

FCC Seeks Comment on Petition to Rule on Text Messages

April 2, 2012

The FCC has issued a [notice](#) seeking public comment on a petition filed in February by SoundBite Communications seeking a declaratory ruling on text messaging. SoundBite asked FCC to issue a ruling that sending a one-time text message to confirm a consumer's request that no further messages be sent does not violate the Telephone Consumer Protection Act ("TCPA") or the FCC's implementing regulations.

Under the TCPA, a person is prohibited from making non-emergency calls, including sending text messages, with an automatic telephone dialing system or an artificial or pre-recorded voice to a cell phone without prior consent. Industry best practice includes confirming receipt of an opt-out request via text message. However, several companies, including SoundBite, are the subject of class action lawsuits for sending the confirmations. SoundBite has asked FCC to expedite a declaratory ruling on the matter on the grounds that the confirmation messages are sent within the grace period established by FCC and that SoundBite does not use an automatic dialing system, as that term is defined in the TCPA. All companies that follow the same practice of sending confirmation of an opt-out request via text message should review the FCC notice and decide whether to comment on the petition. Comments are due to FCC by May 15, 2012.