

FCC Proposes to Strengthen Robocall and Robotext Rules On Revocation of Consent and Wireless Carrier Calls to Subscribers

On June 8, 2023, the Federal Communications Commission (“FCC” or “Commission”) voted to adopt a [Notice of Proposed Rulemaking](#) (“NPRM”), as part of a continued effort to strengthen its rules implemented under the Telephone Consumer Protection Act (“TCPA”) targeting unlawful robocalls and robotexts. See *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed Rulemaking, CG Docket No. 02-278, FCC 23-49 (rel. June 9, 2023).¹

The proposed rules would apply to any calls or texts made using an “automatic telephone dialing system” or an artificial or prerecorded voice. The rules would:

- Allow consumers to revoke consent to receive robocalls and/or robotexts “through any reasonable means,” codifying and expanding upon the ruling in the FCC’s *2015 TCPA Order*;
- Require calling parties to honor company specific do not call and revocation of consent requests within 24 hours;
- Allow calling parties to send a one-time text confirming revocation and clarifying consent, subject to certain limitations; and
- Revise the “wireless exception” to exempt wireless carriers from prior express consent requirements only if certain conditions are met.

Comments on these proposed rules will be due 30 days after publication in the Federal Register, and reply comments will be due 45 days after publication.

Revocation of Consent

Under the proposed codification of the FCC’s *2015 TCPA Order* ruling on revocation of consent, consumers will be allowed to revoke consent using words such as “stop,” “revoke,” “end,” or “opt out.” The proposed rules, however, go further than the *2015 TCPA Order* by prohibiting callers from designating an exclusive means to revoke consent that would preclude the use of any other reasonable method including text message, voicemail, or email. The use of such methods to revoke consent would create a presumption that the consumer has revoked consent, absent evidence to the contrary.

The NPRM also proposes that sending “STOP” or a similar message to an incoming text message creates a presumption that the consumer has revoked consent in a reasonable way. An entity that initiates the text using a system that does not allow reply texts bears the risk of TCPA liability unless it clearly and conspicuously provides (1) a disclosure on each text that two-way texting is not available, and (2) alternative ways for a consumer to revoke consent, such as a link or instructions to text a different number.

The proposal also requires calling parties to honor company-specific do not call and revocation of consent requests within 24 hours of receipt.

¹ In March, the FCC [adopted rules](#) that require mobile carriers to block certain text messages at the network level and to establish a point of contact for documented complaints of unwarranted blocking. The FCC also [sought comment](#) on several additional proposals targeting illegal text messages.

The NPRM also proposes to codify the FCC's prior ruling in *Soundbite* permitting calling parties to send a one-time text message confirming revocation of consent. The confirmation text may only confirm the opt-out request and may not include any marketing or promotional information. Going one step further than it did in *Soundbite*, the proposal would allow the calling party's confirmation message to seek clarification on the scope of the consumer's revocation request when that consumer has consented to receiving multiple categories of *informational* messages from the sender. Lack of response from the consumer must be treated as revocation of consent, and a further request for clarification cannot be sent in response to an additional "STOP" text from the consumer.

Wireless Carrier Calls to Subscribers—The "Wireless Exception"

The NPRM proposes to revise the "wireless exception," which, since 1992, has exempted wireless carriers from the requirement to obtain prior express consent before initiating a robocall or robotext to its subscribers based on the understanding that subscribers were not charged for such calls or texts. The proposal would replace the blanket exception to the TCPA consent requirement with a qualified exemption from the prior express consent requirement for informational robocalls and robotexts from wireless providers to their subscribers if certain conditions are met.

Under the proposal, to qualify for the exemption, robocalls and robotexts:

- Must be directed to an existing subscriber at a number maintained by the provider;
- Must state the name and contact information of the provider;
- Cannot include any telemarketing, solicitation, or advertising;
- Must generally be one minute or less (voice calls) or less than 160 characters (text messages); and
- Must be limited to a maximum of three voice calls or text messages during any 30-day period.

Wireless companies must also offer subscribers an easy means to opt out of future text messages and must honor any opt-out request immediately. For robocalls answered by a live person, the caller must include an automated, interactive voice or key press opt-out mechanism to make an opt-out request prior to terminating the call. For robocalls answered by an answering machine or voicemail, the caller must include a toll-free number that the consumer can call to opt out of future calls. Robotexts must inform recipients of the ability to opt out by replying "STOP."

Chairwomen Rosenworcel, in a separate statement to the NPRM, urged additional action by Congress to curb robocalls and robotexts. First, the Chairwoman said that the Supreme Court's *Facebook v. Duguid* decision narrowed the definition of autodialer under the TCPA, and suggested the FCC needs authority to address new technologies used to send junk calls and texts. Second, the Chairwoman said that the agency needs authority to access Bank Secrecy Act information so the FCC can quickly identify the financial records of targets. Third, the Chairwoman expressed concern that the FCC did not have authority to pursue collections of the fine it imposes under forfeiture orders.

* * * *

HWG LLP's cross-disciplinary TCPA practice advises clients on Federal and state legislative and regulatory proceedings, company compliance, and related litigation matters. Please contact [Jennifer Bagg](#) and [Walter Anderson](#) for more information.

This advisory is not intended to convey legal advice. It is circulated publicly as a convenience and does not reflect or create an attorney-client relationship.