

**Before the  
FEDERAL COMMUNICATIONS COMMISSION**

**Washington, D.C. 20554**

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In the Matter of )

SoundBite Communications, Inc. )

Petition for Declaratory Ruling )

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CG Docket No. CG 02-278

To: The Commission

**COMMENTS OF SOUNDBITE COMMUNICATIONS, INC.**

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Dated: April 30, 2012

## EXECUTIVE SUMMARY

SoundBite requests that the Federal Communications Commission declare that in the limited and narrow circumstances when a subscriber sends a text message choosing to opt-out of receiving future text messages from a SoundBite client, and a one-time immediate reply is sent back via text message to that customer confirming the opt-out request, that confirmation message is not a violation of the Telephone Consumer Protection Act or Section 64.1200 of the Commission's rules.

Unfortunately, SoundBite and other companies have been targeted with multi-million dollar class action lawsuits based, at least in part, on these one-time confirmation messages. The lawsuits allege that a one-time confirmation text message, sent to confirm an opt-out, is a violation of the TCPA. As a result of these lawsuits, and additional lawsuits that have been threatened, companies that lawfully utilize mobile marketing strategies to sustain and grow their businesses are exposed to hundreds of millions of dollars of potential liability, and that exposure is growing by the day.

A one-time confirmation text message, sent within minutes of receipt of the request, and sent only to the consumer requesting the opt-out, is not a violation of the TCPA or the Commission's rules. Such messages fall under the grace period that the FCC has applied to TCPA opt-out requests. They are targeted messages and are not sent through an automatic telephone dialing system. Furthermore, such confirmation messages are in the public interest and consistent with sound public policy, as reflected by the fact that a wide range of government, political and other organizations send confirmatory text messages to consumers that opt-out of receiving future text messages. In addition, at least one Attorney General has actually required a wireless service provider to abide by MMA guidelines, which also require mobile marketing service providers to send a one-time, opt-out confirmation text message.

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**COMMENTS OF SOUNDBITE COMMUNICATIONS, INC.**

SoundBite Communications, Inc. (“SoundBite”), through counsel, submits these comments supporting its Petition for Expedited Declaratory Ruling (“Petition”) in the above referenced proceeding.<sup>1</sup> SoundBite requests that the Federal Communications Commission (“Commission” or “FCC”) declare that in the limited and narrow circumstances when a subscriber sends a text message choosing to opt-out of receiving future text messages from a SoundBite client, and a one-time immediate reply is sent back via text message to that customer confirming the opt-out request, that confirmation message is not a violation of the Telephone Consumer Protection Act (“TCPA”)<sup>2</sup> or Section 64.1200 of the Commission’s rules.<sup>3</sup> The

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<sup>1</sup> *SoundBite Communications, Inc.*, Petition for Expedited Declaratory Ruling, CG Docket No. 02-278 (filed Feb. 16, 2012) (“Petition”).

<sup>2</sup> Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227 (2000 & Supp. 2005) (“TCPA”).

<sup>3</sup> 47 C.F.R. § 64.1200.

Commission released a Public Notice on March 30, 2012 seeking comment on SoundBite's Petition.<sup>4</sup>

Unfortunately, SoundBite and other companies have been targeted with multi-million dollar class action lawsuits based, at least in part, on these one-time confirmation messages. The lawsuits allege that a one-time confirmation text message, sent to confirm an opt-out, is a violation of the TCPA. In fact, there have been at least twelve lawsuits filed on this matter, including against well known companies such as Red Box, American Express, Barclay's Bank, Citibank, Nascar, and the National Football League.<sup>5</sup> As a result of these lawsuits, and additional lawsuits that have been threatened, companies that lawfully utilize mobile marketing strategies to sustain and grow their businesses are exposed to hundreds of millions of dollars of potential liability, and that exposure is growing by the day.

SoundBite respectfully requests the FCC issue a very narrow declaration that a one-time confirmation text message, sent within minutes of receipt of the request, and sent only to the consumer requesting the opt-out, is not a violation of the TCPA or the Commission's rules.<sup>6</sup> As

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<sup>4</sup> *Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Expedited Declaratory Ruling From SoundBite Communications, Inc.*, Public Notice, CG Docket No. 02-278, DA 12-511 (rel. Mar. 30, 2012).

<sup>5</sup> See e.g., *Emanuel v. NFL Enterprises, LLC*, 11-cv-1781 (S.D. Cal.); *Gutierrez et al. v. Barclays Group et al.*, Case No. 10-cv-1012 (S.D. Cal.); *Holt v. Redbox Automated Retail, LLC*, Case No. 11-cv-3046 (S.D. Cal.); *Jaber v. Nascar Holdings, Inc.*, Case No. 11-cv-1783 (S.D. Cal.); *Lo v. Oxnard European Motors, LLC et al.*, Case No. 11-cv-1009 (S.D. Cal.); *Maleksaeedi v. American Express Centurion Bank*, Case No. 11-cv-790 (S.D. Cal.); *Ryabyshchuk v. Citibank*, Case No. 11-cv-1236 (S.D. Cal.).

<sup>6</sup> When a SoundBite client receives an opt-out request from an individual subscriber, SoundBite processes that request and, as recommended by the MMA, and as required by the wireless operators, sends a one-time confirmation text message to that individual subscriber within minutes of receipt of the opt-out request. The reply message confirms that the request was received and that the subscriber requesting the opt-out will no longer receive text messages from that company. See Petition at 2-3.

explained in more detail below, such messages fall under the grace period that the FCC has applied to TCPA opt-out requests. They are targeted messages and are not sent through an automatic telephone dialing system. Furthermore, such confirmation messages are in the public interest and consistent with sound public policy, as reflected by the fact that a wide range of government, political and other organizations send confirmatory text messages to consumers that opt-out of receiving future text messages. In addition, at least one Attorney General has actually required a wireless service provider to abide by MMA guidelines, which also require mobile marketing service providers to send a one-time, opt-out confirmation text message.<sup>7</sup>

#### **I. SENDING ONE-TIME CONFIRMATION TEXT MESSAGES IS CONSISTENT WITH GOOD PUBLIC POLICY**

Opt-out confirmations are consistent with good consumer policy and promote the public interest. The FCC itself has expressed the importance of consumers receiving some type of confirmation that a company has received their opt-out request, specifically emphasizing that telemarketers should confirm that they have recorded a confirmation request at the time the consumer makes an opt-out request:

We decline at this time to require telemarketers to make available a toll-free number or website that would allow consumers to register company-specific do-not-call requests or verify that such a request was made with the marketer. We also decline to require telemarketers to provide a means of confirmation so that consumers may verify their requests have been processed at a later date. Telemarketers should, however, confirm that any such request will be recorded at the time the request is made by the consumer.<sup>8</sup>

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<sup>7</sup> See Section I of these Comments for a discussion of the agreement between the Florida Attorney General and Verizon Wireless. *In the Matter of Verizon Wireless Services LLS & Alltel Communications, LLC*, CASE NO. L08-3-1035 (June 19, 2009) (Assurance of Voluntary Compliance) available at [http://myfloridalegal.com/webfiles.nsf/WF/KGRG-7TAJQ2/\\$file/VerizonAVC.pdf](http://myfloridalegal.com/webfiles.nsf/WF/KGRG-7TAJQ2/$file/VerizonAVC.pdf).

<sup>8</sup> See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, FCC 03-153, 18 FCC Rcd 14014, ¶ 93 (2003) ("2003 TCPA Order") (emphasis added).

In fact, a wide range of government, political and other organizations also send opt-out confirmations when consumers request to be excluded from future text messaging campaigns, reflecting that this is good public policy. These groups include:

- American Automobile Association (AAA)
- Center for Disease Control and Prevention
- Chicago Transit Authority
- Federal Emergency Management Agency
- Fish and Wildlife Service
- History Channel
- National Healthy Mothers, Healthy Babies Coalition
- Obama for America
- Romney for President
- United States Government (USA.gov)

In addition, some organizations send text messages to consumers' mobile devices via Twitter and invite consumers through the organization's website to participate in these campaigns. These groups include, but are not limited to, AARP, Black Entertainment Television, Consumers Union, the Federal Communications Commission, National Association of Consumer Advocates, National Consumers League, and National Trial Lawyers. Similar to the SMS campaigns identified above, confirmation text messages also are sent when consumers opt-out of these Twitter-based campaigns.

Attached to these Comments as Exhibit A are screenshots of opt-out confirmation text messages sent for each of the above organizations.<sup>9</sup> Obviously, these consumer groups, political campaigns, government agencies, and businesses would not send a one-time confirmatory text message if they believed that doing so was unlawful or anti-consumer.

The Mobile Marketing Association (“MMA”), in conjunction with all major mobile operators in the United States, has emphasized that opt-out confirmations are good, consumer-friendly practices. The MMA published the Consumer Best Practices as a guideline for business usage of text messaging. Pursuant to these Consumer Best Practices, when a company receives an opt-out request via text, the phone number must be opted-out of the system and the program must respond with a confirmation text message stating that the consumer has been opted-out of the campaign and will no longer receive any messages from that entity.<sup>10</sup> In addition, the CTIA Compliance Monitoring and Enforcement Playbook, which serves as the basis for industry audits of SMS text messages, specifically lists “[f]ailure to confirm service termination” in response to a user opt-out message as a compliance violation.<sup>11</sup>

In fact, the MMA guidelines formed a central pillar of an agreement between the State of Florida and Verizon Wireless following an investigation into third-party mobile marketing

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<sup>9</sup> See also Exhibit B, Declaration of David Schwind (attesting, under penalty of perjury, that the facts contained in Exhibit A are known to him and are accurate).

<sup>10</sup> See Mobile Marketing Association, U.S. Consumer Best Practices, Version 6.0, § 1.6-4 (March 1, 2011), available at <http://mmaglobal.com/bestpractices.pdf>. (“MMA Best Practices”) (“When STOP, or any of the opt-out keywords above, is sent to a program, the program must respond with an MT [mobile-terminated] message, whether or not the subscriber is subscribed to the program.”).

<sup>11</sup> CTIA Compliance Monitoring and Enforcement Playbook (Oct. 25, 2011), available at [http://www.wmcglobal.com/images/CTIA\\_playbook.pdf](http://www.wmcglobal.com/images/CTIA_playbook.pdf).

practices.<sup>12</sup> The Florida Attorney General explicitly required Verizon Wireless to contractually bind companies that provide mobile marketing services over Verizon Wireless' mobile network, including text message campaigns, to abide by practices "consistent with the MMA Guidelines," which include sending a confirmatory message when a consumer opts out of a marketing program.

The mobile industry has widely endorsed opt-out confirmation text messages as a best practice, as a superior consumer experience, and as being compliant with federal and state laws. CTIA (which has represented the wireless communications industry since 1984), in its testimony before the House Subcommittee on Communications & Technology regarding the Mobile Informational Call Act of 2011, stated:

As with efforts to obtain express consent and protect user privacy through the use of double opt-in mechanisms, acknowledging receipt of a "STOP" message by sending the customer a text message is a reasonable business practice that provides consumers with confirmation that their request has been received, and those who employ it should not become targets for litigation.<sup>13</sup>

Moreover, such one-time confirmation text messages are not inconsistent with the purpose of the TCPA. As the FCC explained, the TCPA was enacted to eliminate calls that cause consumers to feel annoyed by "hang-ups" or "dead air," or feel "frightened, threatened and harassed."<sup>14</sup> The TCPA also was enacted to protect the public from unwanted privacy intrusions and from disruptions to essential public safety services caused by random or sequential number

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<sup>12</sup> See *In the Matter of Verizon Wireless Services LLS & Alltel Communications, LLC*, CASE NO. L08-3-1035 (June 19, 2009) (Assurance of Voluntary Compliance) available at [http://myfloridalegal.com/webfiles.nsf/WF/KGRG-7TAJQ2/\\$file/VerizonAVC.pdf](http://myfloridalegal.com/webfiles.nsf/WF/KGRG-7TAJQ2/$file/VerizonAVC.pdf).

<sup>13</sup> House Energy and Commerce Subcommittee on Communications & Technology Hearing, "H.R. 3035, The Mobile Informational Call Act of 2011," Testimony of Michael Altschul, General Counsel, CTIA (November 4, 2011).

<sup>14</sup> 2003 TCPA Order, ¶ 2 (emphasis added).

generators jamming PBXs and flooding local exchanges.<sup>15</sup> None of these concerns are implicated by an isolated one-time confirmation text message.

## **II. SOUNDBITE’S CONFIRMATION TEXT MESSAGES FALL UNDER THE APPLICABLE GRACE PERIOD FOR TCPA OPT-OUT REQUESTS**

The Commission allows telemarketers up to 30 days after an opt-out request is made to remove the phone numbers from their systems.<sup>16</sup> The FCC has stated that text messages are “calls” under the TCPA.<sup>17</sup> Because the FCC treats texts as calls, the 30-day grace period for opt-out requests that the FCC applies to voice calls must equally apply to text messages. It is also reasonable for the FCC to take into account that because a system processing text opt-out requests may work more quickly than a voice-based system, a shorter time period could apply. In choosing 30 days as the appropriate grace period for calls, the FCC took into account the varying capabilities of different entities, depending on their size:

[W]e decline to amend the timeframe by which telemarketers must honor do-not-call requests. In concluding that telemarketers must honor such requests within 30 days, we considered both the large databases of such requests maintained by some entities and the limitations on certain small businesses. We also determined

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<sup>15</sup> See S. REP. NO. 102-178 at 5 reprinted in 1991 U.S.C.C.A.N. 1968, 1972-73 (1991) (“The Committee believes that Federal legislation is necessary to protect the public from automated telephone calls. These calls can be an invasion of privacy, an impediment to interstate commerce, and a disruption to essential public safety services.”).

<sup>16</sup> See 2003 TCPA Order, Appendix B, ¶ 32 (“[W]e determined to require that both large and small businesses must honor do-not-call requests within 30 days from the date such a request is made, instead of requiring that businesses honor requests in less time.”) (emphasis added); see also FCC Guide: Unwanted Telephone Marketing Calls, *available at* <http://www.fcc.gov/guides/unwanted-telephone-marketing-calls> (“Telemarketers covered by the National Do-Not-Call Registry have up to 31 days from the date that you register your telephone number to remove it from their call lists and stop calling you.”) (emphasis added).

<sup>17</sup> See 2003 TCPA Order, ¶ 165.

that telemarketers with the capability to honor company-specific do-not-call requests in less than thirty days must do so.<sup>18</sup>

The FCC also chose to apply a 30-day grace period for opt-out requests related to facsimiles: “[T]he recipient may make a request to the sender of the advertisement not to send any future advertisements to a telephone facsimile machine or machines and that failure to comply, within 30 days, with such a request meeting the requirements under paragraph (a)(3)(v) is unlawful.”<sup>19</sup>

SoundBite defers to the FCC regarding what would be the appropriate grace period for text messages. Whatever grace period the FCC ultimately chooses to apply to text messages, SoundBite seeks an immediate declaration that the one-time confirmation text message that SoundBite sends within minutes of receiving an opt-out request should fall within the applicable grace period.

### **III. SOUNDBITE’S CONFIRMATION TEXT MESSAGES ARE NOT SENT USING AN AUTOMATIC TELEPHONE DIALING SYSTEM**

The lawsuits allege that because SoundBite and its client companies send an automatic confirmation to subscribers requesting an opt-out, the confirmation messages are sent through an "automatic telephone dialing system" as defined by the TCPA. This is incorrect. As explained below, the system used by SoundBite to send opt-out confirmations is not an "automatic telephone dialing system." Accordingly, there is no violation of the TCPA or the Commission's rules.

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<sup>18</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Second Order on Reconsideration, FCC 05-28, 20 FCC Rcd 3788, ¶ 22 (2005) (“2005 TCPA Second Order on Reconsideration”).

<sup>19</sup> 47 C.F.R. § 64.1200(a)(3)(iii)(B) (emphasis added).

Pursuant to the TCPA and the Commission’s implementing rules, calls made to a wireless telephone number using an automatic telephone dialing system are prohibited:

It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States—

(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice— . . .

(iii) 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; . . .<sup>20</sup>

An automatic telephone dialing system is “equipment which has the capacity (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers.”<sup>21</sup> SoundBite’s automatic confirmatory response does not have the capacity to “store or produce telephone numbers to be called, using a random or sequential number generator.”<sup>22</sup> The software used to send SoundBite’s confirmation text messages to those individuals requesting an opt-out does not allow random or sequential calls. The software only allows confirmation messages to those consumers specifically requesting an opt-out.

The FCC has specifically recognized that it must evaluate capacity in the context of hardware as it is programmed with software.<sup>23</sup> For the SoundBite system, when a consumer replies to a text with “STOP” or other appropriate opt-out keyword from their mobile device, the

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<sup>20</sup> 47 U.S.C § 227(b)(1)(A)(iii); *see also* 64.1200(a)(1)(iii).

<sup>21</sup> 47 U.S.C. § 227(a)(1); 64.1200(f)(1).

<sup>22</sup> *See* Exhibit C, Declaration of John Tallarico (attesting, under penalty of perjury, that the facts contained therein are known to him and are accurate).

<sup>23</sup> 2003 TCPA Order at ¶ 131 (“The hardware, when paired with certain software, has the capacity to store or produce numbers and dial those numbers at random, in sequential order, or from a database of numbers.”).

SoundBite system receives the stop request along with the mobile number from which it originated. The system is programmed to put the individual number on a separate list (a type of “do not text” list), with a one-time confirmation text message sent only to that number. The SoundBite system has absolutely no capacity to store, look-up, or dial in any random or sequential order. There is only a precise, one-time response to an individual subscriber’s opt-out text message request that is individually targeted only to the specific device through which the opt-out request was made.

Moreover, the FCC has explained that calling numbers that are “not generated in a random or sequential fashion” falls outside the TCPA’s prohibitions.<sup>24</sup> The individual confirmation messages sent by SoundBite through its system are not generated in any random or sequential fashion. These are immediate replies sent directly to those individual consumers requesting the opt-out, acknowledging and confirming their opt-out request.

In summary, the SoundBite system does not have the capacity to generate and send confirmations of opt-out requests in a random or sequential order; nor are the opt-out confirmations either random or sequential. Accordingly, SoundBite’s confirmations do not violate the TCPA.

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<sup>24</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, FCC 92-443, 7 FCC Rcd 8752, ¶ 47 (1992) (“*1992 TCPA Order*”) (stating that the prohibitions of the TCPA “clearly do not apply to functions like ‘speed dialing,’ ‘call forwarding,’ or public telephone delayed message services (PTDMS) because the numbers called are not generated in a random or sequential fashion.”).

**IV. CONCLUSION**

The type of immediate, one-time reply messages sent by SoundBite to confirm a subscriber's opt-out request is consistent with the TCPA and consistent with the public interest. SoundBite respectfully requests an expedited declaratory ruling that such messages do not violate the TCPA.

Respectfully submitted,

SoundBite Communications, Inc.

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Its Counsel

Dated: April 30, 2012

**Exhibits**

- A. Confirmation Text Messages
- B. Declaration of David Schwind
- C. Declaration of John Tallarico

# **EXHIBIT A**

## **Exhibit A: Confirmation Text Messages**

This document outlines the process that I, David Schwind (Manger – Mobile Solutions of SoundBite Communications, Inc.) took to identify sms campaigns, opt-in to them via a web site, or via a keyword, and then opt out of the campaign. This document will specifically describe where it is I found instructions for opting in to the program and it will provide screen shots of the opt-out confirmation I received after I opted out of the program. This document will also show how I used Twitter to follow organizations on my mobile phone and how I used Twitter keywords to opt-out of receiving text messages from those organizations. I used a program called “Android Screen Capture” to capture the cell phone text messaging experience.

### Table of Contents:

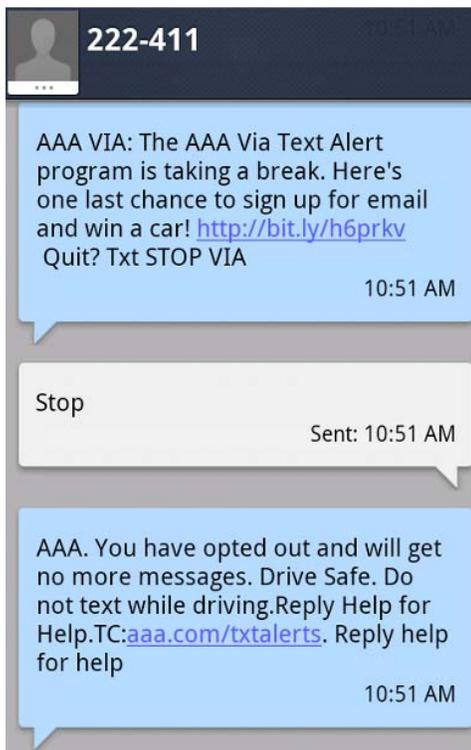
AAA Mobile Alerts	Page 2
AARP	Page 3
Black Entertainment Television	Page 4
Center for Disease Control and Prevention (Folic Acid)	Page 5
Center for Disease Control and Prevention (Health Tips)	Page 6
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## AAA Mobile Alerts

On April 25, 2012 I searched the Internet for AAA Mobile Alerts. My search took me to an AAA website whereby it outlines how to sign up for mobile text message alerts from AAA. Following the instructions on this website, I texted in the keyword "VIA" to the short code 222411 in order to receive updates from AAA. I subsequently received a confirmation text message from AAA Via alerts signifying I successfully signed up for the text message service. I then texted in "STOP" to the short code 222411 and received an opt-out confirmation text message noting that I have opted out and will not receive any further messages from AAA.

AAA Mobile Alerts website: <http://aaatxtalerts.sofmen.com/index.htm>

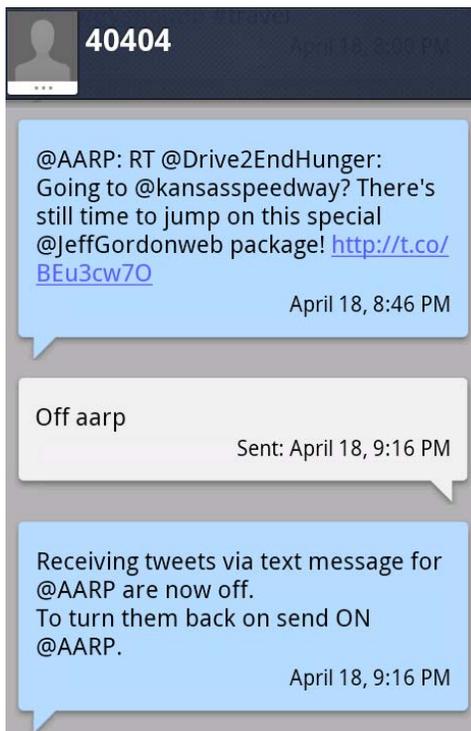
A screenshot of the opt-out request and confirmatory text message is provided below. The date is not present on these text messages because I took the screen shots the "same day" as the text messages occurred.



# AARP

I went to the AARP's website, clicked on the Twitter icon (<http://www.aarp.org/>) and began following the organization on Twitter (Twitter username @AARP). On April 18, 2012, I texted "off aarp" to the Twitter short code 40404. Twitter then sent me a confirmatory opt-out text message stating "Receiving tweets via text message for @AARP are now off. To turn them back on send ON @AARP".

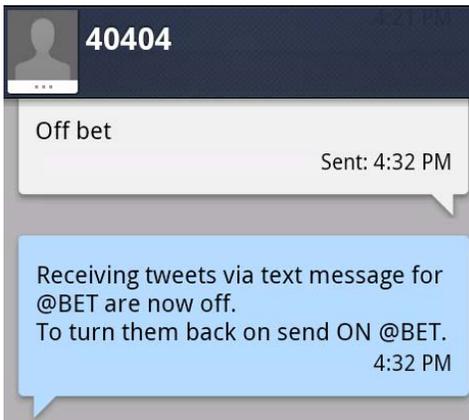
A screenshot of the opt-out request and confirmatory text message is provided below.



# Black Entertainment Television (BET)

I went to the BET website, clicked on the Twitter icon next to “Follow Us!” (<http://www.bet.com/>) and began following the organization on Twitter (Twitter username @BET). On April 25, 2012, I texted “off bet” to the Twitter short code 40404. Twitter then sent me a confirmatory opt-out text message stating “Receiving tweets via text message for @BET are now off. To turn them back on send ON @BET”.

A screenshot of the opt-out request and confirmatory text message is provided below. The dates are not shown on these messages because I took the screenshot the same day the messages were received.

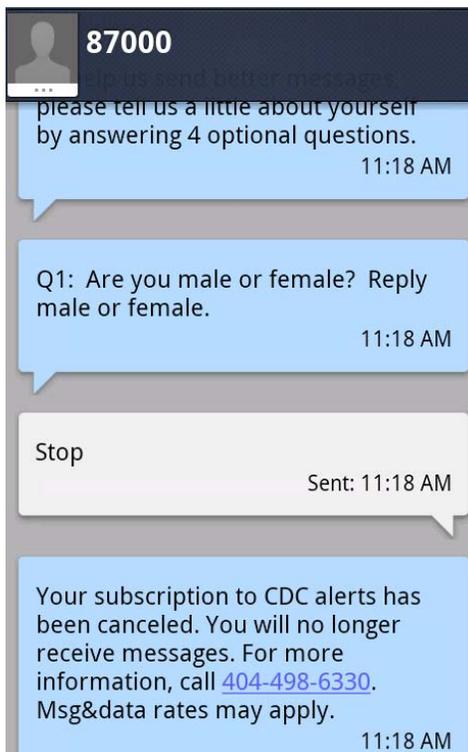


## Center for Disease Control and Prevention (Folic Acid)

On April 26, 2012, I searched the CDC website for sms alerts. In the search results there was a page which referenced how to sign up for health tips on how to prevent some birth defects with folic acid. I followed the instructions on the website and texted “REMINDERS” to short code 87000. I received a welcome text message thanking me for signing up to the service. I subsequently texted “STOP” to short code 87000. I then received a confirmation text message stating that my subscription to CDC alerts has been cancelled and I will no longer receive messages.

CDC website: <http://www.cdc.gov/features/PregnancyHealthTips/>

A screenshot of the opt-out request and confirmatory text message is provided below. The date is not present on these text messages because I took the screen shots the “same day” as the text messages occurred.

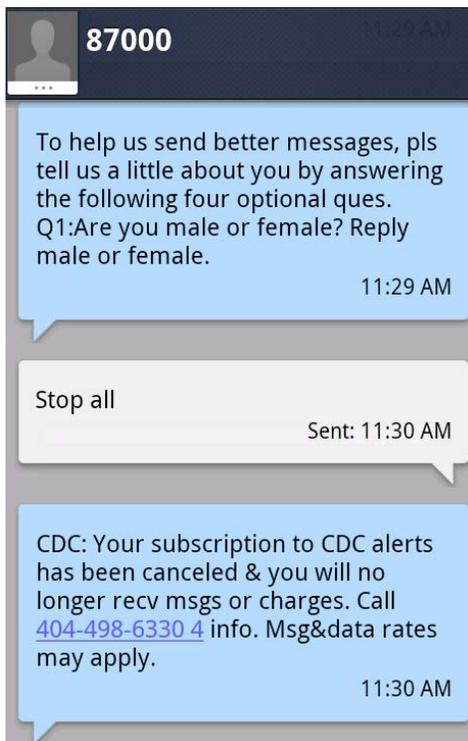


## Center for Disease Control and Prevention (Health Tips)

On April 26, 2012, I searched the CDC website for sms alerts. In the search results there was a page which referenced how to sign up for Everyday Health Alerts. I followed the instructions on the website and texted “CDCHEALTH” to short code 87000. I received a welcome text message thanking me for signing up to the CDC’s health tips and alerts. I subsequently texted “STOP ALL” to the short code 87000. I then received a confirmation text message stating that my subscription to CDC alerts has been cancelled and I will no longer receive messages.

CDC website: <http://www.cdc.gov/mobile/textmessaging/termsandconditions/>

A screenshot of the opt-out request and confirmatory text message is provided below. The date is not present on these text messages because I took the screen shots the “same day” as the text messages occurred.



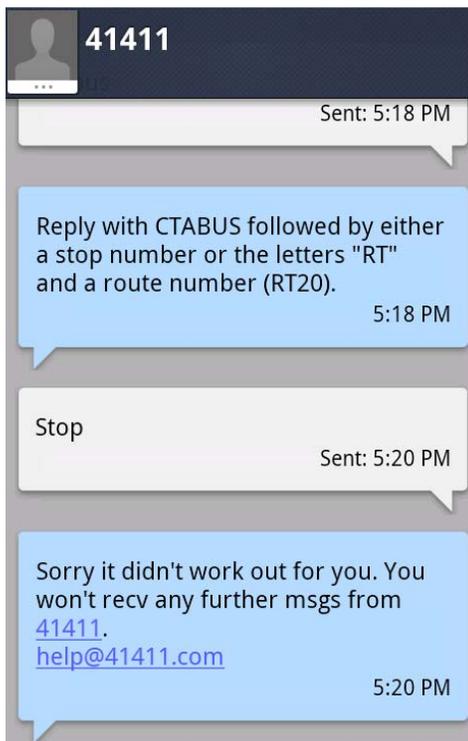
# Chicago Transit Authority

On April 25, 2012, I searched the internet for “Chicago Transit Authority bus tracker”. My search resulted in the website below that instructs you on how to sign up to track bus arrival times. I chose to text the keyword “Ctabus” to short code 41411 to sign up to receive these alerts. I subsequently received a confirmation text message asking me for a bus stop number or a route number. I then texted in “STOP” to the short code 41411 and received a confirmation text message stating I won’t receive any further messages from 41411.

Chicago Transit Authority Bus Tracker by Text website:

[http://www.transitchicago.com/riding\\_cta/how\\_to\\_guides/bustrackertext.aspx](http://www.transitchicago.com/riding_cta/how_to_guides/bustrackertext.aspx)

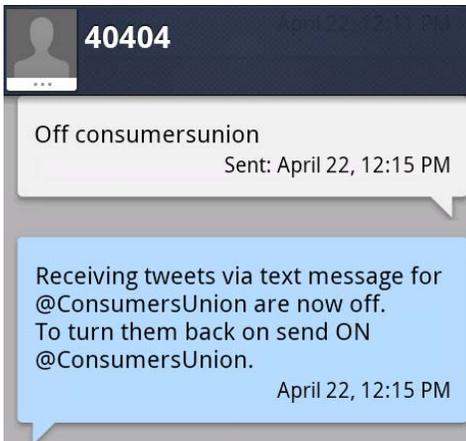
A screenshot of the opt-out request and confirmatory text message is provided below. The date is not present on these text messages because I took the screen shots the “same day” as the text messages occurred.



# Consumers Union

I went to the Consumer Union website, clicked on the “Follow us on Twitter” link (<http://www.consumersunion.org/>) and began following the organization on Twitter (Twitter username @ConsumersUnion). On April 22, 2012, I texted “off consumersunion” to the Twitter short code 40404. Twitter then sent me a confirmatory opt-out text message stating “Receiving tweets via text message for @ConsumersUnion are now off. To turn them back on send ON @ConsumersUnion”.

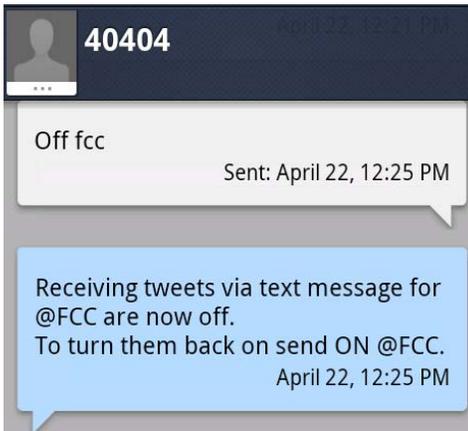
A screenshot of the opt-out request and confirmatory text message is provided below.



# Federal Communications Commission

I went to the FCC’s website, clicked on the Twitter icon (<http://www.fcc.gov/>) and began following the FCC on Twitter (Twitter username @FCC). On April 22, 2012, I texted “off fcc” to the Twitter short code 40404. Twitter then sent me a confirmatory opt-out text message stating “Receiving tweets via text message for @FCC are now off. To turn them back on send ON @FCC ”.

A screenshot of the opt-out request and confirmatory text message is provided below.



## Federal Emergency Management Agency (FEMA)

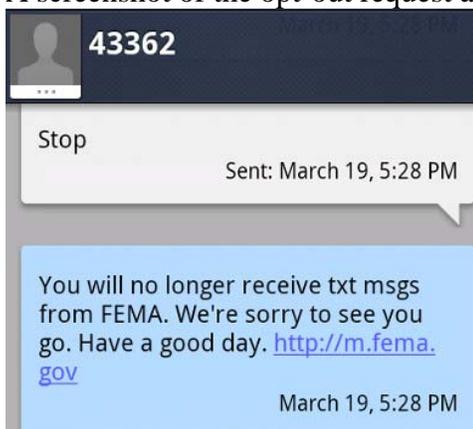
On March 19, 2012, I was searching the Federal Emergency Management Agency website for the ability to sign up for sms/text alerts from this organization. In doing so, I found this website that outlines the instructions for opting-in to FEMA text message alerts: [http://www.fema.gov/help/social\\_media.shtm](http://www.fema.gov/help/social_media.shtm) I followed the instructions and texted "PREPARE" to short code 43362. I received a confirmation text message thanking me for signing up to receive "preparedness tips". I then texted "STOP" to short code 43362, and shortly thereafter, received a confirmatory opt-out text message stating that I will no longer receive text messages from FEMA.

A screenshot of the opt-out request and confirmatory text message is provided below.



On the same website, [http://www.fema.gov/help/social\\_media.shtm](http://www.fema.gov/help/social_media.shtm), I also followed the instructions for searching for a shelter. I texted "SHELTER" and my zip code to the short code 43362, and received a confirmation message thanking me for contacting FEMA. I then texted "STOP" to short code 43362, and shortly thereafter, received a confirmatory opt-out text message stating that I will no longer receive text messages from FEMA.

A screenshot of the opt-out request and confirmatory text message is provided below.

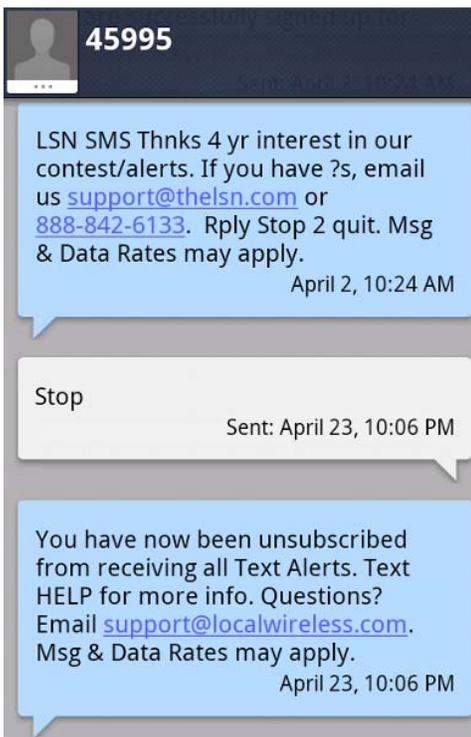


# U.S. Fish and Wildlife Service

On April 2, 2012, I found a news release by the U.S. Department of the Interior labeled “U.S. Fish and Wildlife Service Announces Expanded Reporting for Birds Captured and Collected During Deepwater Horizon Response,” regarding the Deepwater Horizon oil spill in the Gulf Coast. At the end of this report there are instructions on how to receive occasional alerts on my cell phone regarding oil spill response and restoration work by the U.S. Fish and Wildlife Service. I opted in to the campaign by following the instructions on the report by texting “OIL” to the short code 45995 and subsequently received a confirmation that I had successfully signed up for FWS Oil Spill alerts. On April 23, 2012, I texted in the keyword “STOP” to the short code 45995 and subsequently received a confirmation text message that I have been unsubscribed from receiving all text alerts.

Here is a link to the U.S. Department of the Interior news release:  
<http://www.fws.gov/home/dhoilspill/pdfs/birddatanewsrelease.pdf>

A screenshot of the opt-out request and confirmatory text message is provided below. The LSN SMS message below is in response to when I texted in “HELP” to the short code 45995. I don’t know who LSN is.

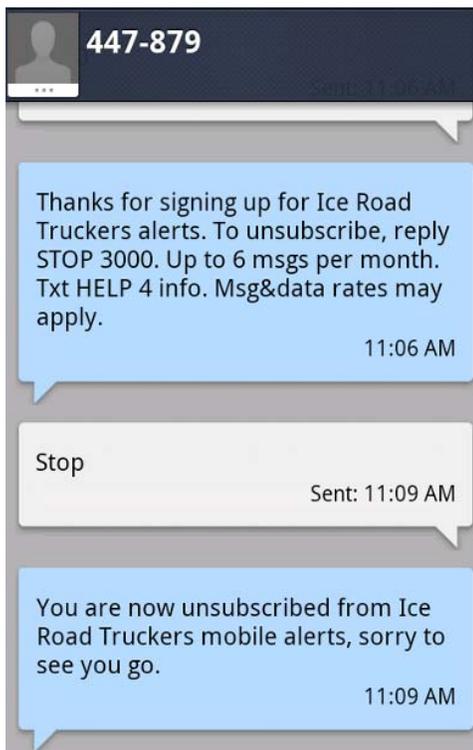


## History Channel Mobile Alerts

On April 25, 2012, I searched the internet for “History Channel mobile alerts”. My search resulted in the website below that lists out how to join different history channel text messaging services. I chose to text the keyword “3000” to short code 447879 to sign up for Ice Road Truckers alerts. I subsequently received a confirmation text message thanking me for signing up to Ice Road Truckers alerts. I then texted in “STOP” to the short code 447879 and received a confirmation text message outlining that I am now unsubscribed from Ice Road Truckers mobile alerts.

History Channel Mobile Alert website: <http://www.history.com/mobile-alerts>

A screenshot of the opt-out request and confirmatory text message is provided below. The date is not present on these text messages because I took the screen shots the “same day” as the text messages occurred.



## National Association of Consumer Advocates (NACA)

I went to the NACA's website, clicked on the Twitter icon (<http://www.naca.net/>) and began following the organization on Twitter (Twitter username @NACAdvocate). On April 24, 2012, I texted "off nacadvocate" to the Twitter short code 40404. Twitter then sent me a confirmatory opt-out text message stating "Receiving tweets via text message for @NACAdvocate are now off. To turn them back on send ON @NACAdvocate".

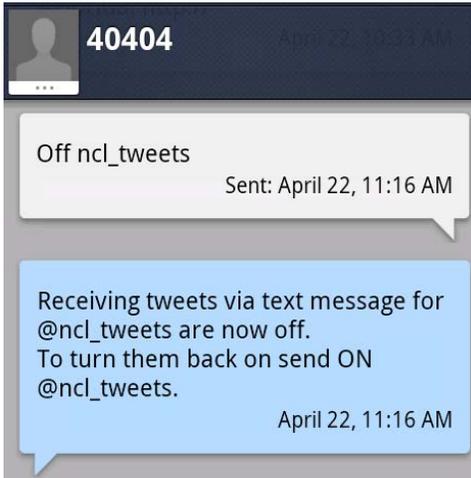
A screenshot of the opt-out request and confirmatory text message is provided below.



## National Consumers League (NCL)

I went to the NCL website, clicked on the Twitter icon under “Follow Us” (<http://nclnet.org>) and began following the organization on Twitter (Twitter username @ncl\_tweets). On April 22, 2012, I texted “off ncl\_tweets” to the Twitter short code 40404. Twitter then sent me a confirmatory opt-out text message stating “Receiving tweets via text message for @ncl\_tweets are now off. To turn them back on send ON @ncl\_tweets”.

A screenshot of the opt-out request and confirmatory text message is provided below.

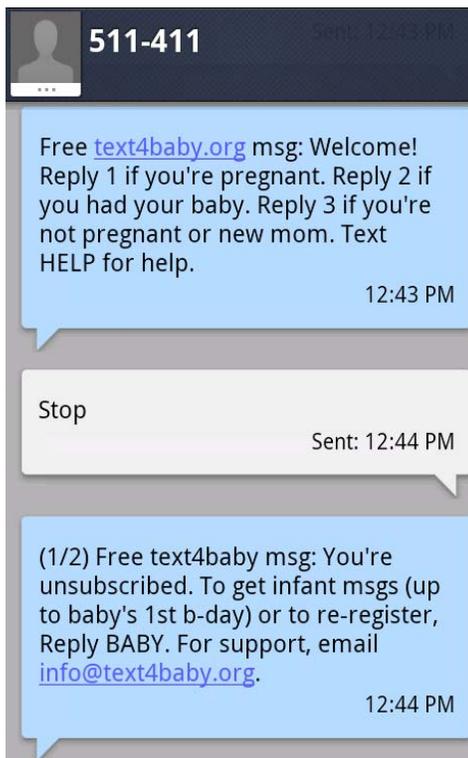


# National Healthy Mothers, Healthy Babies Coalition

On April 26, 2012, I browsed the National Healthy Mothers, Healthy Babies Coalition website for sms alerts. On the front page of this website it has the instructions on how to sign up for “Free info for you and your baby.” I texted in the keyword “BABY” to short code 511411. I received a welcome text message from text4baby. I then texted in “STOP” to the short code 511411. I subsequently received a confirmation text message stating that I’m unsubscribed.

National Healthy Mothers, Healthy Babies Coalition website: <http://www.hmhb.org/>

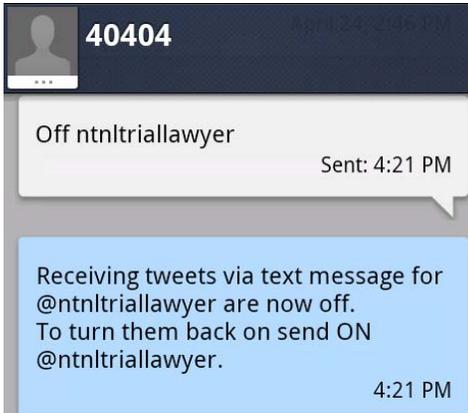
A screenshot of the opt-out request and confirmatory text message is provided below. The date is not present on these text messages because I took the screen shots the “same day” as the text messages occurred.



# The National Trial Lawyers

I went to the National Trial Lawyers website, clicked on the Twitter icon (<http://thenationaltriallawyers.org/>) and began following the organization on Twitter (Twitter username @ntnltriallawyer). On April 25, 2012, I texted “off ntnltriallawyer” to the Twitter short code 40404. Twitter then sent me a confirmatory opt-out text message stating “Receiving tweets via text message for @ntnltriallawyer are now off. To turn them back on send ON @ntnltriallawyer”.

A screenshot of the opt-out request and confirmatory text message is provided below. The dates are not shown on these messages because I took the screenshot the same day the messages were received.



# Obama for America

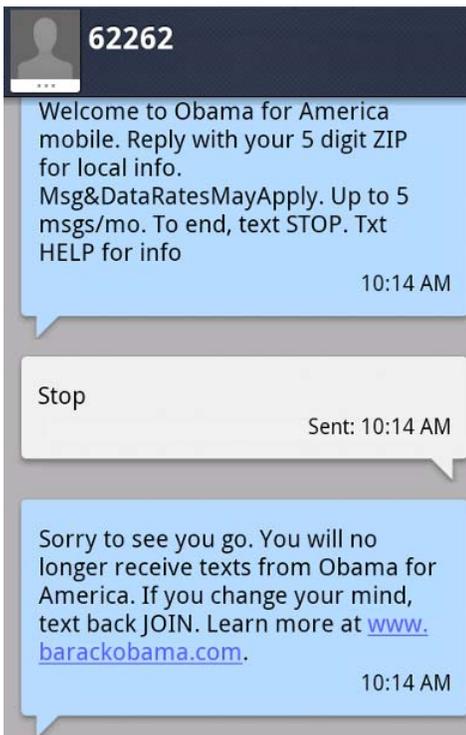
On April 25, 2012, I searched the Obama for America website for how to sign up for receiving text alerts about Barack Obama's 2012 campaign efforts. At the bottom of the website there is a link under the "Connect" category for SMS. I clicked on that link which took me to a website where I "signed up" for the SMS alerts. This is a webpage form whereby I enter in my name, email, zip code, and cell phone number, and checked a box in order to receive campaign news via text message from Obama for America. By entering in my cell phone number on this page, I received a text message from short code 62262 welcoming me to Obama for America mobile alerts. On April 25, 2012, I texted in the keyword "STOP" to the short code 62262 and subsequently received a confirmation text message that I will no longer receive texts from Obama for America.

Obama for America website: <http://www.barackobama.com/>

Obama for America "Sign up for SMS updates" website:

<https://my.barackobama.com/page/s/sms-sign-up?source=footer-nav>

A screenshot of the opt-out request and confirmatory text message is provided below. The date is not present on these text messages because I took the screen shots the "same day" as the text messages occurred.

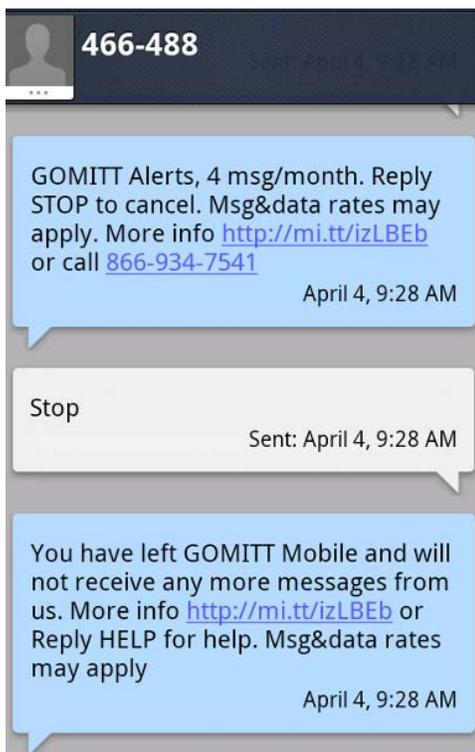


## 2012 Romney for President, Inc.

On April 4, 2012, I searched the 2012 Romney for President website for “text alert.” The results showed a portion of the website’s privacy policy which outlined how to sign up for text alerts from Romney for President. In following the instructions on the website, I texted the keyword “GO” to short code 466488 to sign up for GOMITT alerts. I received a text confirmation message thanking me for signing up for GOMITT alerts. I then texted in “STOP” to the short code 466488, and received an opt-out confirmation text message noting that I have left GOMITT Mobile and will not receive any more messages from them.

2012 Romney for President Inc. website: <http://www.mittromney.com/>

A screenshot of the opt-out request and confirmatory text message is provided below.

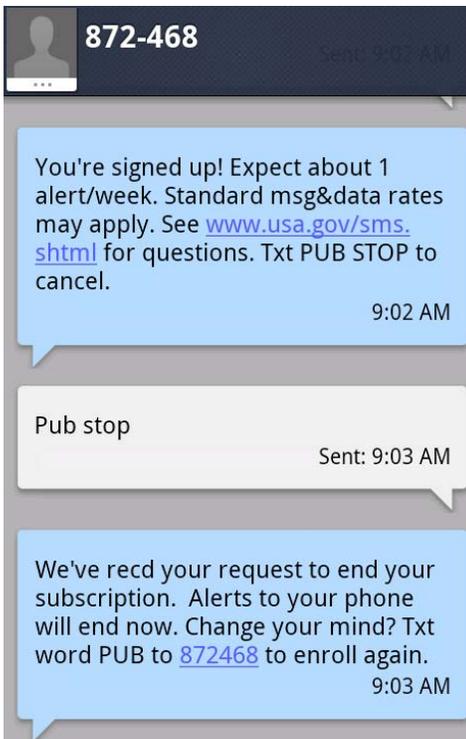


# USA.gov

On April 26, 2012, I searched the website USA.gov for mobile enabled text alerts. I clicked on the mobile icon at the bottom of the website to see if that was what I was looking for. By clicking that, it brought me to another USA.gov website where I clicked on Txt/SMS Services under the section Explore USA.gov. This brought me to another page where there were instructions on how to sign up for Mobile Text Updates from the National Contact Center. I followed the instructions by texting in the keyword “PUB” to the short code 872468. I received a confirmation text message stating that I’ve been signed up. In accordance with the instructions on the website, I then texted the keyword “Pub stop” to the short code 872468 to opt-out. I then received a confirmation text message stating that the request was received to end my subscription.

USA.gov website: <http://www.usa.gov/>

A screenshot of the opt-out request and confirmatory text message is provided below. The date is not present on these text messages because I took the screen shots the “same day” as the text messages occurred.



## **EXHIBIT B**

**DECLARATION OF DAVID SCHWIND**  
**SOUNDBITE COMMUNICATIONS, INC.**

I, David Schwind, declare the following is true and correct to the best of my knowledge and belief:

I am the Manger – Mobile Solutions of SoundBite Communications, Inc. I received the opt-out confirmation messages set forth in Exhibit A from government, political and other organizations and compiled the respective screenshots documenting these messages. I attest, under penalty of perjury, that the facts contained in Exhibit A are known to me and are accurate.

Executed on this 30th day of April 2012.



David Schwind  
Manger – Mobile Solutions  
SoundBite Communications, Inc.

## **EXHIBIT C**

**DECLARATION OF JOHN TALLARICO**  
**SOUNDBITE COMMUNICATIONS, INC.**

I, John Tallarico, declare the following is true and correct to the best of my knowledge and belief:

I am the Vice President, Product Management of SoundBite Communications, Inc. I have reviewed the Comments and attached Exhibit A and attest, under penalty of perjury, that the facts contained therein are known to me and are accurate.

Executed on this 30th day of April 2012.



John Tallarico  
Vice President, Product Management  
SoundBite Communications, Inc.