment in favor of defendant Shac, LLC. The court determined that the promotional text messaging sent by Shac, LLC involved human intervention and therefore was not an auto-dialer for TCPA purposes. So, despite the FCC’s increasingly expansive regulatory action against telemarketers, the court has applied more reasonable standards in interpreting TCPA regulations.

How do I know which car dealership texting solution providers are TCPA complaint?
The texting software vendor can only help you achieve compliance with proper process, education and software. It is the dealership that must be complaint; a good software solution will guide personnel with screens that will allow or not allow texting based on prior express written consent.
What should every dealership do to practice safe texting?

- At the point of vehicle sale collect, TCPA-compliant express written consent from the purchaser allowing you to text them in the future using automated technology. AdvantageTec can provide you with proper consent language.
- At the point of service or when a customer brings in a car for service or repair, collect TCPA-compliant express written consent from the client.
- Obtain prior express written consent on website forms and (recorded) chats.
- Whenever you capture phone numbers in lead forms or in person, make it part of the dealership process to attain the customer’s prior express written consent to be contacted via text messages.
- Make sure to honor opt-outs. Offer “text STOP to end” in messages sent and make sure your texting vendor immediately blocks unsubscribed numbers from all future text messages.

Are TCPA regulations something a dealership should discuss with their attorney?

Yes. This document does not provide legal advice. It has been written by AdvantageTec to help businesses better understand TCPA & FCC rules. The reader of this document should not rely on the information contained herein and should consult their attorney for any legal matters in question.
About advantage txt.

Advantage txt. is a texting solution specifically designed for automotive dealerships and their staff – service advisors, sales people and the BDC. Each employee has access to a mobile, tablet or desktop cloud based texting solution assuring proper rules and interactions are carried out when texting. Certified integration with the dealership’s DMS allows for seamless process integration in attaining written consent prior to texting a client. To learn more about advantage txt please visit our website https://www.advantagetec.com/avt-automotive-dealership-texting/ or text demo to (415) 903 - 8800.