

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

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

Comments of Consumer Action

Consumer Action¹ is writing to comment on the petition of SoundBite Communications seeking a declaratory ruling that sending a one-time text message confirming a consumer’s request to stop text messages is not in violation of the Telephone Consumer Protection Act (TCPA) and FCC rules.

Consumer Action is fully supportive of the TCPA and Commission ban on non-emergency calls using auto-dialing systems, artificial or prerecorded voice calls and mobile texts (including short message service, or SMS) to cellular telephone numbers without the prior express consent of the recipient. However, we welcome the petition as an opportunity to clarify the rules—and in the process strengthen consumer rights and protections for mobile phone users.

As a preface to our comments, we wish to provide a general organizational viewpoint with particular pertinence to the SoundBite petition. It is common knowledge that SoundBite has implemented this petition based on the fact that several companies, including SoundBite, are faced with class action lawsuits over one-time confirmation messages sent to consumers who have opted out of receiving future text messages. We wish to emphasize that our comments seek to clarify and strengthen the rules *going forward* and that there should be nothing issued that provides retroactive relief from litigation. In the often imperfect world of consumer protection and an environment of limited resources for civil and criminal law enforcement, class action attorneys play a vital role in representing and delivering justice for consumers in the courts and by establishing legal precedent that improves and clarifies consumer protections for the benefit of all consumers.

Under the FCC’s rules, commercial text messages may only be sent to wireless devices when phone owners have provided “express prior authorization.” *Text messages must never be sent to a consumer (recipient) who has not provided such written authorization.* In addition, if a consumer

¹ *Consumer Action has been a champion of underrepresented consumers nationwide since 1971. A nonprofit 501(c)3 organization, Consumer Action focuses on financial education that empowers low to moderate income and limited-English-speaking consumers to financially prosper. By participating in the national advocacy process, we bring the needs of the underrepresented consumers to the attention of lawmakers. We advance the rights of all consumers by promoting industry-wide change.*

provides permission to receive text messages for a specific reason, such as to learn of updates to software or services, texts should be restricted to that exact purpose, and no other. When the purpose has been fulfilled, the texts should stop automatically. A mechanism to easily revoke permission should be listed in each text message. (To ensure that consumers really want the confirmatory message, companies could offer an alternate STOP code, which would provide permission to send the one-time confirmatory message.)

Consumer Action views a one-time text message confirming a consumer's request to "opt out" as a good practice. We believe this confirmatory message should be sent free-of-charge to the recipient (free-to-end-user).

We liken a confirmatory text message to a receipt, or evidence that a transaction has occurred. This message provides an opportunity to provide the consumer who has opted out with an affirmative record that his or her preferences have been honored. We believe that the confirmatory message should contain contact information for complaints in the text messages fail to stop coming. Just saving the outgoing STOP message does not provide proof of delivery.

We suggest that these consumer friendly practices should be followed at all times, ensuring that the confirmatory text message should:

- Never, ever contain marketing materials or exert any influence to try to get the recipient to opt back in.
- Be sent *immediately* in reply to the consumer opt out.
- Be free-to-end-user.
- Contain clear and concise information on how to complain if the messages do not stop.
- State unequivocally that no further texts would be sent.
- Be the *last and final message* sent to the consumer (recipient).

A key tenet of the TCPA is that consumers should not sent unsolicited communications and especially in a manner that will cost them money. We emphasize that unwanted text messages place a cost burden *even* on consumers who pay a monthly fee for unlimited text plans. Subscribers on unlimited SMS plans are no less cost sensitive—or impacted by the cost of unwanted texts—than those who pay per message.

Thank you for the opportunity to weigh in on this petition.

Sincerely,



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