

# Now & Next

TCPA Alert

April 11, 2025

## FCC partially delays new TCPA consent revocation rules

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The new rules take effect today, but implementation of certain aspects of the new rules is delayed by one year to allow time for businesses to modify communications systems.



### What's the impact?

- Under the new rules, consumers can revoke prior express consent under the TCPA in any reasonable manner that clearly expresses a desire not to receive further calls or texts, and specifying methods for revocation that are per se reasonable.
- The FCC delayed implementation of certain aspects of the new rules by one year, including the requirement that a consumer's revocation of consent to receive one type of call or text must apply to all types of future calls or texts from that caller. All other rule provisions will go into effect as scheduled.
- While the FCC's Order provides a reprieve, businesses should continue working toward full compliance.

The Federal Communications Commission (FCC) has adopted new rules regarding consumers' revocation of consent to receive robocalls and robotexts under the Telephone Consumer

Protection Act (TCPA). Under the new rules, a consumer can withdraw consent in “any reasonable manner that clearly expresses his or her desire not to receive further calls[.]” The FCC order announcing these rule updates (the “Consent Order”) establishes new consent requirements and explicitly codifies standards the FCC has previously endorsed. See *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 2024 WL 668031, CG Docket No. 02-278, FCC 24-24 (Feb. 16, 2024).

Originally scheduled to take effect on April 11, 2025, the FCC recently granted a limited waiver delaying implementation of certain aspects of the rules by one year, to April 11, 2026 (the “Limited Waiver”). The Limited Waiver stays the requirement that callers treat a request to revoke consent made by a called party in response to one type of message as applicable to all other types of messages from that caller on unrelated matters. The delay will allow affected parties a reasonable opportunity to navigate complex compliance challenges and to implement modifications to communications systems in a cost-effective way. See *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, DA 25-312 (April 7, 2025).

## **Rule changes scheduled to take effect on April 11, 2025**

### **REASONABLE METHODS OF CONSENT REVOCATION**

- / The FCC has identified several standardized keywords that must be honored as explicit revocation requests: **stop, quit, revoke, opt out, cancel, unsubscribe, end**.
- / The use of other words and phrases to revoke consent is not precluded.
- / Consumers may respond in the language in which they received the communication.
- / Opt-out requests submitted via automated or interactive voice response systems are presumed valid unless proven otherwise.

### **TIMEFRAME TO PROCESS OPT-OUT REQUESTS**

- / The new rules mandate that companies process revocation requests within a reasonable time not to exceed 10 business days from receiving them. (The FCC had not previously imposed a specific timeframe for processing revocation-of-consent requests for robocalls and robotexts made to wireless or residential numbers.)
- / This substantially shortens the previously-imposed 30-day maximum period allowed for honoring revocation requests which applied only to telemarketing calls or exempted artificial and prerecorded voice calls to residential telephone numbers and exempted package delivery calls and texts to wireless consumers.

## **TYPES OF CALLS EXEMPTED**

Absent an indication to the contrary, consent revocation applies only to telemarketing calls, not to exempted informational calls.

- / Any revocation of consent request applies only to those robocalls or robotexts for which consent is already required under the TCPA.
- / Consent is not required for the caller to make or send certain exempted informational robocalls or robotexts. Instead, the caller is required to comply with specific conditions including number and frequency limits.
- / Upon receipt of a revocation request, the caller must also stop such exempted informational communications only if the consumer makes a request to opt out of the exempted communications.
- / When a consumer revokes consent with regard to non-exempted telemarketing robocalls or robotexts, the caller can continue to reach out to the consumer with exempted informational calls, which do not require consent, unless and until the consumer separately expresses an intent to opt out of those exempted informational calls.
- / The caller may send a one-time clarification message to ascertain whether the consent revocation is limited in scope to one or more types of messages, but if the consumer does not respond to the clarification message, then all non-emergency messaging must presumptively stop.

## **BURDEN OF PROOF**

The calling party bears the burden of proof on reasonableness of revocation requests.

- / When a consumer uses a revocation method that is not enumerated in the FCC's Consent Order, there is a rebuttable presumption that the consumer's request is valid unless the business or sender can demonstrate otherwise. If a business's texting system does not support reply messages, it must clearly disclose this limitation in each message and offer an alternative, reasonable method for revocation.
- / The FCC has confirmed that texting parties are not mandated to provide consumers with the ability to revoke consent through the use of reply messages, although it has simultaneously cautioned that use of reply messages is a reasonable and widely recognized means for consumers to revoke consent.
- / Where a texting party transmits an autodialed text message using a texting protocol that does not allow reply texts from the consumer, the text initiator is required to: (1) provide a clear and conspicuous disclosure in each text to the consumer that two-way texting is not available due to technical limitations of the texting protocol; and (2) clearly and

conspicuously provide reasonable alternative ways for a consumer to revoke consent, such as a telephone number, website link, or instructions to text a different number to revoke consent from further unwanted text messages.

### **FCC AFFIRMS THAT CONFIRMATORY OPT-OUT TEXTS ARE ALLOWED**

- / Codifying a prior FCC ruling, the Consent Order adopts a rule that allows businesses to send a single confirmation text acknowledging the consumer's revocation request, if it contains no promotional content and is sent within 5 minutes of receipt of the revocation request.
- / If the consumer has signed up for multiple types of messages, then businesses may ask for clarification about which messages the consumer wishes to discontinue. However, if the consumer does not respond, the request must be interpreted as revoking consent for all robocalls and texts from that sender. (This requirement—that a consumer impliedly revokes consent to all future calls and texts by failing to respond to a confirmatory opt-out text—goes into effect on April 11, 2025, and is not subject to delay under the Limited Waiver.)
- / Importantly, the confirmatory or clarification text cannot try to persuade the consumer to reconsider the opt-out decision.

## **Aspects of the new rules delayed under the limited waiver**

The FCC's Consent Order provides that "[i]f a called party uses any [reasonable] method to revoke consent, that consent is considered definitively revoked and the caller may not send additional robocalls and robotexts." The FCC further clarifies that "[o]nce that consent is revoked, the caller may no longer make robocalls or send robotexts to a called party absent an exemption to the consent obligation." **The Limited Waiver stays these rules, to the extent they require a caller to treat a consumer's request to revoke consent for one type of message as a universal revocation of consent for all types of future messages from that caller.**

Certain categories of calls and texts are exempt from the TCPA's prior express consent requirement. These exemptions cover calls made for emergency purposes and certain informational messages (for which number and frequency limits apply). See 47 C.F.R. § 64.1200(a)(3), (9). Accordingly, the FCC rules differentiate between categories of calls and texts that require prior express consent (i.e., messages for marketing purposes), and those that are exempt and do not require prior express consent (i.e., informational messages). The Consent Order makes clear that if a consumer's revocation request is made in response to an exempt, informational call or text, then all further robocalls and robotexts must stop.

The Limited Waiver gives callers an additional year to address this universal revocation requirement, and to design cost-effective systems to process revocation requests across the callers' various business units and vendors. The FCC acknowledged that different business units

may utilize separate caller systems, that modifications to communications systems may require manual work, and that callers often outsource communications to third-party vendors with whom they must coordinate on revocation requests.

Relying on evidence submitted by industry associations, the FCC found good cause to delay the effective date of the Consent Order's universal revocation requirements by one year, until April 11, 2026. Organizations representing financial institutions and healthcare providers submitted evidence to the FCC demonstrating the significant challenges they faced in designing a system that would allow them, upon receipt of a customer's revocation request, to clarify the scope of that request and avoid applying it more broadly than the customer intended. The FCC reasoned that callers require additional time to ensure that they can process revocation requests sent in response to one business unit's call or text to ensure that all calls and texts from other business units will also stop. The FCC further found that the public interest is served by the Limited Waiver's partial rule delay, which will increase cost-effectiveness and effectuate consumer preferences. In the absence of delayed implementation, the FCC noted that organizations faced significant hardships and expenditures to comply with the Consent Order's requirements.

Citing examples, the FCC noted that banks and financial institutions often send multiple types of informational messages to their customers, including fraud alerts, notices about payments due, and declined credit card transactions. When a customer replies directly to one of these types of informational messages with a consent revocation request, the FCC's rule changes would have required the bank to stop all future calls and texts of all types, absent the customer's indication to the contrary. However, during the Limited Waiver's delay period, the bank need only stop sending the particular type of informational message in response to which the customer specifically requested revocation.

Similarly, within the healthcare space, medical providers often send informational text messages to patients with appointment reminders, wellness checkups, prescription notifications, and for other healthcare treatment purposes. These messages do not require prior express consent from the patient. During the Limited Waiver's delay period, when a patient replies to a healthcare treatment message with an opt-out request, the provider only needs to cease sending the same type of informational texts to that patient in the future, but may continue to send other types of informational texts and calls to that patient for unrelated matters, absent the patient's indication to the contrary.

Apart from the universal revocation requirements, the Limited Waiver does not delay any other aspect of the rule changes set forth in the Consent Order, which are summarized below.

## **TCPA considerations for businesses**

All businesses that engage in telemarketing or informational outreach to customers via text messaging and voice calls should review and update their opt-out procedures and otherwise ascertain that their chosen communications platforms can reliably accommodate these imminent regulatory changes. As with all TCPA considerations, compliance is key to avoid perceived violations potentially risking imposition of statutory penalties of \$500 to \$1500 per violation, per class member.

Nixon Peabody will continue to monitor developments regarding regulatory and judicial actions affecting [TCPA compliance](#) and liability concerns.

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