

# FCC Clarifies and Codifies TCPA Consent Revocation Rules

Article By:

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At its February 19, 2024 Open Meeting, the Federal Communications Commission (“FCC”) adopted an array of changes and codifications to its Telephone Consumer Protection Act (“TCPA”) rules to “strengthen consumers’ ability to revoke consent” to receive robocalls and texts after deciding that they no longer want them. The agency’s [Report and Order and Further Notice of Proposed Rulemaking](#) (Order) is designed to make consent revocation “simple and easy” and adopts requirements “for callers and texters to implement revocation requests in a timely manner.”

The Order is detailed and comprehensive, but key components of the FCC’s actions on are:

1. Codifies as a new rule that consumers may revoke prior express consent in any reasonable manner and provides approved sample methods for consumers to do so.
2. Sets a time frame for callers/texters to honor do-not-call or consent revocation request, which the FCC committed to monitoring.
3. Codifies that a one-time text message confirming a consumer’s request that no further text messages be sent does not violate the TCPA under certain conditions.
4. Further codifies that certain senders can include a request for clarification in this one-time confirmation text, if the sender ceases further robocalls and robotexts absent an affirmative response from the consumer.
5. Clarifies rules on the scope of consent revocation.
6. Effective date of key rule changes will not take effect until announced by FCC’s Consumer and Governmental Affairs Bureau.
7. Seeks comment on application of consent and revocation of consent requirements to wireless carrier calls to customers and whether to adopt requirement for automated opt-out mechanism on every call that contains an artificial or prerecorded voice.

A further overview of elements of each of these actions are as follows:

**Revoking Consent in A Reasonable Way** – Now by rule, “consumers may revoke prior express consent for autodialed or prerecorded or artificial voice calls and autodialed texts in any reasonable manner that clearly expresses a desire not to receive further calls or text[s]....” Further, callers cannot dictate “an exclusive means to revoke consent that precludes the use of any other reasonable method.”

**FCC Approved Reasonable Methods/No Designation of Exclusive Method** – The rule makes

clear that “any revocation request made using an automated, interactive voice or key press-activated opt-out mechanism on a robocall, via a response of ‘stop’ or a similar, standard response message sent in a reply to an incoming text message, or submitted at a website or telephone number provided by a caller to process opt-out requests constitute examples of reasonable means to revoke consent.” Any such request using these means would “constitute absolute proof” that called party has used a reasonable means.

**Standardized List of Specific Revocation Words** – More specifically, the FCC rules that using the words “stop,” “quit,” “end,” “revoke,” “opt-out,” “cancel” or “unsubscribe” via a reply text message are per se reasonable means.” But other words and phrases may be used; however, in such a case, should any dispute arise, “the texter, who is responsible for processing the request, will have a chance to “explain why the consumer’s use of alternative words or phrases does not constitute a reasonable means to revoke. In such cases, the FCC or court would apply a “totality of the circumstances” analysis, looking at the “totality of the facts and circumstances surrounding the specific situation....”

**Revocation Via Reply Texts** – Text initiators who choose to use a texting protocol that does not allow reply texts must (a) clearly and conspicuously disclose in each text to the consumer that “two-way texting is not available due to “technical limitations of the texting protocol” and clearly and conspicuously provide “reasonable alternative ways for the consumer to revoke consent” (e.g., telephone number, website link, instructions to text a different number to revoke consent)

**Rebuttable Presumption Of Revocation** – Even where the consumer uses a method other than the approved methods cited above, such as by voicemail or email to a telephone number or address at which the “consumer can reasonably expect to reach the caller but has not been designated by the caller as a method to revoke consent” doing so creates a rebuttable presumption that the consumer has revoked consent, when the called party satisfies their obligation to produce evidence that such request has been made, absent evidence to the contrary.” If there is a dispute, a “totality of the circumstances analysis will determine whether the caller can demonstrate that the request to revoke consent has been conveyed in a reasonable manner.” This is a change from the draft which puts more of an initial burden of proof on the called party.

**DNC List “Prior Express Invitation or Permission”** – Consumers on the DNC list who have given their “prior express invitation or permission” to be called may also revoke that consent by any reasonable means.

**Timeframe for Honoring a DNC or Revocation Request** – Callers/texters must honor company specific do-not call requests and revocation of consent requests within “a reasonable time from the date that the request is made, not to exceed 10 business days after receipt of the request.” The FCC committed to “monitor compliance with this obligation.” The draft order included an “as soon as practicable” rule standard, which is now identified as a “best practice.”

**Revocation Confirmation Text Message**– Codifies that one-time text message “confirming a consumer’s request that no further text messages be sent” does not violate the TCPA as long as limited to confirming the consumer’s opt-out request, contains no marketing or promotional information and is the only additional text sent after the opt-out request. If sent within 5 minutes of receipt of the opt-out request, then the text is deemed within the original consent; if it takes longer, sender will have to make a showing that it is reasonable.

**Revocation Clarification and Non-Response** – A confirmation text may include a request for

clarification where the text recipient has consented to several different categories of text messages from the sender. Consumers will have the opportunity to specify which types of text messages they no longer wish to receive, including that they wish to opt out of “all categories of messages from the sender.” If there is no affirmative response that the recipient wishes to receive “further communications from the sender,” the sender must treat that lack of response as “a revocation of consent for all robocalls and robotexts from the sender.” A “stop” or similar text in response does not permit another request for further clarification.

**Scope of Consent Revocation** – Any revocation of consent request “applies only to those robocalls and robotexts for which consent is required under the TCPA.” After such revocation, a caller may no longer make robocalls or send robotexts to a called party, “absent an exemption to the consent obligation” (e.g., informational communications covered by an exemption). If a revocation request is made directly in response to an informational call or text, it constitutes an opt-out request from the consumer and “all further non-emergency robocalls and robotexts must stop.” When consent is revoked in any reasonable manner, the “revocation extends to both robocalls and robotexts regardless of the medium used to communicate the revocation.”

**Effective Date of New Rules** – The Order takes effect 30 days after publication in the Federal Register except certain amendments, including the changes to rule sections dealing with time of honoring revocation, which may contain new or modified information collection requirements, will not be required until six months after OMB completes review of any information collection requirements that the Consumer and Governmental Affairs Bureau determines are required under the Paperwork Reduction Act. The Consumer and Governmental Affairs Bureau is required to announce compliance dates by publication in the Federal Register and by subsequent Public Notice. The Order notes that as a result “the implementation period will be longer than 6 months because of the additional time required for OMB to approve the information collections required by the new rules.”

**Further Notice of Proposed Rulemaking** – The FNPRM seeks comment on two issues:

- Whether the TCPA applies to robocalls and robotexts from wireless providers to their own customers and whether the unique relationship between carrier and customer satisfies the TCPA consent requirement, or do wireless providers otherwise have to obtain consent.
- Should the TCPA rules be amended to require “an automated opt-out mechanism on every call that contains an artificial or prerecorded voice.” The FCC added this issue, which is a proposal of the National Consumer Law Center, to the draft FNPRM.

Initial comments are due 30 days after publication of the FNPRM in the Federal Register, with replies due 45 days after such publication.

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