



Business Litigation Update

March 2024

FCC Issues Order on Consent-Revocation Processes for Robocalls and Robotexts

On February 16, the Federal Communications Commission (FCC) adopted a [Final Order](#) amending its regulations implementing the Telephone Consumer Protection Act (TCPA), which, among other areas, seeks to “strengthen consumers’ ability to revoke consent” to receive robocalls and robotexts. Specifically, the Order clarifies that a consumer’s revocation of consent can be made in *any* reasonable manner, codifies the time frame for honoring do-not-call or consent revocation requests, and limits text senders to a one-time text message confirming a revocation of consent and the scope of that request. With limited exceptions, the Order takes effect 30 days after publication in the Federal Register.

Revoking Consent in Any Reasonable Way

The FCC codified both a consumer’s right to revoke consent by any reasonable means and a prohibition on designating the specific means by which consumers may revoke consent. The Order states that “consumers may revoke prior express consent for autodialed or prerecorded or artificial voice calls and autodialed texts in any reasonable manner that clearly expresses a desire not to receive further calls or text messages, and that callers may not infringe on that right by designating an exclusive means to revoke consent that precludes the use of any other reasonable method.” The Order provides examples of reasonable means of revoking consent, including:

- Using interactive voice or key-press-activated opt-out mechanisms during robocalls;

- Responding to a text message with “stop,” “unsubscribe,” or similar language; and
- Submitting a revocation request via a website or phone number provided by the caller.

If a called party offers one of those means of revocation, it cannot then allege that revocation by that method is unreasonable because, according to the Order: “[a]ny such request made by these specific means constitutes absolute proof that the called party has used a reasonable means to revoke consent.”

Though the Order agrees that the FCC should adopt a standardized list of words that could be used to revoke consent, it also finds that using words such as “stop,” “quit,” “end,” “revoke,” “opt out,” “cancel,” or “unsubscribe” when sent in response to a text message constitutes a “per se reasonable means” of revoking consent. If the called party uses a different word or phrase and the text sender does not honor the consent-revocation request, the sender will have the opportunity to explain or demonstrate why the use of alternative words was not a reasonable means to revoke consent. In those situations, the FCC or a court will determine based on the totality of circumstances whether the revocation of consent was conveyed in a reasonable manner.

If a text sender sends a robotext that does not allow reply texts such that a recipient cannot reply to opt out and revoke consent, the Order clarifies that the sender must clearly and conspicuously disclose in each text that two-way texting is not available due to the technical limitations of

the texting protocol being used and provide reasonable alternative ways for a consumer to revoke consent.

If a consumer uses a more nontraditional means of revoking consent, it can give rise to a rebuttable presumption of revocation subject to a fact-intensive inquiry under a totality of circumstances analysis.

Revocation Confirmation Text Message

The Order codifies a previous [FCC ruling](#) that clarified that a one-time text message confirming a consumer's request that no further text messages be sent does not violate the TCPA, provided it merely confirms the called party's opt-out request and does not include any marketing or promotional information, and the text is the only additional message sent to the called party after receipt of the opt-out request. If the one-time text is sent within five minutes of the request of revocation, the text is assumed to be within the consumer's original prior consent, but if it takes longer, the sender will have to show a fact-finder that the delay was reasonable. The longer the delay, the more difficult it will be to show that the text falls within the original prior consent.

Further, the FCC codified that after sending a one-time confirmation, a text sender must cease all further robocalls and robotexts, even if the consumer never responds.

The Order also codifies that a one-time clarification text is allowed if the recipient consented to several categories of text messages from the sender, as long as it does not contain any marketing or advertising content or information to persuade the recipient to reconsider their revocation. However, the Order limits this opportunity to request clarification to instances where the recipient has consented to *several categories* of text messages from the sender, which therefore provides consumers an opportunity to specify which types of text messages they no longer wish to receive when the texter sends different types of messages. That request for clarification can seek confirmation that the consumer wishes to opt out of all categories of messages from the sender, provided the sender ceases all further

robocalls and robotexts absent an affirmative response from the consumer that they wish to receive further communications from the sender.

The lack of any response to the confirmation text must be treated by the sender as a revocation of consent for all robocalls and robotexts from the sender.

The FCC clarified that any revocation of consent "applies only to those robocalls and robotexts for which consent is required under the TCPA," and once the consent is revoked, the caller cannot "make robocalls or send robotexts to a called party absent an exemption to the consent obligation" (e.g., information communications). The Order also identifies areas in which the FCC has previously granted exemptions (e.g., 47 CFR § 64.1200(a)(3), (a)(9)) to its consent requirements, and such communications are not subject to its Order on consent revocation. Therefore, under the current FCC Order, a caller can still reach out to the consumer for exempted calls or texts because the exemptions have no consent requirement "unless and until the consumer separately expresses an intent to opt out of these exempted calls."

Lastly, the Order confirms that it does not matter what medium a consumer uses to communicate the revocation. If a reasonable manner is used to revoke consent, the revocation extends to both robocalls and robotexts. In other words, according to the Order, "[r]evocation of consent ... is an instruction that the caller no longer contact the consumer at that number" and "if a called party has revoked consent via any reasonable means, the caller no longer has consent to make further robocalls or robotexts to that called party absent instructions to the contrary from the consumer."

Timeframe for Honoring a Do-Not-Call or Revocation Request

The Order also amends the TCPA to require that do-not-call requests (including robotexts) be honored within a reasonable time not to exceed 10 business days after receipt of the request.

FOR MORE INFORMATION

For more information, please contact:

Jessica E. Salisbury-Copper

937.443.6854

Jessica.Salisbury-Copper@ThompsonHine.com

Steven G. Stransky

216.566.5646

202.263.4126

Steve.Stransky@ThompsonHine.com

Certified Information Privacy Professional/Government (CIPP/G)

Certified Information Privacy Professional/United States (CIPP/US)

Abigail L. Ophir

216.566.5682

Abigail.Ophir@ThompsonHine.com

This advisory bulletin may be reproduced, in whole or in part, with the prior permission of Thompson Hine LLP and acknowledgment of its source and copyright. This publication is intended to inform clients about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in it without professional counsel.

This document may be considered attorney advertising in some jurisdictions.

© 2024 THOMPSON HINE LLP. ALL RIGHTS RESERVED.