



## FCC order codifies rules for revocation under the TCPA

March 10, 2024

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On February 15, 2024, the Federal Communications Commission (FCC) published a [Report and Order](#) (Order) that attempts to clarify the rules for revoking consent under the Telephone Consumer Protection Act (TCPA). Most notably, the FCC codified that a consumer can revoke consent using “any reasonable means.” The FCC also announced new rules governing the amount of time callers and texters have to honor revocations of consent. Companies that fail to comply with these rules and other aspects of the TCPA risk significant class action liability in light of the TCPA’s statutory damages provision of \$500 per violation.

## I. Revocation by “Any Reasonable Means”

The Order codifies a 2015 FCC declaratory ruling that consumers may revoke prior consent in a reasonable manner provided that the consumer “clearly expresses a desire not to receive further calls or text messages.”<sup>1</sup> The FCC’s intent in codifying this rule was to reinforce the right of consumers to revoke consent.<sup>2</sup> The FCC also provided several examples of revocations that would always be reasonable. For example, using an automated, interactive opt-out mechanism for calls or texts is a *per se* reasonable way to revoke consent. In the context of texts, a consumer can reasonably revoke consent by responding with the words “stop,” “quit,” “end,” “revoke,” “opt out,” “cancel,” or “unsubscribe.”<sup>3</sup> Additionally, if the caller designates a specific method for revoking consent, the caller must honor consumers who use it.

Absent such a *per se* reasonable revocation, a court would look to the totality of the circumstances to determine whether the revocation was reasonable.<sup>4</sup> If the consumer could identify a specific communication revoking their consent, the consumer “creates a rebuttable presumption that the consumer has revoked consent.”<sup>5</sup> In reaching this conclusion, the FCC rejected some commenters’ requests that callers or texters should be able to require consumers to revoke their consent in a certain way. The FCC expressly prohibited such limitations, concluding that they would unfairly hinder consumers who want to revoke consent.<sup>6</sup>

## II. Responding to Revocation and Do-Not-Call Requests

The FCC also announced new rules governing the amount of time callers and texters have to honor revocations of consent. Concerned that consumers can continue to receive calls or messages for days or even weeks after opting out, the FCC announced that callers and texters must honor requests within a “reasonable time” of revocation. To provide certainty for consumers, the FCC provided a “backstop”: revocations must be implemented “no longer than 10 business days” after the request. But the FCC emphasized that callers should honor requests “as soon as practicable,” rather than relying on the backstop, especially in light of technologies that allow such requests to be processed quickly.<sup>7</sup>

## III. Effect of Revocation

Finally the FCC addressed two effects of a revocation. First, the FCC held that texters are limited to a single follow-up message confirming that the consumer will not receive future texts. Importantly, that follow-up text can request clarification of the scope of the request

where the texter sends multiple categories of messages. But the message cannot include any advertising or promotional content. Furthermore, if that follow-up message is sent more than five minutes after receipt of revocation, the texter must show that the delay was reasonable.

Second, the FCC announced that when a consumer revokes consent for texts or calls, the revocation applies to both future texts and calls, unless an exemption applies. So a caller can still make calls for emergency or non-commercial purposes, for example, unless the consumer revokes consent in response to an exempted call or otherwise revokes consent for such calls. This could have significant impacts for callers who use both texts and calls, as a revocation, regardless of how it is communicated, applies to both forms of communication. This rule makes the follow-up clarification message all the more important, as a consumer may not know that they are opting out of both texts and calls.

#### **IV. Conclusion**

This Order will have several important consequences for companies that use texts or calls to communicate with consumers and customers. First, companies may not mandate certain methods for consumers to revoke consent. Since the Order permits revocation by any reasonable means, companies that employ telemarketing through texts or calls must diligently review all consumer communications, not just communications using the provided opt-out method. Second, companies must promptly honor consumer requests as soon as practical, and no more than 10 business days later. Finally, it gives companies who receive an ambiguous revocation one chance to ask the consumer to clarify, via a confirmation text. While these rules make revocation of consent simpler for consumers, they add further complications for companies to the already complex TCPA landscape.

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*If you have any questions about this Legal Briefing, please feel free to contact any of the attorneys listed or the Eversheds Sutherland attorney with whom you regularly work.*

1 Order paragraph 10.

2 *Id.* paragraphs 5, 10 & n.10.

3 *Id.* paragraph 12.

4 *Id.* paragraph 13.

5 *Id.* paragraph 15.

6 *Id.* paragraph 15.

7 *Id.* paragraph 19 n.40.

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