

Insights

THE TCPA'S NEW OPT-OUT RULES TAKE EFFECT ON APRIL 11, 2025 – WHAT DOES THIS MEAN FOR BUSINESSES?

Mar 18, 2025

BACKGROUND

The legal world has been abuzz with news of the Federal Communications Commission's One-to-One Consent Rule, which was vacated by the 11th Circuit Court of Appeals last month.^[1] However, an additional new FCC rule warrants businesses' attention, and it takes effect in less than a month.^[2] The "Opt-Out Rule," which makes it easier for consumers to revoke consent to receive robocalls and robotexts, was adopted under the Telephone Consumer Protection Act (TCPA) in February of 2024 and is set to take effect on April 11, 2025. Under the TCPA, businesses must obtain "prior express written consent" in order to send marketing text messages, make marketing robocalls, or send fax advertisements.^[3] Without such consent, businesses face significant financial penalties, as the TCPA provides for a private right of action with statutory damages of \$500-1,500 per violation, per class member, with no requirement to prove actual injury, so it is critical that businesses comply.^[4] The Opt-Out Rule has faced no legal challenges as yet, but a last-minute challenge before its effective date is not out of the question.

The Opt-Out Rule will have major implications for businesses that engage in text message marketing and telemarketing.^[5] As such, businesses should be aware of the new requirements and verify that they have the appropriate policies and procedures to ensure compliance with the Rule.

KEY REQUIREMENTS

The Opt-Out Rule creates additional requirements for businesses in honoring a consumer's opt-out request. As of April 11, businesses must:

1. Apply a consumer's opt-out for informational messages to both informational and marketing messages;
2. Apply a consumer's opt-out for marketing messages only to marketing messages (not informational messages);

3. Allow consumers to revoke consent in any reasonable manner;
4. Honor revocation requests within ten days of receipt; and
5. Only send a post-revocation text message one time after receipt of a revocation request to clarify the scope of the consumer's revocation (a "clarification message").^[6]

APPLYING THE OPT-OUT RULE TO MARKETING AND INFORMATIONAL MESSAGES

The Opt-Out Rule has a sweeping scope, covering both marketing and informational calls and texts.^[7] The FCC slightly distinguishes how revocation is treated for marketing and promotional communications versus informational communications, because consumers may want to continue receiving calls or text messages about their transactions or the services they receive even if they no longer wish to receive marketing messages. For example, a consumer might want to opt-out of receiving notifications on a pharmacy's latest deals, but continue receiving updates about a prescription order. Under the TCPA, businesses do not need prior express written consent to send informational communications, so despite a revocation of consent to receive *marketing* robocalls and robotexts, the business may continue to send informational communications.^[8] However, under the Opt-Out Rule, if the consumer revokes consent in response to an *informational* robocall or robotext, businesses must discontinue *all* future non-emergency calls and texts, including all marketing messages.^[9] It will be important for businesses to be able to make this distinction and identify what type of communication the consumer initially received (i.e., whether the communication that the consumer responded to was a marketing call or text versus an informational call or text) to determine whether the business must solely discontinue telemarketing or all types of messages.

ANY REASONABLE MANNER

Under the Opt-Out Rule, consumers may revoke prior express consent to robocalls and robotexts "*in any reasonable manner...*" which means that businesses can no longer specify an exclusive means to revoke consent to receive automated calls and or text messages.^[10] Although the FCC did not provide an exhaustive definition of "reasonable" in its ruling, it provided guidance that reasonable means of revocation may include texting the words "STOP," "QUIT," "END," "REVOKE," "OPT-OUT," "CANCEL," or "UNSUBSCRIBE" in response to a robotext.^[11] Additionally, consumers may revoke consent using an automated, interactive key press-activated mechanism on an automated call or through a website or telephone number provided by the business to process revocation requests.^[12] The FCC also noted that if a consumer revokes consent using a method prescribed by the business, such revocation is definitively reasonable.^[13] However, a "reasonable manner" may also include non-traditional methods of opting-out, such as a "voicemail or email to any telephone

number or address at which the consumer can reasonably expect to reach the caller.”^[14] Even if the consumer uses a non-prescribed method of opting out, there is a rebuttable presumption that the method was reasonable.^[15] For instance, if the consumer calls a business’s headquarters and states that they wish to opt-out, or tells a cashier at a business’s brick-and-mortar location that they no longer wish to receive messages, it is presumed that the consumer opted-out in a reasonable manner. Ultimately, it will be the business’s burden to demonstrate why the opt-out request was not reasonable.^[16]

Importantly, when consent is revoked by a reasonable manner, “revocation extends to *both* robocalls and robotexts regardless of the medium used to communicate the revocation of consent.”^[17] Therefore, if a consumer responds “STOP” to an automated text message, the business can no longer contact the consumer through texts *or* automated or prerecorded/artificial voice calls.

TEN DAY DEADLINE TO HONOR REVOCATION REQUESTS

The Opt-Out Rule further stipulates that businesses must honor revocation requests for marketing and promotional robocalls and robotexts “as soon as practicable” and “*no more than ten business days*” after receiving the request.^[18] The FCC set out this timeline in response to consumers’ frustrations with delays of honoring their revocation requests.

CLARIFICATION MESSAGES

Businesses will be permitted to send consumers a one-time, post-revocation text message clarifying the scope of the consumer’s revocation request (a “clarification message”).^[19] The clarification message must be sent within five minutes of the consumer’s sending of the revocation request.^[20] However, the clarification message may not include any marketing or promotional information, and instead can only clarify the type of text messages that the consumer would no longer like to receive.^[21] For example, where a consumer has consented to marketing text messages in addition to text messages about their transaction or other types of communications, the clarification message can request that the consumer specify whether they would like to opt-out of all types of communications from the business.^[22] The consumer must provide an affirmative response to clarification messages, and without such a response, the business must cease all future robotexts and robocalls.^[23]

WHAT DOES THIS MEAN FOR YOUR BUSINESS?

Businesses who engage in telemarketing through automated or prerecorded/artificial voice calls and text messages should review the Opt-Out Rule ahead of April 11th, as there are potentially significant challenges to overcome when implementing these requirements. Compliance with the Opt-Out Rule is going to involve: (1) interpreting what a “reasonable” opt-out request is across all

forms of communication and to all categories of communication content; (2) processing opt-out requests and ensuring that they are honored in a timely manner across all communication channels; and (3) utilizing clarification messages in way that does not violate the Opt-Out Rule but allows consumers to continue receiving important information that they need, among other challenges.

First, businesses will have to consider the various ways in which a consumer could respond to a call or text. Although the FCC has endorsed the aforementioned list of keywords as “reasonable,” it has made clear that these are not the only reasonable means of opting out of robotexts or robocalls. Businesses should conduct a thorough review of the ways in which consumers currently attempt to opt-out of automated texts or calls, in addition to considering additional words or phrases that could reasonably indicate a desire to stop receiving certain communications. Utilizing solutions such as large language models (LLMs) may be helpful to do this efficiently; however, businesses should ensure that such solutions are trained on sufficient data encompassing the range of words and phrases that consumers may use. Businesses will want to invest in training all communications-related staff across all departments to ensure that they are able to identify the different methods of communicating opt-out requests.

Second, businesses will have to consider the different channels through which they communicate to consumers. Large companies with multiple departments may communicate with consumers for multiple purposes. For instance, a retail company may send automated texts to a consumer with updates regarding an online order, while also sending automated texts with coupon offers to save on future purchases. It may be difficult to take inventory of the different types of texts and calls sent to consumers, but it is critical to do so because once an opt-out request is received by the business, it will need to efficiently determine whether the consumer responded to a promotional message or an informational message. If a consumer requested to opt-out in response to a promotional message, the business is permitted under the Opt-Out Rule to continue informational communications. However, if a consumer responded to an informational message, then *all* communication to that consumer must cease. Additionally, the business will have to keep track of how the consumer communicated their opt-out request (i.e., did the consumer call, text, send an email, or use any other reasonable means to communicate their request?). In some circumstances, the consumer may not have directly responded to the message or call to opt-out of receiving communications. In those instances, the business must have procedures and capabilities in place to identify such requests that come in from multiple channels and ensure that those requests are honored accordingly. Documentation of opt-out requests should be retained for at least four years, the TCPA’s statute of limitations.

Third, businesses will need to be cautious with how clarification messages are crafted to ensure (1) that they do not convey marketing or promotional messaging and (2) that such messages are only sent *once* after receiving the consumer’s request to revoke consent. Clarification messages can be useful to prevent consumers from cancelling communications that provide important information

and updates about a transaction or service; however, businesses must monitor whether an affirmative response was received following the clarification message to avoid penalties for any unconsented messages. Thus, marketing teams should craft clarification messages in such a way that encourages the consumer to respond. Additionally, marketing teams should draft clarification messages in relation to the content of the initial message to which the consumer responded. Remember that if a consumer sends an opt-out request in response to an informational call or text, the opt-out request applies to all future marketing communications as well. Thus, the clarification message must be tailored so that the consumer understands which type of messages they will no longer receive. For example, a confirmation message sent in response to a request to opt-out of informational messages might ask “To be clear, do you want to stop receiving updates about your order, stop receiving marketing messages, or stop receiving both? Respond (1) to stop order updates, (2) to stop marketing messages, or (3) to stop both. Respond (4) to continue receiving all types of messages.” The goal is to clarify what type of communication the consumer would like to stop receiving, while also avoiding use of any marketing or promotional language.

Although there are no legal challenges to the Opt-Out Rule yet, representatives from the American Bankers Association, America's Credit Unions, the American Financial Services Association, and the Association of Credit and Collection Professionals (collectively, the “Associations”) met with Danielle Thumann, Senior Counsel to FCC Chairman Brendan Carr on March 7, 2025 to raise concerns about the effect that the Opt-Out Rule’s requirements would have on the financial services industry.^[24] Of particular concern was the burden to process revocation requests across all communication channels and across all business departments, which may have different calling systems.^[25] Additionally, the Associations pointed out that several businesses outsource their communication services to third parties, so coordinating with these vendors would present another onerous step in complying with the Commission’s requirements.^[26] Due to the administrative and financial burden that the Opt-Out Rule would impose on businesses, in addition to the limited amount of time provided to implement its requirements, the Associations asserted that the FCC should pause the Opt-Out Rule until April 11, 2026. Whether this will be enough to sway the Commission is yet to be determined, but until then, businesses should aim to apply the Opt-Out Rule’s requirements by the original deadline. As the Associations pointed out, businesses will face many challenges as they begin to integrate the FCC’s new opt-out requirements into their operations. However, there are solutions that can facilitate implementation. As always, businesses should consult with counsel that is experienced with the TCPA and related rules to advise on how they can comply with these requirements.

[1] *In the Matter of Targeting and Eliminating Unlawful Text Messages, Implementation of the Telephone Consumer Protection Act of 1991, Advanced Methods To Target and Eliminate Unlawful Robocalls*, 89 FR 5098-01 (Jan. 26, 2024); *Insurance Mktg. Coalition Ltd. v. FCC, et al.*, 2025 WL 289152 (11th Cir. Jan. 24, 2025). See also Kohlstrand, Martha and Kolb, Annalisa, [Is TCPA 1:1 Consent Dead?](#)

[2] See Rockey, Dan and Kohlstrand, Martha, “New TCPA Opt-Out Rules Coming as FCC Adopts Report and Order on Revocation of Consent,” BCLP Insights (Feb. 16, 2024).

[3] 47 CFR § 64.1200(a)(2), (3).

[4] 47 USC § 227(b)(3).

[5] Although the TCPA applies to fax communication as well, the Opt-Rule does not mention revocation of consent to fax communications. The TCPA’s opt-out rules for faxing are outlined in 47 C.F.R. § 64.1200(a)(4)(iii).

[6] Report and Order, FCC Fact Sheet.

[7] *Id.* at ¶ 30.

[8] *Id.* at ¶ 30.

[9] *Id.*

[10] *Id.* at ¶ 10.

[11] *Id.* at ¶ 12, noting that these words are merely examples of reasonable revocation requests and do not preclude consumers from using other words or phrases to revoke consent. Ultimately, whether a revocation request was made in a reasonable manner will be a question for the courts.

[12] *Id.* at ¶ 11.

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.* at ¶ 31.

[18] *Id.* at ¶ 19.

[19] *Id.* at ¶ 24.

[20] *Id.*

[21] *Id.*

[22] *Id.* at ¶ 25.

[23] *Id.*

[24] Re: Notice of Ex Parte Presentation, In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order and Further Notice of Proposed Rulemaking, 39 FCC Rcd 1988 (2024).

[25] *Id.*

[26] *Id.*

RELATED PRACTICE AREAS

- Data Privacy & Security
- Telephone Consumer Protection Act (TCPA)

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