

## APPENDIX A

### Draft Proposed Rules for Public Comment

The Federal Communications Commission proposes to amend part 64 of Title 47 of the Code of Federal Regulations 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 Solicitation, 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.

\* \* \* \* \*

\* \* \*

(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 **a reply text message, voicemail, or email to any telephone number or email address provided by the caller or text sender in such party's initial communication** ~~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)~~ **other word or phrase specified by the text sender)** 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; **provided, however, where a caller or text sender provides clear and conspicuous instructions to revoke consent by (i) an automated, interactive voice- and/or key press-activated opt-out mechanism, in accordance with paragraph (b)(3) of this section and/or (ii) a toll-free telephone number or email address that permits the call or text recipient to revoke consent and/or (iii) a reply text, using a word or phrase specified by the text sender, the burden shall be placed on the call or text recipient to demonstrate by clear and convincing evidence that an alternative method used by such individual to revoke consent was reasonable under the circumstances presented.** 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~~ **10 business days** 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 **and/or may provide a link to a web portal that enables the text recipient to select (or-unselect) the categories of text messages from the text sender that they desire to receive.** ~~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~~ **10 business days** from the date such request is ~~made~~**received**. ~~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.