



# PUBLIC NOTICE

Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Internet: <http://www.fcc.gov>  
TTY: 1-888-835-5322

DA 16-1299  
November 18, 2016  
Enforcement Advisory No. 2016-06

## FCC ENFORCEMENT ADVISORY

### ROBOTEXT CONSUMER PROTECTION

#### TEXT MESSAGE SENDERS MUST COMPLY WITH THE TELEPHONE CONSUMER PROTECTION ACT

The FCC's Enforcement Bureau issues this Advisory to promote understanding of the clear limits on the use of autodialed text messages, known as "robotexts." The FCC is committed to protecting consumers from harassing, intrusive, illegal, and unwanted robotexts to cell phones and other mobile devices.

The FCC has stated that the restrictions on making autodialed calls to cell phones encompass both voice calls and texts.<sup>1</sup> Accordingly, text messages sent to cell phones using any automatic telephone dialing system are subject to the Telephone Consumer Protection Act of 1991 ("TCPA").<sup>2</sup> The term "automatic telephone dialing system" (or "autodialer") covers any equipment that has the capacity to store or produce numbers to be dialed and dial them without human intervention but does not need to have the present ability to do so.<sup>3</sup>

The TCPA places limits on autodialed calls and prerecorded- or artificial-voice<sup>4</sup> calls to wireless numbers; emergency numbers; guest or patient rooms at hospitals, health care facilities, elderly homes, or similar

<sup>1</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014, 14115, para. 165 (2003).

<sup>2</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd 7961, 7978, 8017, paras. 24, 111-15 (2015) (*TCPA Omnibus Declaratory Ruling and Order*), *pets. for review pending sub nom. ACA Int'l v. FCC*, No. 15-1211 (D.C. Cir. filed July 10, 2015). Just as texts are a subset of "calls" under the TCPA, "robotexts" are a subset of "robocalls." See *id.* at 7964, para. 1 & n.1.

<sup>3</sup> *TCPA Omnibus Declaratory Ruling and Order*, 30 FCC Rcd at 7973-74, 7975-76, paras. 14-15, 19. A robotext platform may be deemed to have initiated the text for purposes of liability under the TCPA in certain circumstances. *Id.* at 7980-81, para. 30 & n.110.

<sup>4</sup> We refer to prerecorded- or artificial-voice calls together as "prerecorded" calls.

establishments; and to any service for which the called party is charged for the call.<sup>5</sup> The FCC's corresponding rules<sup>6</sup> restrict the use of prerecorded-voice calls and automatic telephone dialing systems, including those that deliver robotexts.<sup>7</sup> The FCC's Enforcement Bureau will rigorously enforce the important consumer protections in the TCPA and our corresponding rules. We expect this Advisory will facilitate compliance with the law and rules by those who initiate robotexts to mobile devices.

**Restrictions on Robotexts.** The TCPA prohibits autodialed calls or text messages, as well as prerecorded calls, unless made with the prior express consent of the called party, to any telephone number assigned to a cell phone or other mobile device (such as a pager), unless the calls or text messages are: (1) made for emergency purposes; (2) free to the end user and have been exempted by the Commission, subject to conditions prescribed to protect consumer privacy rights; or (3) made solely to collect debts "owed to or guaranteed by the United States."<sup>8</sup>

**Consumer Consent.** Those contending that they have prior express consent to make robotexts to mobile devices have the burden of proving that they obtained such consent.<sup>9</sup> This includes text messages from text messaging apps and Internet-to-phone text messaging where the technology meets the statutory definition of an autodialer.<sup>10</sup> The fact that a consumer's wireless number is in the contact list of another person's wireless phone does not, by itself, demonstrate consent to receive robotexts.<sup>11</sup> Further, recipients may revoke their

---

<sup>5</sup> 47 U.S.C. § 227(b)(1)(A). The TCPA also places limits on unsolicited prerecorded telemarketing calls to residential telephones. See 47 U.S.C. § 227(b)(1)(B).

<sup>6</sup> See 47 CFR § 64.1200.

<sup>7</sup> By this Enforcement Advisory, the FCC's Enforcement Bureau highlights certain obligations under the TCPA and corresponding Commission rules. Failure to receive this notice does not absolve an entity of the obligation to meet the requirements of the Communications Act of 1934, as amended, or the Commission's rules and orders. Companies, individuals, and other entities should read the full text of the relevant portions of the TCPA and corresponding Commission rules, respectively, at 47 U.S.C. § 227 and 47 CFR § 64.1200, as well as FCC orders interpreting and/or applying those provisions.

<sup>8</sup> See 47 U.S.C. § 227(b)(1)(A)(iii); see also 47 CFR § 64.1200(a)(1)(iii) (prohibiting such calls to "any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service which the called party is charged for the call"). Congress has amended Section 227 to except federal debt collection calls and the Commission recently implemented rules related to that exception. *Rules and Regulations Implementing the Telephone Consumers Protection Act of 1991*, Report and Order, FCC 16-99 (Aug. 11, 2016), 2016 WL 4250379.

<sup>9</sup> *TCPA Omnibus Declaratory Ruling and Order*, 30 FCC Rcd at 7990, para. 47; see also *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Request of ACA International for Clarification and Declaratory Ruling*, Declaratory Ruling, 23 FCC Rcd 559, 565, para. 10 (2008) (concluding that creditors and debt collectors claiming prior express consent to make prerecorded-voice or autodialed calls to cell phones are responsible for demonstrating such consent was obtained).

<sup>10</sup> *TCPA Omnibus Declaratory Ruling and Order*, 30 FCC Rcd at 8020, paras. 115-16 (consumer consent required for autodialed Internet-to-phone text messages and for text messages sent from apps "that enable entities to send text messages to all or substantially all text-capable U.S. telephone numbers, including through the use of autodialer applications downloaded or otherwise installed on mobile phones").

<sup>11</sup> *Id.* at 7989, para. 47.

consent at any time using any reasonable method.<sup>12</sup> When a recipient of an autodialed text has revoked consent to receive future robotexts, the text sender may immediately send one final autodialed text to confirm the recipient's opt-out request.<sup>13</sup>

**Advertising Robotexts.** Prior express *written* consent is required for autodialed texts that include or introduce an advertisement except in certain limited circumstances.<sup>14</sup> Even if a person has provided such consent, however, his or her later opt-out request requires the sender to stop sending text advertisements.<sup>15</sup>

**Robotexts to Reassigned Wireless Numbers.** The Commission has determined that when a caller reasonably relies on prior express consent to robocall or robotext a wireless number and does not discover that the number has been reassigned to another party prior to making the call or text, the caller is not liable for the first call or text going to the called party who did not provide consent.<sup>16</sup> They are, however, liable for any continued calls or text messages to a reassigned number after the initial call or text, regardless of whether or when they learn of the reassignment.<sup>17</sup>

**Enforcement.** Robotext violations are subject to enforcement by the FCC, including forfeiture penalties up to \$18,936 per violation,<sup>18</sup> and state enforcement agencies.

---

<sup>12</sup> *Id.* at 7996, paras. 55-70. The prior express consent requirement is subject to limited exemptions granted by the Commission for specific types of calls; all exempted of these types must result in no charge to the called party and must satisfy specified conditions. *See id.* at 8027-28, para 138 (financial alerts); *id.* at 7986, para. 40 (collect calling agencies setting up a billing relationship); *id.* at 8031-32 paras. 147-48 (certain healthcare messages); *see also Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Cargo Airline Association Petition for Expedited Declaratory Ruling*, Order, 29 FCC Rcd 3432, 3439, para. 21 (2014) (certain package delivery notifications).

<sup>13</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, SoundBite Communications, Inc. Petition for Expedited Declaratory Ruling*, Declaratory Ruling, 27 FCC Rcd 15391 (2012) (setting forth certain requirements that the one-time text must meet).

<sup>14</sup> *See* 47 CFR § 64.1200(a)(2) (requiring prior express written consent for prerecorded and autodialed telephone calls that include or introduce an advertisement or constitute telemarketing, except that consent need not be in writing for certain health care calls and calls made by or on behalf of a tax-exempt nonprofit organization).

<sup>15</sup> *TCPA Omnibus Declaratory Ruling and Order*, 30 FCC Rcd at 7996, para. 64.

<sup>16</sup> *Id.* at 8006-07, para. 85 (emphasizing that the caller bears the burden of demonstrating a reasonable basis for believing that he had consent to make the call and that he did not know about the number reassignment when making the one allowable call).

<sup>17</sup> *Id.* at 8006-07, 8009, paras. 85, 89.

<sup>18</sup> Before proposing a monetary forfeiture penalty against a party that does not, or should not, hold an FCC license, permit, certificate, or other authorization, the FCC must first issue a warning citation. 47 U.S.C. § 503(b)(5). If a party continues to violate the Communications Act or the Commission's rules after receiving a citation, the FCC may impose a monetary forfeiture penalty covering both violations that occur after the citation and those violations that were addressed in the citation. *See* S. Rep. No. 95-580, 95th Cong., 1st Sess. at 9 (1977), *reprinted in* 1978 U.S.C.C.A.N. 109 (If a person or entity that has been issued a citation by the Commission thereafter engages in the conduct for which the citation of violation was sent, the subsequent notice of apparent liability "would attach not only for the conduct occurring subsequently *but also for the conduct for which the citation was originally sent.*") (emphasis added).

**Need More Information?** Media inquiries should be directed to Will Wiquist at (202) 418-0509 or [will.wiquist@fcc.gov](mailto:will.wiquist@fcc.gov). Information about the Telephone Consumer Protection Act is available here: <https://www.fcc.gov/general/telemarketing-and-robocalls>. For general information on the FCC, you can contact the FCC at 1-888-CALL-FCC (1-888-225-5322) or visit our website at [www.fcc.gov](http://www.fcc.gov).

**Consumer complaints.** To file a complaint with the FCC about a robotext, visit [consumercomplaints.fcc.gov](http://consumercomplaints.fcc.gov) or call (888) CALL-FCC.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Issued by: Chief, Enforcement Bureau