

One Minute Memo[®]



FCC Rules That Opt-Out Confirmation Texts Do Not Violate the TCPA

The Federal Communications Commission (FCC) has issued a Declaratory Ruling finding that companies do not violate the Telephone Consumer Protection Act (TCPA) when they send a single text message to confirm receipt of a consumer's request that no further text messages be sent. See *In Re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling, FCC 12-143, 2012 WL 5986338 (Nov. 29, 2012). Specifically, the FCC ruled that "a consumer's prior express consent to receive text messages from an entity can be reasonably construed to include consent to receive a final, one-time text message confirming that such consent is being revoked." The Ruling is important, as opt-out confirmation texts had been challenged in a number of TCPA class actions.

The FCC was careful to limit the scope of the Ruling. *First*, it made clear that companies cannot use an opt-out confirmation to engage in further marketing. While they can include contact information or instructions on how to opt back in, they cannot include any marketing or promotional material, or encourage the consumer to reconsider the opt-out. *Second*, the company may send only one opt-out confirmation, and it must be sent by text rather than a voice call. *Finally*, consent to receive a confirmation text is presumed only if the text is sent within five minutes of the opt-out request. Confirmation texts sent more than five minutes after the opt-out request are subject to case-by-case review for reasonable delay.

While the Declaratory Ruling is helpful to companies that communicate with their customers via text message, it likely will put only a small dent in the number of TCPA cases being pursued. The statute remains a hot area for the plaintiffs' bar and an important compliance issue for companies dealing with consumers.

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