

## FCC Adopts New TCPA Rules Expanding Consumer Consent Revocation Mandates

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The FCC has adopted a [Report and Order](#) imposing a number of new TCPA caller and sender compliance obligations in connection with consumer revocation requests, which are applicable to calls and text messages that otherwise require consent under the TCPA and the FCC's rules. The new rules apply to various categories of calls and text messages to mobile numbers as well as to an array of calls to residential lines for which consent is required.

For text messages, the new rules specify six words and a two-word phrase (*stop, quit, end, revoke, opt out, cancel, and unsubscribe*) that when texted-back by a consumer in response to a text message are definitively deemed to revoke the texted party's consent, and are deemed per se reasonable. Similarly, revocation provided through an automated interactive voice or key-press system or via a website provided by a caller or sender for processing opt-out requests, is likewise deemed to definitively revoke consent and is deemed per se reasonable.

More troubling, and sure to create significant uncertainty for senders, the new rules also require senders to treat "reasonable" natural language text-backs by consumers other than the 7 standard terms as consent revocations. Under an earlier FCC declaratory ruling not codified in its rules, callers could revoke consent by any reasonable method, though courts tended to disfavor natural language revocation texts that were end runs around simple revocation phrases conspicuously made available by the caller (e.g., "reply STOP to STOP"), where such natural language revocation requests might be viewed as simply a pretext for a consent revocation claim.

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Now, under the new rules, where a consumer text backs a natural language revocation request, “if a reasonable person would understand those words to have conveyed a request to revoke consent,” the caller must treat the reply text as a valid revocation request based on what the FCC terms a “totality of the circumstances” analysis. This analysis focuses, in large part, as the Commission explained, on whether the text back, “clearly express[es] a desire not to receive further calls or text messages from the caller or sender.” This creates significant uncertainty for senders who will now have to train systems to recognize this consumer “desire” from natural language text backs, and will likewise impose costs on firms to modify their systems to recognize and process these requests. It also begs the question of why a regulation specifying seven “standard” opt-out keywords that consumers can use to presumptively revoke consent is insufficient to protect consumers, such that a natural language, ambiguous opt-out option must also be made available.

In other highlights, the Report and Order stated that callers may not infringe these opt-out rights by mandating an exclusive means of revoking consent that precludes the use of other methods. The new rules also impose an accelerated period for honoring opt-out requests, requiring that callers and senders honor do-not-call and consent revocation requests within a reasonable timeframe not to exceed 10 business days from receipt. The Commission also amended its rules to substantially reduce the timeframe to process revocation requests for exempted package delivery calls from 30 days to 6 business days. Finally, under the new rules, senders can send a one-time text message confirming a consumer’s revocation request, which must generally be sent, absent extenuating circumstances, within 5 minutes of revocation.

The item also included a Further Notice of Proposed Rulemaking seeking comment on whether the TCPA’s prohibitions and consent requirements should also apply to wireless providers, and their texts and calls to their own subscribers. More specifically, the FCC seeks comment on whether wireless providers must receive consumer consent to make prerecorded voice, artificial voice, or autodialed calls or texts to their subscribers. Comments on the FNPRM are due 30 days after *Federal Register* publication, which has not yet occurred, and reply comments are due 45 days after *Federal Register* publication.

The current Report and Order and Further Notice of Proposed Rulemaking comes on the heels of several other high profile TCPA actions by the Commission over the last several months. As we previously discussed, earlier in February, the Commission adopted a declaratory ruling making clear that AI voice calls are subject to provisions in the TCPA and the Commission’s rules on artificial and pre-recorded voice calls. The FCC also took enforcement action against a carrier that was transmitting AI-generated calls spoofing the President’s voice. In December, the Commission adopted a Report and Order imposing new requirements on its prior express written consent definition applicable to autodialed telemarketing calls and texts, and pre-recorded/artificial voice telemarketing calls, intended to close, what it termed the “lead generator loophole.”

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