



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02-278; FCC 24-24; FR ID 205124]

Strengthening the Ability of Consumers to Stop Robocalls

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on whether the Telephone Consumer Protection (TCPA) applies to robocalls and robotexts from wireless providers to their own subscribers and therefore whether such providers must have consent to make robocalls and send robotexts to their own subscribers. To the extent that wireless providers have consent to robocall or robotext their own subscribers, the Commission seeks comment on whether wireless subscribers can exercise their right to revoke such consent by communicating a revocation of consent request to their wireless provider and that such requests must be honored. In addition, the Commission seeks comment on a request to require automated opt-out mechanisms on every call that uses an artificial or prerecorded voice.

DATES: Comments are due on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], and reply comments are due on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Written comments on the Paperwork Reduction Act (PRA) proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated in this document. Comments and reply comments may be filed using the Commission's

Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). Interested parties may file comments or reply comments, identified by CG Docket No. 02-278 by any of the following methods:

- *Electronic Filers*: Comments may be filed electronically using the Internet by accessing ECFS: <https://www.fcc.gov/ecfs/>.
- *Paper Filers*: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (March 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Richard D. Smith, Competition Policy Division, Consumer and Governmental Affairs Bureau, at Richard.Smith@fcc.gov or at (717) 338-2797. For additional information concerning the Paperwork Reduction Act proposed information collection requirements contained in this document, send an email to PRA@fcc.gov or contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (*FNPRM*) in CG Docket No. 02-278, adopted on February 15, 2024, and released on February 16, 2024. The full text of this document is available for public inspection at the following internet address: <https://docs.fcc.gov/public/attachments/FCC-24-24A1.pdf>. To request materials in accessible formats for people with disabilities (e.g. braille, large print, electronic files, audio format, etc.), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice).

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act proposed information collection requirements contained herein should be submitted to the Federal Communications Commission email to PRA@fcc.gov and to Cathy Williams, FCC, via email to Cathy.Williams@fcc.gov.

Paperwork Reduction Act

This document may contain proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Providing Accountability Through Transparency Act

The Providing Accountability Through Transparency Act, Public Law 118-9, requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule. The required summary of the Further Notice of Proposed Rulemaking is available at <https://www.fcc.gov/proposed-rulemakings>.

Synopsis

A. Wireless Provider Exemption

1. The Commission seeks comment on whether the TCPA applies to robocalls and robotexts from wireless providers to their own subscribers and therefore such providers must have consent to make prerecorded voice, artificial voice, or autodialed calls or texts to their own subscribers. The Commission seeks comment on whether wireless providers satisfy any TCPA consent obligation pursuant to the unique nature of the relationship and service that they provide to their subscribers. Specifically, the Commission asks whether wireless providers require additional consent beyond that provided by the unique nature of this relationship with their subscribers to satisfy this requirement. To the extent that wireless providers have consent to robocall or robotext their own subscribers, the Commission proposes that wireless subscribers, as any other called party, be able to revoke such consent by communicating a revocation of consent request to their wireless provider and that such request must be honored. The Commission seeks comment on these issues as set forth in more detail below.

2. In the 2023 TCPA Consent NPRM, published at 88 FR 42034 on June 29, 2023, the Commission proposed to require wireless providers to honor their customers' requests to cease robocalls and robotexts. To effectuate this result, the Commission proposed at that time to create and codify a qualified exemption—based on its authority under section 227(b)(2)(C)—for informational robocalls and robotexts from wireless providers to their subscribers, subject to certain conditions including honoring requests to opt out of such communications. In response to requests for comments on this proposal, wireless providers suggest that the TCPA's prohibitions do not apply to communications from wireless providers to their subscribers because

there is no charge to the subscriber and they have a unique relationship with their subscribers. In light of these arguments, the Commission now revisits that proposal.

3. The Commission now seeks further comment on the argument that, pursuant to the 1992 TCPA Order, published at 57 FR 48333 on October 23, 1992, or statutory language, wireless providers are wholly excluded from the application of the TCPA's requirement to obtain consent before robocalling or robotexting their own subscribers because there is no charge imposed on the subscriber. In 1992, the Commission concluded that wireless carriers need not obtain "additional consent" prior to initiating autodialed, artificial voice, or prerecorded voice calls to their own subscribers. Although it stated that such robocalls could be made by wireless providers to their own subscribers without a charge, the Commission did not specify whether it intended to wholly exclude wireless providers from the statutory obligation to obtain consent based solely on the calls being free to the called party. Moreover, shortly following this ruling Congress amended the TCPA to grant the Commission express statutory authority to exempt from the prior-express-consent requirement calls to wireless numbers that are not charged to the called party subject to such conditions as the Commission deems necessary to protect the privacy rights afforded under the TCPA. Section 227(b)(2)(C)'s authority to grant exemptions from the prior-express-consent requirement is predicated on the ability of callers to make such calls with no charge to the consumer. The Commission believes Congress could not have meant the pre-amended TCPA to exempt free calls from the consent requirement because its amendment describes exactly how the Commission must go about that, including an analysis of each type of exempted call and an affirmative showing that such an exemption does not unduly harm consumer privacy.

4. Similarly, the Commission is not persuaded that the pre-amended TCPA itself exempts robocalls to wireless subscribers for which there is no charge. The TCPA prohibits robocalls absent an emergency purpose or with the prior express consent of the called party "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 for which the called party is charged for the call.” As the Court of Appeals for the Eleventh Circuit explained in interpreting this provision: “[t]he rule of the last antecedent requires the phrase ‘for which the called party is charged for the call,’ [in section 227(b)(1)], ‘to be applied to the words or phrase immediately preceding (i.e. “any service”), and not to be construed as extending to or including others more remote.” As the court concluded “[i]f the phrase ‘any service for which the called party is charged for the call’ requires that the party be charged per call for the ‘paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service’ in order for the party to prohibit autodialed calls, then the listing of these services would be superfluous because they are already included under the term ‘any service for which the called party is charged.’” Another Federal circuit court decision has reached the same conclusion.

5. This interpretation of the relevant statutory provision is consistent with the Commission’s own treatment of robocalls to wireless numbers for which there is no charge to the called party. For example, the Commission has allowed certain specific categories of robocalls to wireless telephone numbers that can be made without a charge to the called party only when they have been granted an exemption from the TCPA’s consent obligation. The Commission, therefore, seeks comment on the contention that either the 1992 TCPA Order or the TCPA itself wholly excludes wireless providers from the TCPA’s consent requirement when communicating with their own subscribers solely because their calls and texts are free to their subscribers. Rather, read in light of the subsequent statutory amendment, the Commission believes the 1992 TCPA Order’s reference to the ability of wireless providers to communicate with their subscribers without imposing any charge on those subscribers is an example of the unique nature of the wireless provider and subscriber relationship that supported the Commission’s conclusion that such providers need not obtain “additional consent” under the TCPA to robocall their own subscribers. The Commission seeks comment on this analysis.

6. Should the Commission determine that wireless providers are required to obtain consent and have effectively obtained consent to make robocalls and send robotexts to their own subscribers by virtue of their unique relationship with their subscribers, the Commission seeks comment on whether this consent should extend to robocalls and robotexts that contain telemarketing or advertisements. In 2012, the Commission adopted rules requiring prior express consent to be obtained in writing for autodialed or prerecorded telemarketing calls to wireless numbers. In so doing, however, the Commission has not extended this requirement to robocalls made by a wireless provider to their own subscribers. As a result, the Commission seeks comment on whether it should revisit this issue to require prior express written consent to be obtained for any such robocall or robotext that contains telemarketing or advertising.

7. The Commission seeks comment on whether the right to revoke consent extends to wireless subscribers when they receive unwanted robocalls and robotexts from their wireless provider, just as it does to any robocalls or texts sent pursuant to the TCPA. As a result, the Commission seeks comment on whether wireless providers must honor any revocation or opt-out requests from their own subscribers that are made through any reasonable means and at any time. The Commission seeks comment on whether, if it were to find wireless providers have consent based on having a unique relationship with their subscribers, the Commission should codify a new rule to that effect that would make clear consumers also have a right to revoke consent to such communications. Although many of the messages sent by wireless providers to their own subscribers may be welcome and provide useful information, as wireless commenters suggest, the Commission does not believe there is any reason to deprive wireless subscribers of the same right to exercise revocation of consent when they make an affirmative request not to receive such communications. In this circumstance, the subscriber has made clear that they do not wish to receive such further communications from their wireless provider regardless of the merits of the robocalls and robotexts that they receive. The record in this matter confirms that at least some wireless subscribers do not wish to receive these communications from their wireless provider.

8. The Commission does not believe that any obligation to honor revocation requests is unduly burdensome to wireless providers. In fact, the record suggests that some wireless providers already honor opt-out requests on many communications to subscribers. Other callers have implemented such measures for decades to comply with the Commission's rules. Nevertheless, the Commission seeks comment on ways to reduce any new burdens such a requirement might entail, including for smaller wireless providers. The Commission seeks comment on this proposal and any other issues commenters may wish to raise in this context, including any alternative proposals set forth in the TCPA Consent NPRM that would allow it to balance consumer privacy rights without unduly interfering with the ability of wireless providers to communicate critical information to their subscribers.

9. Having proposed to confirm that wireless providers are subject to the TCPA when communicating with their subscribers, the Commission seeks comment on whether wireless providers have effectively obtained consent to make robocalls and send robotexts to their own subscribers by virtue of their unique relationship with their subscribers. Several wireless providers citing the 1992 TCPA Order contend that an inherent unique relationship renders it unnecessary to obtain any additional form of consent to communicate with their own subscribers.

10. Wireless providers are in a unique position to accurately obtain, track, and maintain records of their subscribers' activities, including prepaid subscribers, to ensure that they are sent critical, time-sensitive information to avoid inadvertently losing their wireless service or experiencing bill shock from overages or roaming fees. The Commission has acknowledged the benefit of these communications and has encouraged wireless providers to send them to their wireless subscribers. In some instances, the Commission's rules require these communications so that, for example, low-income consumers do not inadvertently lose benefits that make their service affordable. The ability to provide such information is a unique function of the wireless provider and subscriber relationship that advances the interests of consumers by ensuring they are informed of any potential risk to the ongoing provision of their wireless service. As a result,

the Commission agrees that wireless providers have a unique relationship that allows them to send critical information to their subscribers that their subscribers may welcome. In addition, wireless providers are in a unique position in that they offer the specific service over which these communications are made, including the provision of the unique telephone number at which subscribers are contacted over that service. The Commission seeks comment on whether the nature of this unique relationship and service continues to render it unnecessary for wireless providers to obtain any additional consent from their subscribers, as the Commission concluded in the 1992 TCPA Order. The Commission seeks comment on whether that view is incorrect, e.g., because the TCPA requires a more affirmative statement from a consumer that they consent to robocalls. Parties arguing for this conclusion should state whether such a view could upset the status quo such that millions of subscribers who may currently receive robocalls and robotexts they welcome from their providers would no longer be able to receive them unless they take steps to consent. And, if so, the Commission seeks comment on how it should proceed to avoid inadvertently disrupting the flow of information that wireless subscribers have come to expect or burdening wireless providers with the necessity of obtaining such consent from their existing subscribers.

B. Expanding Opt-Out Requirements

11. The Commission seeks comment on the National Consumer Law Center's (NCLC) request that the Commission amend section 64.1200(b)(3) of its rules to require an automated opt-out mechanism on every call that contains an artificial or prerecorded voice. NCLC argues that consumers "complain about the seemingly unstoppable" prerecorded non-marketing calls from entities such as medical professionals and, in NCLC's view, that would harmonize the treatment of such calls with those to residential lines. The Commission seeks comment on this proposal, including whether such a change is necessary and what the compliance costs of such a change would be on callers including any alternatives that would minimize compliance burdens on smaller entities.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

12. As required by the Regulatory Flexibility Act of 1980, as amended (RFA) the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies proposed in this Further Notice of Proposed Rulemaking (FNPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments in the FNPRM. The Commission will send a copy of this FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and the IRFA (or summaries thereof) will be published in the *Federal Register*.

A. Need for, and Objectives of, the Proposed Rules

13. In the *FNPRM*, the Commission seeks comment on whether the TCPA applies to robocalls and robotexts from wireless providers to their own subscribers and therefore such providers must have consent to make prerecorded voice, artificial voice, or autodialed calls or texts to their own subscribers. The Commission seeks comment on whether wireless providers satisfy the TCPA's consent obligation pursuant to the unique nature of the relationship and service that they provide to their subscribers. To the extent that wireless providers have consent to robocall or robotext their own subscribers, the Commission seeks comment on whether wireless subscribers, as any other called party, can exercise their right to revoke such consent by communicating a revocation of consent request to their wireless provider and that such request must be honored. Lastly, the Commission seeks comment on a request to amend its rules to require automated opt-out mechanisms for every non-telemarketing call that uses an artificial or prerecorded voice that can be used by the called party to stop such calls.

B. Legal Basis

14. The proposed action is authorized pursuant to section 227 of the Communications Act of 1934, as amended.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

15. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

16. Small Businesses, Small Organizations, Small Governmental Jurisdictions. Our actions, over time, may affect small entities that are not easily categorized at present. The Commission, therefore describe at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.

17. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

18. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2017 Census of Governments indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,931 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”

19. **Wireless Carriers and Service Providers.** Wireless Telecommunications Carriers (except Satellite) is the closest industry with a SBA small business size standard applicable to these service providers. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees. Consequently, using the SBA’s small business size standard, most of these providers can be considered small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

20. The *FNPRM* seeks comment on issues that may alter the Commission’s current information collection, reporting, recordkeeping, or compliance requirements for small entities. The Commission seeks comment on whether wireless providers have effectively obtained

consent to make robocalls and send robotexts to their own subscribers by virtue of their unique relationship with their subscribers or if they must obtain such consent for robocalls and robotexts. The Commission seeks comment on whether the right to revoke consent extends to wireless subscribers when they receive unwanted robocalls and robotexts from their wireless provider, just as it does to any robocalls or robotexts sent pursuant to the TCPA. In particular, whether wireless providers would be required to honor any revocation or opt-out requests from their own subscribers that are made through any reasonable means and at any time. If adopted, this may require wireless providers to obtain consent from their own subscribers for robocalls and robotexts and may require such providers to maintain records on whether they have such consent and on any revocation of consent by their subscribers. Additionally, such revocation may be from all robocalls and robotexts, or from certain ones (such as marketing) and the wireless providers would be required to maintain such records on the specific revocation requests. The Commission also seeks comment on a request to require every call that uses an artificial or prerecorded voice to provide an automated opt-out mechanism. There is not sufficient information in the record to quantify the cost of compliance for small entities, or to determine whether it will be necessary for small entities to hire professionals to comply with these proposals. The Commission will review the record and further examine the economic impact of the proposals on small entities following the review of comments filed in response to the *FNPRM*.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

21. The RFA requires an agency to describe any significant alternatives that could minimize impacts to small entities that it has considered in reaching its approach, which may include the following four alternatives, among others: “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting

requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for such small entities.”

22. In the *FNPRM* the Commission seeks comment on several alternatives that may impact small entities. The Commission seeks comment on whether wireless providers have effectively obtained consent to make robocalls and send robotexts to their own subscribers by virtue of their unique relationship with their subscribers and whether this consent extends to telemarketing or other messages, or if providers must obtain consent from their subscribers for such robocalls and robotexts. The Commission seeks comment on whether the right to revoke consent for robocalls and robotexts extends to wireless subscribers when they receive unwanted robocalls and robotexts from their own wireless provider, just as it does to any robocalls or robotexts sent to a consumer. The Commission seeks comment on whether wireless providers must honor any revocation or opt-out requests from their own subscribers that are made through any reasonable means and at any time.

23. This proposal, if adopted, would apply to all wireless providers, including small wireless entities. The Commission expects that the obligation to honor revocation requests will not be unduly burdensome to small wireless providers and recognizes that some wireless providers already honor opt-out requests on many communications to subscribers. The Commission observes that other entities have implemented such measures to honor revocation requests for decades to comply with the Commission’s rules. Nevertheless, the Commission seeks comment on ways to reduce any new burdens such requirements might create for smaller wireless providers. Lastly, the Commission seeks comment on any burdens imposed by requiring all artificial or prerecorded voice calls to provide an automated opt-out mechanism to stop such calls including any alternatives that would minimize the impact on small entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

24. None.

Federal Communications Commission.

Marlene Dortch,
Secretary.

[FR Doc. 2024-04586 Filed: 3/4/2024 8:45 am; Publication Date: 3/5/2024]