

FCC Seeks Comments Whether Opt-Out Follow-Up Texts Violate TCPA

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The FCC issued a [Public Notice](#) seeking comments on whether companies sending text messages can send a follow-up text message to clarify the scope of an opt-out request without violating the TCPA.

Specifically, the FCC seeks comments on the [petition](#) filed by Capital One Services, LLC requesting a ruling that “if the sender of a lawful informational text message transmitted through an automatic telephone dialing system (“ATDS”) receives a valid opt-out request from the recipient in response to that message, and that informational message was part of a program in which the recipient had previously enrolled that transmits several categories of informational messages, then, pursuant to the Commission’s ruling in *Soundbite*, the sender may clarify in an opt-out confirmation message to the recipient the scope of the recipient’s opt-out request without violating the Telephone Consumer Protection Act (“TCPA”) or related Commission rules.”

In the *SoundBite* Declaratory Ruling issued in 2012, the FCC confirmed that sending a one-time text message confirming a consumer’s request that no further messages be sent does not violate the TCPA. The FCC said that a consumer’s prior express consent to receive text messages from an entity includes receiving a one-time opt-out confirmation message from that entity. Such confirmation messages have been widely used in the industry. Consistent with the *Soundbite* ruling and practice, the [CTIA Guidelines](#) suggest that “Message Senders should acknowledge and honor all Consumer opt-out requests by sending one final opt-out confirmation message per campaign to notify the Consumer that they have opted-out successfully. No further messages should be sent following the confirmation message.”

But Capital One’s petition intends to extend a similar reasoning to cover opt-out confirmation messages intended to clarify the customer’s intent regarding the breadth of his or her opt-out, in the context of a program that transmits more than one category of messages.

This specific issue has been considered in the past by the Mobile Marketing Association’s [Best Practices for Messaging](#), which provide that if a subscriber who is participating in multiple programs on a specific short code opts-out, then the sender has two options: (i) send a menu of the programs the subscriber is subscribed to, including an option to “STOP ALL,” and the subscriber must reply with the specific keyword to the specific program they would like to be opted out, or (ii) opt-out the

subscriber from all programs enrolled in on that short code. However, it is worth noting that the Mobile Marketing Association stopped updating their Best Practices back in 2012.

After reviewing the industry's comments, the FCC's ruling on this matter could give certainty and clarity across the board on what is acceptable under the TCPA and what is not.

Comments are due on December 9, 2019, and reply comments on December 24, 2019.

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