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## eNews Headline: Under TCPA, Do We Need Explicit Consent for Existing Customers?

**Question:** Does TCPA prevent the bank from soliciting new business from existing customers? For example, including information about a related product or service in permitted communications without explicit consent?

**Answer:** Without explicit consent, yes. While the bank can communicate with accountholders about current products and services in certain circumstances without explicit consent, the bank cannot market additional products and services without explicit consent.

The Federal Communications Commission (FCC) regulations interpreting and implementing the TCPA require consent for most automated telemarketing communications. Specifically, prior express written consent is required for autodialed or prerecorded telemarketing calls or texts to cell phones.

The FCC has issued specific guidance clarifying that banks may make automated calls and texts to their customers concerning data breaches without violating the TCPA. Specifically, the FCC created an exemption for calls intended to prevent fraudulent transactions or identity theft, including data security breaches, provided that the messages do not include marketing, advertising, or debt collection, and that each message includes information regarding how to opt out of future messages.

Banks are limited to no more than three calls over a three-day period. According to the FCC, these types of calls are intended to address circumstances in which a quick, timely communication with a consumer could prevent considerable consumer harm or mitigate the extent of such harm. The FCC also exempted from the consent requirement calls regarding money transfers, including notifying the recipient of steps to be taken to receive the transferred funds.

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