

FCC Clarifies Telephone Consumer Protection Act Permits Confirmation Text Messages

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In a declaratory ruling released on November 29, 2012, the Federal Communications Commission (FCC) clarified that sending a text message to confirm a consumer's opt-out request does not violate the Telephone Consumer Protection Act (TCPA) or the FCC's rules. The FCC's ruling clarifies a confusing area of the law and provides important guidance to companies involved in mobile telemarketing.

Telecommunications carriers and other companies involved in mobile telemarketing often send consumers text messages with promotional information. Under the TCPA, companies sending these promotional text messages to consumers must obtain their prior express consent and typically offer consumers the ability to opt out of marketing campaigns via text message. Prior to the FCC's ruling, there was confusion whether sending a one-time text message confirming a consumer's opt-out request was itself a violation of the TCPA. This confusion had triggered class-action litigation through the country on the meaning of the TCPA.

The FCC concluded that a customer's prior express consent to receive promotional text messages could reasonably be construed to include consent to receiving a text message confirming that the consumer had opted-out. It reasoned that consumers had come to expect confirmation texts, given their widespread use, and noted the absence of consumer complaints about receiving confirmation texts. The FCC described the confirmation text as merely a part of the opt-out process that is consistent with the goals and objectives of the TCPA.

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The FCC clarified that its ruling was limited to confirmation texts with specific characteristics:

- The confirmation text must only confirm the opt-out request and cannot include any marketing or promotional information except for instructions how to opt back in.
- The confirmation text must be the only additional message sent to the consumer after receipt of the opt-out text.
- The confirmation text must be sent within five minutes of the opt-out request unless the sender can show the delay was reasonable.

The FCC's ruling should provide important protection to carriers and other companies facing class-action litigation for sending confirmation texts, according to Scott D. Delacourt, Thomas R. McCarthy and Brett A. Shumate, attorneys in Wiley Rein's Communications Practice. Courts are required to defer to the FCC's reasonable interpretations of the TCPA, and the FCC's unanimous ruling appears to be eminently reasonable. Because the FCC's ruling is limited to confirmation texts with the characteristics described above, companies desiring to send confirmation texts with different characteristics should seek express consent from their customers before doing so. The FCC's ruling suggests that the TCPA may permit confirmation texts without the characteristics described above if the consumer's prior express consent directly addressed confirmation texts with different characteristics.

The FCC's declaratory ruling can be found [here](#).