

TCPA COMPLIANCE

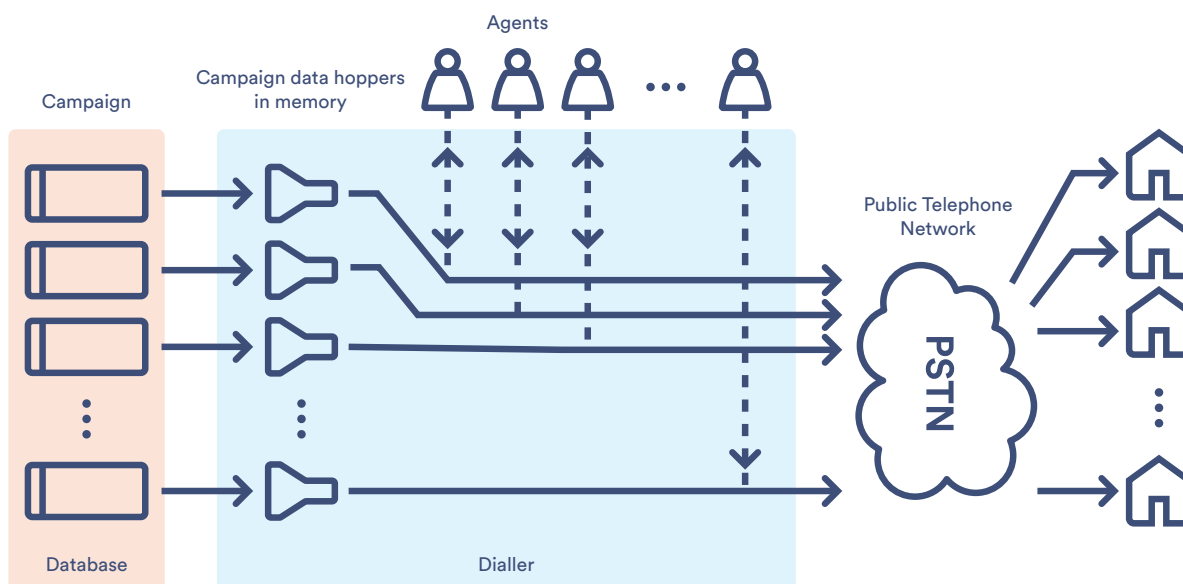
US FCC (Federal Communications Commission) TCPA regulations stipulate that cellular (wireless) numbers cannot be dialed by an ATDS (Automatic Telephone Dialing System) unless explicit written consent has been provided by the recipient. An ATDS is broadly defined as equipment which has the capacity to dial without human intervention. It is widely accepted that this includes predictive diallers.

It has been proven and tested in the US courts that as long as a human physically ‘clicks’ on a telephone number, then that number can be immediately dialed by a dialler, assuming that the dialler does not have the capacity to dial any such numbers without human intervention of this kind¹.

The basic idea behind Noetica’s dialler solution to TCPA is to utilise the time that outbound agents spend waiting between calls to prompt them to click on numbers/records that the dialler needs to dial, eliminating the need for a dedicated member of staff, thus streamlining the operation. To explain how this works and why it is entirely TCPA compliant, we need to explain how a standard ATDS works and then in what way we modified the mechanics of such and ATDS in order to ensure that it is no longer classified as such under the FCC rules.

Below is a schematic of how a standard predictive dialler (an ATDS, by all accounts) works:

ATDS dialling land lines



Calling data (including telephone numbers) is loaded into campaigns within the system’s database from where the dialler automatically retrieves it continuously to keep its hops² replenished. The dialler uses the data in the hops to automatically dial the telephone numbers therein. It detects whether each call made is connected (as opposed to busy, no answer, unobtainable, etc.) and once answered it is automatically transferred to the next available agent. No human intervention is required until the call is put through to the agent.

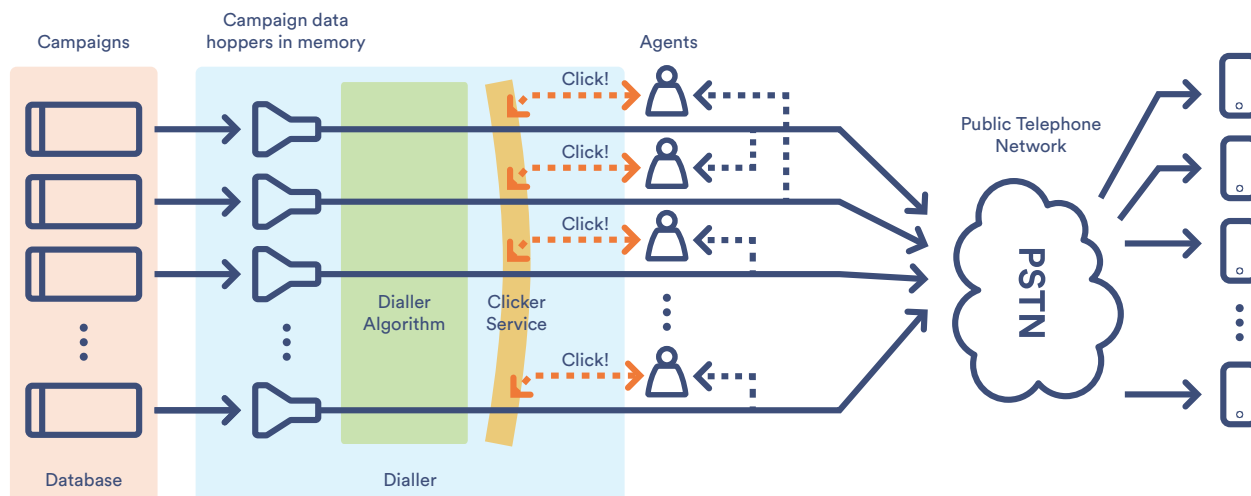
The method described above is perfectly acceptable and TCPA compliant as long as the numbers dialed are either landlines or cellular (wireless) numbers for which written consent exists for these types of calls to be made.

Now, for campaigns which include cellular (wireless) numbers without written consent, Noetica have developed a new type of dialler that cannot be considered to form an ATDS because no telephone numbers can ever be dialed without immediate prior human intervention. Below is a schematic describing how this type of dialler works:

¹ For instance, see Fleming v. Associated Credit Services Inc. (2016-2019)

²“Hoppers” are essentially lists in the system’s RAM (Random Access Memory) containing telephone numbers that are to be dialed imminently.

New “clicker” enabled non-ATDS dialling cell phones



The method, which is derived from the predictive dialler but is not an ATDS places the outbound call center agents as a barrier between the dialler algorithm and the numbers being actually dialled. In order for any data record (containing telephone numbers) to be physically dialled, an agent is required to physically “click” on the telephone number as it is presented on his/her screen. To summarise the workings of this mechanism, the dialler loads records into the campaign hoppers as normal without any human intervention and its algorithm continuously assesses in real time, using a complex mathematical formula, how many calls should be dialling concurrently in real time. It then calculates the difference between this number and the calls that are currently in the process of being dialled. If the difference is positive, it will pick up a number of records out of the campaign hopper equal to this difference with the intention of dialling these numbers immediately.

When the dialler platform is “clicker” enabled, instead of just dialling these numbers, the dialler will ask the clicker service to present these to agents who can click on them. Once confirmation of a live click is received back from the service, it will disappear from the agents’ screens and the dialler will request the telephone system to dial each such number instantly.

The clicker mechanism will either be enabled or disabled for the entire platform and no user can ever convert from one mechanism to another. On a “clicker” enabled platform, no ATDS (predictive dialling) would be possible for any campaign. Also, on a platform that is clicker enabled, any form of autodial (even when linked to a preview campaign) is completely and irreversibly deactivated.

To conclude, because in the “clicker” enabled system no call can be made without an explicit specific manual request from a call center agent, such a system has no capability of auto-dialling any number without human intervention and it cannot be easily converted to do so, therefore it is not an ATDS. Furthermore, once a record is clicked, it will be dialled instantly without delay.

The Noetica system is more efficient (and less mind numbing) than other systems on the market because it does not utilise dedicated “clicker” agents (as other systems require) but uses the idle time that agents have between calls in order to achieve the same effect.

