

# Proposed Rules

Federal Register

Vol. 88, No. 124

Thursday, June 29, 2023

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CG Docket No. 02–278; FCC 23–49; FR ID 149026]

#### Prior Express Consent Under the Telephone Consumer Protection Act of 1991

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) proposes measures to clarify and strengthen consumers' ability to revoke consent to receive both robocalls and robotexts. The Commission proposes to codify past guidance on prior express consent to make these requirements more apparent to callers and consumers. In addition, the Commission proposes to amend its rules to strengthen the ability of consumers to decide which robocalls and robotexts they wish to receive by exercising their right to grant and revoke consent to individual callers. Specifically, the Commission proposes to: ensure that revocation of consent does not require the use of specific words or burdensome methods; require that callers honor do-not-call and consent revocation requests within a reasonable time, not to exceed 24 hours of receipt; codify the ruling that consumers only need to revoke consent once to stop getting all robocalls and robotexts from a specific entity; and allow wireless consumers the option to stop robocalls and robotexts from their own wireless service provider.

**DATES:** Comments are due on or before July 31, 2023, and reply comments are due on or before August 14, 2023.

**ADDRESSES:** You may submit 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 the ECFS: <https://apps.fcc.gov/ecfs/>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, 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, DA 20–304 (March 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

**FOR FURTHER INFORMATION CONTACT:**

Richard D. Smith of the Consumer and Governmental Affairs Bureau at (717) 338–2797 or [Richard.Smith@fcc.gov](mailto:Richard.Smith@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*), in CG Docket No. 02–278, FCC 23–49, adopted on June 8, 2023 and released on June 9, 2023. The full text of the document is available for public inspection and copying via the Commission's Electronic Comment Filing System (ECFS). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice).

This matter shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 through 1.1216. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substances of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

#### Initial Paperwork Reduction Act of 1995 Analysis

The *NPRM* seeks comment on proposed rule amendments that may result in modified information collection requirements. If the Commission adopts any modified information collection requirements, the Commission will publish a notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act. Public Law 104–13; 44 U.S.C. 3501–3520. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. Public Law 107–198; 44 U.S.C. 3506(c)(4).

#### Synopsis

1. The Commission initiates this proceeding to clarify and strengthen consumers' rights under the TCPA to grant and revoke consent to receive robocalls and robotexts. Specifically, the Commission proposes to: (1) ensure that revocation of consent does not require the use of specific words or burdensome methods; (2) require that callers honor do-not-call and consent revocation requests within a reasonable time, not to exceed 24 hours of receipt; (3) codify the ruling that consumers only need to revoke consent once to stop getting all robocalls and robotexts from a specific entity; and (4) allow wireless consumers the option to stop robocalls and robotexts from their own wireless service provider. As discussed below,

the Commission seeks comment on these proposals and on the costs and benefits of the proposals, including for smaller businesses and consumers.

#### *A. Revoking Consent in Any Reasonable Way*

2. The Commission proposes to codify its 2015 ruling confirming that consumers who have provided prior express consent to receive autodialed or prerecorded voice calls may revoke such consent through any reasonable means. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02–278, WC Docket No. 07–135, Declaratory Ruling and Order, published at 80 FR 61129, October 9, 2015. The Commission believes this will make clearer to callers and consumers that a consumer has a right to revoke consent under the TCPA. Specifically, the Commission proposes codifying a rule that would make clear that consumers may revoke prior express consent in any reasonable manner that clearly expresses a desire not to receive further calls or text messages, including using words such as “stop,” “revoke,” “end,” or “opt out,” and that callers may not infringe on that right by designating an exclusive means to revoke consent that precludes the use of any other reasonable method. The Commission seeks comment on this proposal.

3. Additionally, the Commission proposes to codify that reasonable methods to revoke consent typically include revocation requests made by text message, voicemail, or email to any telephone number or email address at which the consumer can reasonably expect to reach the caller. The Commission proposes to codify that, when a consumer uses any such method to revoke consent, doing so creates a presumption that the consumer has revoked consent, absent evidence to the contrary. For example, the use of reply text messages is a reasonable and widely recognized means for text recipients to revoke prior consent to text messages. The sending of a “STOP” message in reply to an incoming text message is the standard recommended by industry groups such as the Mobile Marketing Association. In addition, text messages may, on occasion, inadvertently be directed to reassigned or wrong numbers. In these instances, the text recipient may have no contact information other than the text itself, since the recipient is not the party that provided prior consent to the sender, and the only method they may have to contact the sender is with a reply text message. Thus, the Commission

proposes to codify that the sending of “STOP” or a similar message that reasonably conveys a desire to not receive further messages in reply to an incoming text message creates a presumption that the consumer has revoked consent in a reasonable way. Should the text initiator choose to use a texting protocol that does not allow reply texts, we propose that it would bear the risk of potential liability under the TCPA unless it both provides a clear and conspicuous disclosure on each text to the consumer that two-way texting is not available due to technical limitations of the texting protocol and clearly and conspicuously provides alternative ways for a consumer to revoke consent, such as a link or instructions to text a different number. The Commission seeks comment on these proposed rules.

4. The Commission believes that these proposed rules are consistent with the Commission’s prior finding that placing significant burdens on the called party who no longer wishes to receive such calls or texts is inconsistent with the TCPA and with our finding that the TCPA requires “only that the called party clearly express his or her desire not to receive further calls” to invoke this right to revoke consent. The Commission seeks comment on whether callers have encountered any difficulties in complying with this longstanding precedent that consumers can revoke consent via any reasonable method. Based on this experience, are there specific issues or circumstances that have arisen that the Commission should address in the context of this proceeding to provide clarity as to the factors that make the means of revocation “reasonable” both from a consumer’s perspective and that of a caller? Has the Commission struck an appropriate balance here between protecting the consumer’s privacy interests and facilitating the caller’s ability to process opt-out requests?

5. The Commission also recognizes that the scope of a “reasonable” means to revoke consent is not unlimited. The Commission seeks comment on any such limitations it should codify. What are the most common situations in which callers are unable to process opt-out requests from consumers? Are there ways that the Commission could address these situations in this proceeding consistent with its goal not to place an unreasonable burden on consumers to opt out of robocalls? The Commission proposes to codify that callers that do not believe that consumers have used a reasonable method to convey a request to revoke consent will be afforded an opportunity

to rebut the presumption on a case-by-case basis, should a complaint be filed with the Commission or finder of fact. The Commission seeks comment on the types of evidence that would suffice to rebut the presumption. For example, if the consumer directs the request to a telephone number or email address, and the caller presents evidence that the consumer lacks a reasonable basis to expect that the request will be received by it, should the Commission hold that such a method to revoke consent is not in fact reasonable? The Commission believes such a rule would balance the consumer’s right to revoke consent in an easy and reasonable manner with the caller’s ability to process such revocation requests. The Commission seeks comment on this proposal, including any impact on small entities.

#### *B. Timeframe for Honoring a Do-Not-Call or Revocation Request*

6. The Commission proposes to require that, within 24 hours of receipt, callers must honor company-specific do-not-call and revocation-of-consent requests for robocalls and robotexts that are subject to the TCPA. The Commission’s rules currently provide no specific timeframes for honoring revocation-of-consent requests for robocalls and robotexts made to residential or wireless telephone numbers. The Commission’s rules currently require callers making telemarketing calls or exempted artificial and prerecorded voice calls to residential telephone numbers and exempted package delivery calls and texts to wireless consumers to honor do-not-call requests within a reasonable time not to exceed 30 days from the date of any such request. This proposal will require amending those existing rules and establishing new rules where no specific timeframe for honoring such requests currently exists. The Commission seeks comment on this proposal, including on the 24-hour period. Is this period reasonable? Should the Commission, rather, require that revocations be honored immediately upon receipt or consider some other timeframe?

7. Consumers are understandably frustrated when they receive robocalls and robotext messages days or even weeks following a request to stop such communications. Such delays also undermine a consumer’s right to determine which robocalls and robotexts they wish to receive under the privacy protections afforded by the TCPA. In addition, the Commission believes that advances in technology over the years, including automated and interactive technologies, have made the

processing of do-not-call and consent revocation requests more efficient and timely than in the past. The Commission believes that such technological advances provide callers and senders of text messages with the tools they need to process all do-not-call and consent revocation requests in near real time. The Commission seeks comment on these beliefs.

8. Consistent with the conditions imposed on other calls to wireless telephone numbers that are exempt from the prior-express-consent requirement, the Commission also proposes to amend its rules for exempted package delivery calls to require that such callers honor an opt-out request immediately. This proposal will place such callers on an equal footing with other categories of callers that have been granted an exemption to call wireless telephone numbers without prior express consent. Alternatively, is there any reason that package delivery calls should continue to be treated differently from other exempted callers to allow for up to 30 days to honor an opt-out request? The Commission believes these proposals will provide consumers with certainty that their do-not-call and consent revocation requests are honored in a timely manner, enhancing the ability of consumers to stop unwanted robocalls and robotexts. The Commission seeks comment on these proposals, including any burdens this may impose on callers, including small entities.

#### C. Revocation Confirmation Text Message

9. The Commission proposes to codify the *Soundbite Declaratory Ruling* clarifying that a one-time text message confirming a consumer's request that no further text messages be sent does not violate the TCPA or the Commission's rules as long as the confirmation text merely confirms the called party's opt-out request and does not include any marketing or promotional information, and the text is the only additional message sent to the called party after receipt of the opt-out request. In the *Soundbite Declaratory Ruling*, the Commission noted that "confirmation messages ultimately benefit and protect consumers by helping to ensure, via such confirmation, that the consumer who ostensibly opted out in fact no longer wishes to receive text messages from entities from whom the consumer previously expressed an affirmative desire to receive such messages." The Commission believes that codifying this ruling will better ensure that both text senders and recipients are aware of it, including the limitations imposed on such one-time confirmation text

messages. The Commission seeks comment on this proposal. In the time since it went into effect, have callers or consumers encountered any issues not addressed in the *Soundbite Declaratory Ruling*?

10. The Commission also proposes to codify that senders can include a request for clarification in the one-time confirmation text, provided the sender ceases all further robocalls and robotexts absent an affirmative response from the consumer that they wish to receive further communications from the sender. The Commission further propose that a lack of any response to the confirmation call or text must be treated by the sender as a revocation of consent for all robocalls and robotexts from the sender. It does so in response to Capital One's petition seeking confirmation that the text sender may request clarification in its one-time confirmation message of the scope of the recipient's revocation request when that recipient has consented to receiving multiple categories of informational messages from the sender. The Commission notes that banks and financial institutions support Capital One's request, indicating that consumers often consent to receive multiple categories of informational messages and that opt-out requests in these situations can be ambiguous as to whether the request applies to all or just certain types of those messages. Consumer groups have also expressed support for Capital One's request, provided that a lack of any response to the confirmation text message must be interpreted by the sender to mean that the consumer's revocation request was intended to encompass all robocalls and robotexts and the sender must therefore cease all further robocalls and robotexts to that consumer absent further clarification from the consumer. The Commission seeks further comment on any additional issues not fully addressed in the record.

11. Consistent with the *Soundbite Declaratory Ruling* and Capital One's request, the Commission proposes to codify that any such clarification message must not contain any marketing or advertising content or seek to persuade the recipient to reconsider their opt-out decision. Rather, this proposed clarification is strictly limited to informing the recipient of the scope of the opt-out request absent some further confirmation from the consumer that they wish to continue receiving certain categories of text messages from the sender. The Commission seeks comment on this limitation.

12. The Commission proposes to emphasize that this confirmation text

message is limited to a final one-time text message absent an affirmative response from the consumer that they wish to continue to receive certain categories of informational calls or text messages from the sender. The Commission proposes that, in the absence of any such affirmative response, no further robocalls or robotexts can be made to this consumer. In addition, the Commission proposes that a "STOP" text sent in response to the one-time request for confirmation does not then allow the text sender to send another request for further clarification. As noted above, both industry and consumer groups support this proposal. Does the record fully address the views of all parties?

13. The Commission seeks comment on these proposals and any other related issues, such as any impact on smaller entities. Is this the appropriate limit to put on the clarification from the *Soundbite Declaratory Ruling*? Are there other limitations the Commission should impose to protect consumers' rights to opt out of text messages yet ensure callers' ability to correctly interpret consumers' intent in revoking consent? Should the Commission instead decline to offer the clarification Capital One seeks?

#### D. Wireless Carrier Calls to Subscribers

14. The Commission proposes to require wireless providers to honor their customers' requests to cease autodialed, prerecorded voice, and artificial voice calls, and autodialed texts. To effectuate this change, the Commission proposes to alter our prior ruling to require wireless providers to subject such calls to certain conditions that protect the privacy interests of subscribers.

15. In 1992, the Commission concluded that wireless carriers need not obtain consent prior to initiating autodialed, artificial voice, or prerecorded voice calls to their own subscribers because such communications were not charged to the called party. See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90, Report and Order, published at 57 FR 48333, October 23, 1992. 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. As a result, the ability of wireless carriers to call their own subscribers without prior

express consent, where the consumer is not charged for the call, was based on the language of § 227(b)(1)(A)(iii) and was not a creation of a § 227(b)(2)(C) exemption; therefore, the Commission has not subjected this ability to conditions to protect the privacy rights of wireless subscribers that the Commission has imposed in other analogous situations where callers have been granted an exemption to make robocalls or send robotexts to wireless numbers without prior express consent.

16. This situation has created disagreements as to whether the Commission has authority to impose an opt-out requirement on communications from wireless service providers to their customers. Two wireless subscribers filed petitions seeking clarification that they can revoke consent to receive calls and messages from their wireless provider after such a request to stop such communications was denied by their wireless providers. In response to requests for comments on these petitions, wireless providers and organizations opposed the relief sought, arguing that the TCPA's prohibitions do not apply to communications from wireless providers to their customers because there is no charge to the subscribers for calls and messages to them. As a result, these commenters contend, there is no prior consent to be revoked because prior express consent is not required to make such calls under the TCPA. The Commission seeks comment on these considerations in the context of its proposed exemption.

17. The Commission proposes to revisit the 1992 ruling that "cellular carriers need not obtain additional consent from their cellular subscribers prior to initiating autodialer and artificial and prerecorded message calls for which the cellular subscriber is not charged." Instead of that blanket exemption for all wireless calls for which the subscriber is not charged, the Commission proposes to create and codify a qualified exemption—based on its authority under § 227(b)(2)(C)—for informational robocalls and robotexts from wireless providers to their subscribers. More specifically, those calls would be exempt from the prior-express-consent requirement if, and only if, certain conditions are satisfied. As noted, the Commission has exercised this statutory authority to recognize certain limited exemptions in other analogous situations where such calls also are made without a charge to the called party. The Commission notes that § 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 that requirement would be meaningless if all such calls or texts were deemed to be wholly outside the prior express consent requirement merely because they were free to the end user, as some wireless providers have argued. Consistent with § 227(b)(2)(C), which permits the Commission to impose such conditions it deems necessary in the interest of privacy, the Commission proposes conditions that are similar to those it imposed to protect the privacy interests of consumers in other situations where it has recognized an exemption from the prior-express-consent requirement for robocalls to wireless telephone numbers. The proposed conditions are as follows:

(A) voice calls and text messages are initiated by a wireless service provider only to an existing subscriber of that wireless service provider at a number maintained by the wireless service provider;

(B) voice calls and text messages must state the name and contact information of the wireless provider (for voice calls, these disclosures must be made at the beginning of the call);

(C) voice calls and text messages must not include any telemarketing, solicitation, or advertising;

(D) voice calls and text messages must be concise, generally one minute or less in length for voice calls or 160 characters or less in length for text messages;

(E) a wireless service provider may initiate a maximum of three voice calls or text messages during any 30-day period;

(F) a wireless service provider must offer recipients within each message an easy means to opt out of future such messages; voice calls that could be answered by a live person must include an automated, interactive voice- and/or key press-activated opt-out mechanism that enables the call recipient to make an opt-out request prior to terminating the call; voice calls that could be answered by an answering machine or voice mail service must include a toll-free number that the consumer can call to opt out of future calls; text messages must inform recipients of the ability to opt out by replying "STOP"; and,

(G) a wireless service provider must honor opt-out requests immediately.

18. The Commission believes such an exemption, subject to the conditions imposed above, balances the privacy interests of the TCPA with the legitimate interests of wireless providers in communicating with their own subscribers. And because the TCPA only restricts calls initiated with an

autodialer or using an artificial or prerecorded voice to a wireless telephone number, wireless providers can use a live agent or equipment that does not constitute an autodialer to make such calls or send texts without running afoul of the TCPA. In addition, the Commission proposes that wireless providers have the option to obtain the prior express consent of their subscribers to avoid the need to rely on this exemption and its accompanying conditions, including the numerical limits imposed on such exempted calls. The Commission seeks comment on these conditions. Are further conditions needed for calls from a wireless service provider to its subscribers? Alternatively, the Commission seeks comment on any benefits consumers receive from calls or messages that may be lost as a consequence of an opt-out or limit on the number of calls or messages sent. Are there any potential drawbacks for consumers to the conditions proposed? If so, should the Commission modify its proposed conditions to account for any such drawbacks?

19. Lastly, the Commission believes such an exemption satisfies the obligations of § 8 of the TRACED Act. Specifically, the class of parties that may make such exempted calls in these situations is strictly limited to the wireless service provider. The class of parties that may be called is limited to an existing subscriber of a wireless service provider, and the number of such calls and messages is limited to three calls within any 30-day period. To the extent that there are any calls or texts that wireless service providers are mandated to make to their subscribers pursuant to any federal or state law, the Commission seeks comment on whether such calls or texts should not be counted toward the numerical limit of such communications that are imposed in the 30-day timeframe. The Commission seeks comment on this proposal, including any burdens this proposal may impose on wireless providers, including small entities.

#### *E. Legal Authority*

20. The Commission tentatively concludes that its legal authority for the proposed rules contained herein derives from §§ 154 and 227 of the Communications Act of 1934, as amended (the Act). The Commission further proposes to rely on its authority under § 8 of the TRACED Act to establish limitations on the proposed exemption for wireless providers from the TCPA's prior-express-consent requirement. As discussed above, the Commission as the expert agency on the

TCPA has addressed issues relating to prior express consent by robocall consumers on numerous occasions. The Commission believes that these sources grant it sufficient authority to adopt the proposed rules contained herein, and it seeks comment on this conclusion. Are there any other sources of legal authority the Commission should rely on? Do any of these sources of authority not apply to the rules it proposes?

#### F. Proposed Effective Date

21. The Commission proposes that the rule changes set forth herein go into effect upon publication of an Order in the **Federal Register**, or for those rules that require OMB review under the Paperwork Reduction Act, upon OMB approval and publication of the notice of approval in the **Federal Register**. The Commission seeks comment on whether this proposed timeline provides a sufficient opportunity for affected parties to comply with any new requirements imposed by the proposed rules or whether a longer implementation period is warranted. The Commission also seeks comment on whether these effective dates should be the same for all affected parties, or whether it should provide more time for small entities to comply.

#### Initial Regulatory Flexibility Analysis

22. 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 and rules proposed in this *Notice of Proposed Rulemaking* (NPRM). 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 on the NPRM provided on the first page of this document. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

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

23. The NPRM seeks comment on proposals to clarify and strengthen the right of consumers to grant or revoke consent to receive robocalls and robotexts under the TCPA. Under the Telephone Consumer Protection Act of 1991 (TCPA), certain types of calls and texts may only be sent with the prior express consent of the called party. The

ability of consumers to exercise this right to provide or revoke consent is essential to protecting the privacy rights of consumers by allowing them to decide which callers may communicate with them via robocalls and robotexts.

24. The NPRM proposes to codify prior Commission rulings and adopt new requirements to ensure that the requirements relating to providing or revoking consent under the TCPA are clear to both callers and consumers. Specifically, the NPRM proposes to make clear that consumers may revoke prior express consent in any reasonable manner that clearly expresses a desire not to receive further calls or text messages, including using words such as “stop,” “revoke,” “end,” or “opt out,” and that callers may not infringe on that right by designating an exclusive means to revoke consent that precludes the use of any other reasonable method. The NPRM also proposes to require that callers honor do-not-call and revocation requests within a reasonable time not to exceed 24 hours of receipt. Further, the NPRM reiterates that consumers only need to revoke consent once to stop getting all calls and texts from a specific entity. It also proposes to codify that a one-time text message confirming a consumer’s request that no further text messages be sent does not violate the TCPA or the Commission’s rules as long as the confirmation text merely confirms the called party’s opt-out request, does not include any marketing or promotional information, and the text is the only additional message sent to the called party after receipt of the opt-out request. Finally, the NPRM proposes to require wireless providers to honor a customer’s request to cease autodialed, prerecorded voice, and artificial voice calls, and automated texts.

#### B. Legal Basis

25. The proposed rules are authorized under §§ 4(i), 4(j), and 227 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 227, and § 8 of the TRACED Act.

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

26. 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 rules adopted herein. 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.

27. *Small Businesses, Small Organizations, Small Governmental Jurisdictions*. The Commission’s actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes, 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 32.5 million businesses.

28. 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.

29. 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, the Commission estimates that at least 48,971 entities fall into the category of “small governmental jurisdictions.”

30. *Telemarketing Bureaus and Other Contact Centers*. This industry

comprises establishments primarily engaged in operating call centers that initiate or receive communications for others-via telephone, facsimile, email, or other communication modes-for purposes such as (1) promoting clients products or services, (2) taking orders for clients, (3) soliciting contributions for a client, and (4) providing information or assistance regarding a client's products or services. These establishments do not own the product or provide the services they are representing on behalf of clients. The SBA small business size standard for this industry classifies firms having \$16.5 million or less in annual receipts as small. According to U.S. Census Bureau data for 2017, there were 2,250 firms in this industry that operated for the entire year. Of this number 1,435 firms had revenue of less than \$10 million. Based on this information, the majority of firms in this industry can be considered small under the SBA small business size standard.

31. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA 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 in this industry that operated for the entire year. Of that 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*

32. In cases where consumers invoke their right to grant or revoke consent to small entity callers to receive robocalls and robotexts under the TCPA, these callers may need to implement new methods to record and track such requests to honor them within the specified timeframes. At this time

however, the Commission is not in a position to determine whether, if adopted, its proposals and the matters upon which it seeks comment will require small entities to hire professionals to comply, and cannot quantify the cost of compliance with the potential rule changes discussed herein. It anticipates the information it receives in comments including where requested, cost and benefit analyses, will help the Commission identify and evaluate additional relevant compliance matters for small entities, including compliance costs and other burdens that may result from the proposals and inquiries it makes in the *NPRM*.

#### *E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

33. The RFA requires an agency to describe any significant alternatives, specifically small business alternatives, that it has considered in reaching its proposed 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) an exemption from coverage of the rule, or any part thereof, for such small entities.”

34. The *NPRM* specifically seeks comment on any costs or burdens imposed on callers to implement any of the proposals set forth in the *NPRM* which could help the Commission identify burdens for small entities and other actions that can be taken to minimize impact on small entities. For example, the *NPRM* proposes and seeks comment on what constitutes a “reasonable” manner to revoke consent, noting that it is not without limitation. An alternative consideration is whether callers will have an opportunity to demonstrate that a consumer has not used a reasonable means to convey their revocation of consent request. Allowing this flexibility may reduce the burden on small entities' ability to respond to process revocation requests. The *NPRM* considers any compliance costs for small businesses if the proposed rules are adopted and seeks comment on ways to minimize any such burdens. The *NPRM* also proposes that callers must honor do-not-call and revocation requests within 24-hours, and seeks comment on whether other timeframes should be considered, including whether small entities may benefit from

longer timeframes to implement these requests. Many of the requirements noted in the *NPRM* have been adopted by the Commission in rulings that date back many years. As a result, the Commission anticipates that many callers have already made efforts to comply with these obligations and may have no new burdens.

35. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the *NPRM* and this IRFA, in reaching its final conclusions and taking action in this proceeding.

#### *F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

36. None.

#### **List of Subjects in 47 CFR Part 64**

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison Officer.*

#### **Proposed Rules**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 64 as follows:

#### **PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

■ 1. The authority citation for part 64 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 617, 620, 1401–1473, unless otherwise noted; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

#### **Subpart L—Restrictions on Telemarketing, Telephone Solicitations, and Facsimile Advertising**

■ 2. Section 64.1200 is amended by revising paragraph (a)(9)(i)(F) and adding paragraphs (a)(9)(v), (10), and (11) and revising paragraph (d)(3) to read as follows:

#### **§ 64.1200 Delivery restrictions.**

\* \* \* \* \*

(a) \* \* \*

(9) \* \* \*

(i) \* \* \*

(F) The package delivery company must offer package recipients the ability to opt out of receiving future delivery notification calls and messages and

must honor an opt-out request immediately; and,

\* \* \* \* \*

(v) Calls made by a wireless service provider to an existing subscriber, provided that all of the following conditions are met:

(A) voice calls and text messages are initiated by a wireless service provider only to an existing subscriber of that wireless service provider at a number maintained by the wireless service provider;

(B) voice calls and text messages must state the name and contact information of the wireless provider (for voice calls, these disclosures must be made at the beginning of the call);

(C) voice calls and text messages must not include any telemarketing, solicitation, or advertising;

(D) voice calls and text messages must be concise, generally one minute or less in length for voice calls or 160 characters or less in length for text messages;

(E) a wireless service provider may initiate a maximum of three voice calls or text messages during any 30-day period;

(F) a wireless service provider must offer recipients within each message an easy means to opt out of future such messages; voice calls that could be answered by a live person must include an automated, interactive voice- and/or key press-activated opt-out mechanism that enables the call recipient to make an opt-out request prior to terminating the call; voice calls that could be answered by an answering machine or voice mail service must include a toll-free number that the consumer can call to opt out of future calls; text messages must inform recipients of the ability to opt out by replying "STOP"; and,

(G) a wireless service provider must honor opt-out requests immediately.

\* \* \* \* \*

(10) A called party may revoke prior express consent, including prior express written consent, to receive calls or text messages made pursuant to paragraphs

(a)(1) through (3) of this section by using any reasonable method to clearly express a desire not to receive further calls or text messages from the caller or sender. The use of text message, voicemail, or email to any telephone number or email address at which the consumer can reasonably expect to reach the caller to revoke consent creates a rebuttable presumption that the consumer has revoked consent absent evidence to the contrary. The sending of "STOP" or a similar text message that reasonably conveys a desire to not receive further messages in reply to an incoming text message creates a presumption that the consumer has revoked consent in a reasonable way. Callers or senders of text messages covered by paragraphs (a)(1) through (3) of this section may not designate an exclusive means to request revocation of consent. Should the text initiator choose to use a texting protocol that does not allow reply texts, it must provide a clear and conspicuous disclosure on each text to the consumer that two-way texting is not available due to technical limitations of the texting protocol, and clearly and conspicuously provide reasonable alternative ways to revoke consent. All requests to revoke prior express consent or prior express written consent made in any reasonable manner must be honored in a reasonable time not to exceed 24 hours from receipt of such request.

(11) A one-time text message confirming a request to revoke consent from receiving any further text messages does not violate paragraphs (a)(1) through (2) of this section as long as the confirmation text merely confirms the text recipient's revocation request and does not include any marketing or promotional information, and is the only additional message sent to the called party after receipt of the revocation request. To the extent that the text recipient has consented to several categories of text messages from the text sender, the confirmation message may request clarification as to

whether the revocation request was meant to encompass all such messages; the sender must cease all further texts absent further clarification that the recipient wishes to continue to receive certain text messages.

\* \* \* \* \*

(d) \* \* \*

(3) *Recording, disclosure of do-not-call requests.* If a person or entity making an artificial or prerecorded-voice telephone call pursuant to an exemption under § 64.1200(a)(3)(ii) through (v) or any call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name, if provided, and telephone number on the do-not-call list at the time the request is made. Persons or entities making such calls (or on whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. This period may not exceed 24 hours from the receipt of such request. If such requests are recorded or maintained by a party other than the person or entity on whose behalf the call is made, the person or entity on whose behalf the call is made will be liable for any failures to honor the do-not-call request. A person or entity making an artificial or prerecorded-voice telephone call pursuant to an exemption under § 64.1200(a)(3)(ii) through (v) or any call for telemarketing purposes must obtain a consumer's prior express permission to share or forward the consumer's request not to be called to a party other than the person or entity on whose behalf a call is made or an affiliated entity.

\* \* \* \* \*

[FR Doc. 2023-13821 Filed 6-28-23; 8:45 am]

BILLING CODE 6712-01-P