

TCPA Compliance: Is the Upcoming Opt-Out Rule a Major Game Changer?

Article

Amundsen Davis Class Action Alert

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On April 11, 2025, there will be a new Telephone Consumer Protection Act (TCPA) revocation rule for unwanted robocalls and robotexts.

This Opt-Out Rule, adopted in February 2024 by the Federal Communications Commissions (FCC), aims to make opting out of unwanted calls and texts easier for consumers. Except for limited circumstances, business-to-consumer companies that send robotexts and/or robocalls will soon be required to honor do-not-call and consent revocation requests within 10 days of receipt of the request.

On its face, this has a broad reach, such that a revocation of consent to receive promotional or marketing texts from a company **also** means a revocation to receive informational, non-marketing texts—unless you can get the consumer to confirm they only wanted to opt out of one category of texts.

Companies in violation of the rule could face massive exposure, given the statutory amounts that can be recovered under the TCPA. So it is important to understand and plan for the rule before it takes effect next week.

Communications Regulated by the TCPA

The TCPA governs and the FCC regulates transactional texts—messages that provide non-marketing information to customers (e.g., reminders)—as well as promotional texts.

Generally speaking, for companies that do not enjoy certain exemptions (such as those organizations in the health care and financial services space) prior express consent is required to contact customers by text messages that are sent with an automatic telephone dialing system (ATDS) or prerecorded calls. For companies sending marketing ATDS texts and prerecorded calls, there are even broader requirements, including that the prior, express consent be **in writing**.

Hopefully, all companies understand and comply with these basic requirements. However, now, assuming there are no last minute challenges to this Rule or an extension of the April effective date, a revisiting of your internal controls (and

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those used by your third-party platforms and vendors) is appropriate because the ease and breadth of revoking this consent has greatly evolved.

Consent May Be Revoked in Any Reasonable Manner

Consumers can opt out of receiving these communications by expressing a desire to not receive further robocalls or robotexts in any reasonable manner. As a result, companies cannot impose an exclusive or specific opt-out method (e.g., “Text STOP”). The FCC’s order outlines a variety of responses that indicate an unambiguous intent to revoke consent. These responses, called *per se* reasonable methods of revocation, include, but are not limited to:

- Responding to robotexts with words or phrases such as “stop,” “quit,” “end,” “revoke,” “opt out,” “cancel,” and “unsubscribe;”
- Requesting revocation using an automated, interactive voice or key press-activated opt-out mechanism on a robocall; and
- Submitting an opt-out request on a website or to a telephone number provided by the caller.

The business—not the consumer—bears the burden of proof that an opt-out request was not made in a reasonable manner in the event that it is disputed.

Revocation Confirmation Texts

A one-time text message confirming a consumer’s request to revoke consent is not in violation of the TCPA or the FCC’s rules, so long as it meets the following criteria:

- **One-and-done.** Only a single confirmation text is permitted. A revocation response to a confirmation text does not permit a second one.
- **Five minute timeframe.** The confirmation must be sent within five minutes of receipt of the opt-out request. Any delays must be shown to be reasonable by the sender.
- **Confirmation only.** The text merely confirms the revocation request. It does not include and marketing or promotional material. It may not try to persuade the consumer to reconsider.
- **Scope clarification.** The confirmation text *may* request the recipient clarify the scope of revocation to determine which category of text they no longer wish to receive (e.g., they only want to stop promotional texts but want to continue receiving transactional texts).

However, if the recipient does not respond to the one-time confirmation text, it must be treated as a revocation of consent to receive any and all texts and prerecorded calls from the business.

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What Can Your Company Do?

- Ensure your employees and any business partners who would field phone calls or receive opt-out requests are made fully aware of this new rule. If you use a solution such as a large language model, you should confirm the solutions are updated to understand a range of words and phrases that consumers may use to revoke consent.
- Evaluate the need to utilize robotexts and robocalls. Companies should evaluate the potential cost of compliance against the return on this type of investment together with the potential exposures for not fully complying. Class action lawsuits are filed based upon what could be considered “technical” violations of these types of FCC rules; so, having a good understanding of your risk tolerance is appropriate.
- Develop an appropriate clarifying message to ensure the scope of the opt-out is correct.

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