



Federal Communications Commission
Washington, D.C. 20554

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SMALL ENTITY COMPLIANCE GUIDE

**Targeting and Eliminating Unlawful Text Messages, Rules and Regulations Implementing the
Telephone Consumer Protection Act of 1991
Second Report and Order**

FCC 23-107

CG Docket Nos. 02-278, 21-402, 17-59

Released December 18, 2023

In accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, this Small Entity Compliance Guide (Guide) is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)

Videophone: 1-844-4-FCC-ASL (1-844-432-2275)

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I. OBJECTIVES OF THE PROCEEDING

In *Targeting and Eliminating Unlawful Text Messages, Second Report and Order (Second Report and Order)*¹ the Federal Communications Commission (Commission) adopted three rules to combat unwanted and illegal calls and texts. The Commission required terminating mobile wireless providers to block text messages from a particular number following notification from the Commission, unless their investigation determines that the identified text messages are not illegal. To assist providers in complying with this rule, the Commission adopted a limited waiver to allow providers to use the Reassigned Numbers Database (RND) to determine whether a number that the Commission has ordered to be blocked has been permanently disconnected. The Commission also codified that the National Do-Not-Call (DNC) Registry's protections apply to text messages. In addition, the Commission closed the lead generator loophole by prohibiting lead generators, texters, and callers from using a single consumer consent to inundate consumers with unwanted robotexts and robocalls when consumers visit comparison shopping websites. The Commission made it unequivocally clear that texters and callers soliciting consumers' business must obtain a consumer's prior express written consent to robocall or robotext. This consent requirement applies to a single seller at a time, the consent must be in response to a clear and conspicuous disclosure to the consumer, and the content of the ensuing robotexts and robocalls must be logically and topically associated with the website where the consumer gave consent.

Mandatory Blocking of Texts Following Notification from the Commission. In the *Second Report and Order*, the Commission adopted, with some changes, the proposal to require terminating providers to block all texts from a particular number when notified by the Enforcement Bureau of illegal texts from that number. Upon receipt of the notice, a provider must block all texts from the number and respond to the Enforcement Bureau indicating that the provider has received the notice and is initiating blocking. This blocking requirement is effective July 24, 2024, with a limited 12-month waiver as discussed in section II.

The National Do-Not-Call Registry. The Commission adopted the proposal to codify that the National DNC Registry's existing protections extend to text messages. Texters must have the consumer's prior express invitation or permission before sending a marketing text to a wireless number in the National DNC Registry. The Commission previously concluded that the national database should allow for the registration of wireless telephone numbers and that such action will further the objectives of the Telephone Consumer Protection Act (TCPA) and the DNC Act. This action is consistent with federal court opinions, will deter illegal texts, and will make DNC enforcement easier. This amendment was effective March 26, 2024.

Prior Express Written Consent Requirements – Closing the Lead Generator Loophole. Lead generated communications are a large percentage of unwanted robocalls and robotexts and often rely on flimsy or non-existent claims of consent. The TCPA requires callers to obtain the consent of the called party before making certain calls or texts using an "automatic telephone dialing system" (also known as an "autodialer") or with artificial or prerecorded voice. In some cases, this consent must be in writing. To satisfy this requirement, a consumer must consent to receive calls or texts from a single seller at a time, parties must provide clear and conspicuous disclosure to the consumer, and the content of the ensuing robotexts and robocalls must be logically and topically associated with the website where the consumer gave consent. This action is also consistent with the FTC's Telemarketing Sales Rule (TSR), which requires one-to-one consent. This amendment is effective January 27, 2025, or 30 days after notice that the Office of Management and Budget has completed review of any information collection requirements, whichever is later.

¹ *Targeting and Eliminating Unlawful Text Messages; Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Second Report and Order and Second Further Notice of Proposed Rulemaking in CG Docket Nos. 02-278 and 21-402, and Waiver Order in CG Docket No. 17-50, FCC 23-107 (Dec. 18, 2023) (*Second Report and Order*).

II. COMPLIANCE REQUIREMENTS

A. Mandatory Blocking of Texts Following Notification from the Commission (47 CFR § 64.1200(s) and 47 CFR § 0.111(a))

1. Mandatory Blocking. Upon receipt of the Notification of Illegal Texts from the Commission's Enforcement Bureau, a provider must:
 - a) Block all texts from the identified number(s) within the timeframe specified in the Notification; and
 - b) Respond to the Enforcement Bureau including a certification that the provider:
 - i) received the notice, and ii) is initiating blocking.

If the provider learns that some or all of the numbers in the Notification have been reassigned, the provider must promptly notify the Enforcement Bureau and include any information it has to prove the number has been reassigned. If, at any time in the future, the provider determines that the number has been reassigned, it must notify the Enforcement Bureau and cease blocking. Providers are not required to monitor whether any numbers subject to this blocking requirement have been reassigned, but must notify the Commission and cease blocking if the provider learns of a number reassignment.

2. Notification from the Commission. The Commission's Enforcement Bureau may notify terminating providers of illegal texts from a number or numbers (Notification of Illegal Texts). Notifications will specify a reasonable time frame for the notified provider to respond to the Enforcement Bureau and initiate blocking. The Enforcement Bureau shall publish the Notification of Illegal Texts in EB Docket No. 23-418. Notifications shall:
 - a) Identify the number(s) used to originate the illegal texts and the date(s) the texts were sent or received;
 - b) Provide the basis for the Enforcement Bureau's determination that the identified texts are unlawful;
 - c) Cite the statutory or regulatory provisions the illegal texts violate;
 - d) Direct the provider receiving the notice that it must comply with mandatory blocking requirements in 47 CFR § 64.1200(s) of the Commission's rules; and
 - e) Provide a point of contact to be used by a subscriber to a listed number to dispute blocking.

Limited Waiver. The *Second Report and Order* adopted a 12-month waiver on the effective date of 47 CFR § 64.1200(s) to allow mobile wireless providers to access the Reassigned Numbers Database (RND) to determine whether a number has been permanently disconnected since the date of the illegal text described in the Notification of Illegal Texts. We strongly encourage providers to make an effort to determine whether a number has been reassigned in order to avoid blocking lawful texts from a different source.

B. National Do-Not-Call Registry Requirements (47 CFR § 64.1200(e))

No person or entity shall send a solicitation or marketing text to a consumer with a wireless number in the National DNC Registry without the consumer's prior express invitation or permission before sending, as detailed in section II.C below.

C. Prior Express Written Consent Requirements (47 CFR § 64.1200(f)(9))

In the *Second Report and Order*, Commission revised the "prior express written consent" definition to make it clear that the consent must be from the called or texted party to each seller/caller, on

a one-to-one basis, and that the calls and texts must be logically and topically associated with the website or other interaction when consent was obtained.

1. Prior express written consent requires:
 - a) A written agreement,
 - b) Signed by the person called or texted, and
 - c) The agreement clearly and conspicuously authorizes no more than one identified seller to deliver, or cause to be delivered to the person called or texted, advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice.
 - d) The agreement must identify the telephone number to which the signatory authorizes such advertisements or telemarketing messages to be delivered.
2. Calls and texts must be logically and topically associated with the interaction that prompted the consent.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The Commission's actions in the *Second Report and Order* created new recordkeeping or reporting requirements for callers and texters as detailed above in section II. Upon receipt of a Notification of Illegal Texts, a provider must block all texts from the number(s) indicated in the notice and respond to the Enforcement Bureau confirming that the provider has received the notice and is initiating blocking. Callers and texters must obtain one-to-one prior express written consent from the consumer. Such calling and texting parties that have not previously obtained one-to-one consent from the consumer will have to revise their websites and other platforms where consent is obtained, if prior express written consent is required under the TCPA.

IV. IMPLEMENTATION DATE

The amendment to the Do-Not-Call rule, 47 CFR § 64.1200(e), was effective March 26, 2024. The amendment to the mandatory blocking rule, 47 CFR § 64.1200(s), was effective July 24, 2024, with limited 12-month waiver. The prior express written consent requirements in 47 CFR § 64.1200(f)(9), are effective January 27, 2025, or 30 days after notice that the Office of Management and Budget has completed review of any information collection requirements, whichever is later.

V. INTERNET LINKS

A copy of the *Second Report and Order* is available at: <https://docs.fcc.gov/public/attachments/FCC-23-107A1.pdf>.

A copy of the Federal Register Summary of the *Second Report and Order* is available at: <https://www.federalregister.gov/documents/2024/01/26/2023-28832/targeting-and-eliminating-unlawful-text-messages-implementation-of-the-telephone-consumer-protection>.

Notifications of Illegal Texts in EB Docket No. 23-418 are available at: <https://www.fcc.gov/ecfs/search/search-filings>.

Other information on combatting robocalls and texts can be found on the Commission's website at: <https://www.fcc.gov/consumers/guides/stop-unwanted-robocalls-and-texts>.