

**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, DC 20554**

In the Matter of )  
 )  
Rules and Regulations Implementing the ) CG Docket No. 02-278  
Telephone Consumer Protection Act of 1991 ) FCC 23-49

**Reply Comments of**

**National Consumer Law Center** on behalf of its low-income clients

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## Reply Comments

### I. Introduction and Summary.

These reply comments are provided to supplement the comments we filed on behalf of the low-income clients of the **National Consumer Law Center**, and **Appleseed, Consumer Action, Consumer Federation of America, Electronic Privacy Information Center, National Association of Consumer Advocates, National Association of State Utility Consumer Advocates, National Consumers League, Public Knowledge**, and **U.S. PIRG**,<sup>1</sup> regarding the Commission's latest Notice of Proposed Rulemaking (NPRM) in which it proposes to clarify the rules for revocation of consent and place some limits on calls and texts from wireless providers.<sup>2</sup>

We stand by all the points provided in our primary comments, but we have some responses to points made by other commenters that may be helpful to Commission. These reply comments address three issues:

1. Whether the Commission should limit the ways in which consumers can revoke their consent.
2. Whether callers should have more than 24 hours to stop calls after consent has been revoked.
3. Whether the implementation date for the regulations should be extended.

### II. The Commission should require all callers to provide automated mechanisms to revoke as well as information on the Internet about how to revoke by email or letter.

Virtually all of the comments submitted by representatives of callers noted difficulties with processing revocation requests that were not made through an automated opt-out mechanism. The current limitation in the Commission's proposal is that the revocation method used by the consumer must be reasonable. We believe that is the appropriate standard. But the Commission can provide more clarity to both callers and consumers on what methods are reasonable in two ways:

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<sup>1</sup> *In re* Rules and Regulations Implementing the Telephone Consumer Protection Act, Comments of the National Consumer Law Center on behalf of its low-income clients and Appleseed, Consumer Action, Consumer Federation of America, Electronic Privacy Information Center, National Association of Consumer Advocates, National Association of State Utility Consumer Advocates, National Consumers League, Public Knowledge, CG Docket No. 02-278 (July 31, 2023), available at <https://www.fcc.gov/ecfs/search/search-filings/filing/10731199517166> ("Primary comments").

<sup>2</sup> *In re* Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Notice of Proposed Rulemaking, CG Docket No. 02-278 (Rel. June 9, 2023), available at <https://docs.fcc.gov/public/attachments/FCC-23-49A1.pdf>; Federal Commc'ns Comm'n, Proposed Rule, Prior Express Consent Under the Telephone Consumer Protection Act of 1991, 88 Fed. Reg. 42,034 (June 29, 2023), available at <https://www.govinfo.gov/content/pkg/FR-2023-06-29/pdf/2023-13821.pdf>.

1. All calls made with a prerecorded or artificial voice (prerecorded calls) and covered texts (texts sent using an automated telephone dialing system, as well as all texts that include a solicitation) should be required to include an automated opt-out mechanism. Under both the current and proposed regulations, prerecorded calls to cell phones that are not telemarketing calls are not required to include this mechanism, and neither are covered texts. Indeed, the proposed NPRM would explicitly permit covered texts to not accept responses. As we explained in our primary comments in more detail, these oversights should be addressed.<sup>3</sup> All calls that include a prerecorded voice made to all types of lines should be required to include an automated opt-out mechanism, and all covered texts should be required to include—and to accept—a “STOP” mechanism.
2. All callers should be required to provide public notice of alternative methods to revoke consent for covered calls. Not everyone is comfortable using an automated opt-out mechanism, especially given the advice repeatedly provided by enforcement agencies *not* to engage with unwanted callers.<sup>4</sup> If callers would prominently display on their websites alternative means of opting out of covered calls and texts such as a specific email address, or P.O. box to which a standard letter could be addressed, that would provide consumers with a reasonable alternative to stop the calls, and it would be a simple way for the callers to capture and process these requests. Establishing easily found alternative methods for consumers to use to revoke consent is much preferable to requiring that consumers use certain “magic” words or a specific method to revoke consent. These alternative methods should be easy to find, easy to use, available to anyone with a computer or smartphone, and should include mailing a letter with a first class mail stamp to a specific address, for those consumers who are not connected to the Internet.

By giving consumers easily found and easily activated ways to revoke consent, callers would create an alternative avenue that consumers who wanted the calls to stop would use. Providing

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<sup>3</sup> *Id.* at 9.

<sup>4</sup> See e.g. <https://portal.ct.gov/DCEP/Common-Elements/Common-Elements/Do-Not-Call-Registry> (“If you get an unwanted call, don't engage the caller, don't press any buttons (even if they promise to remove you from their list). Hang up immediately.”); <https://www.forbes.com/sites/kellyphillipsrb/2016/05/28/six-reasons-not-to-engage-with-scammers-no-matter-what-your-facebook-friends-tell-you/?sh=5f3982fa439d> (“When you engage with a scammer - even if you are blowing a whistle in the phone - you've just confirmed two pieces of information for the scammers: they've called a working phone number AND you'll answer the phone.”)

these straightforward ways to revoke consent—an automated mechanism or “STOP” text plus other methods—would not preclude a court from finding other methods to be reasonable, but would inform the court’s evaluation of what methods *were* reasonable. Courts have already had no difficulty in finding obscure or overly wordy language not to be a reasonable method of revoking consent.<sup>5</sup>

### **III. Callers should have a limited time to implement a revocation request.**

We very much appreciate the Commission’s commitment to ensuring that consent revocations are implemented expeditiously. In their comments, however, callers have insisted that a 24-hour implementation period is not feasible. We therefore recommend that the Commission allow a longer period for the first year after the regulation goes into effect—perhaps as long as 14 days, but then require that callers figure out how to adopt an implementation period of two business days after the revocation request is made. We agree with the concerns expressed in some comments that business days should be the trigger for implementing the revocation request rather than just hours, especially to the extent that affiliated callers need to be notified of the revocation.

### **IV. Extending the compliance period to six months after the effective date is likely to result in more efficient revocation systems.**

We do not object to a longer period after the effective date of the regulations for callers to implement the new requirements. In the long run, consumers will be better served by well-constructed and effective mechanisms.

### **IV. Conclusion and revised recommendations.**

In light of our review of the comments made by others, our recommendations regarding the NPRM are slightly revised. All of our recommendations are listed below, with two additional ones added in light of these reply comments.

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<sup>5</sup> See, e.g., *Viggiano v. Kohl’s Dep’t Stores, Inc.*, 2017 WL 5668000 (D.N.J. Nov. 27, 2017) (holding that texting a long, wordy revocation request—rather than following the opt-out procedure the seller had created, which involved texting one of a list of short instructions such as “STOP”—was not a reasonable method of revoking consent). *Accord* *Rando v. Edible Arrangements Int’l, L.L.C.*, 2018 WL 1523858 (D.N.J. Mar. 28, 2018). *See also* *Franklin v. Express Text, L.L.C.*, 727 Fed. Appx. 853 (7th Cir. 2018) (consumer’s texts to a number known to be affiliated with an automated system, with content other than “STOP,” and including questions amounted to consent to receive replies); *Epps v. Earth Fare, Inc.*, 2017 WL 1424637 (C.D. Cal. Feb. 27, 2017), *aff’d mem.*, 740 Fed. Appx. 627 (9th Cir. 2018).

1. Clarify that automated opt-out mechanisms are required for all non-emergency prerecorded calls to wireless telephones as well as residential lines, as discussed in section III.B of our primary comments.
2. Require that all texts sent by an ATDS or that contain telemarketing messages to wireless lines registered on the DNC Registry must include a “STOP” mechanism, as discussed in section III.B of our primary comments.
3. Clarify that consent is considered definitively revoked, and that future non-emergency calls and texts from that caller must be stopped, if the called party a) uses the automated opt-out mechanism, or b) types “STOP” in response to a text sent by an ATDS or that contains a telemarketing message, as discussed in section III.B of our primary comments.
4. Clarify that a consumer has the right to revoke consent even if consent was provided as part of a contract, as discussed in section III.C of our primary comments.
5. Delete the last sentence in proposed (and current) § 64.1200(d)(3) and codify the requirement that sellers and other entities that engage others to make calls on their behalf are responsible for ensuring that all callers making calls on their behalf are aware of revocations made to them or made to other callers, and that these entities are responsible for ensuring that the calls stop, as discussed in section III.D of our primary comments.
6. Apply the rules proposed for revocation of consent for telemarketing calls to residential lines to revocation of prior express invitation or permission to calls to DNC lines, as discussed in section IV of our primary comments.
7. Eliminate the limitation of revocations of consent in 47 C.F.R. § 64.1200(d)(6) and establish a limit of ninety days for the consent to be effective from the date consent or express permission for telemarketing calls was provided, as discussed in section IV of our primary comments.
8. Require all callers to provide and easy to find public notice of alternative methods to revoke consent for covered calls through an email address and a posted letter, as discussed in section II of these reply comments.
9. For the first year after the regulations are effective, allow callers as much as 14 days to stop calls after the called party has revoked consent, but after the first year, require that callers must implement the revocation within two business days after the request is made, as discussed in section III of these reply comments.

In addition, as we explained in our primary comments, we support the Commission’s proposal to clarify that TCPA covered communications from wireless providers to their customers are permitted only by virtue of the Commission’s exemption authority under 47 U.S.C. § 227(b)(2)(C). Allowing wireless customers more control of their messages is consistent with the

purposes of the TCPA. And there is no reason that a provider of wireless telephone service should be treated differently than providers of other essential utility services.

We very much appreciate the Commission's consideration of our recommendations.

Respectfully submitted:

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