

SMS/Text Messaging and TCPA Compliance

Legal Disclaimer: The article is for informational purposes only and does not provide legal advice. Materials on this website are published by Alive5 to provide users with free information regarding the laws and policies described. While Alive5 provides a SMS platform designed with compliance in mind, you should seek legal advice from an attorney in your own state.

1. What is the TCPA?

The Telephone Consumer Protection Act of 1991 (TCPA) was passed by the United States Congress in 1991 and signed into law by President George H. W. Bush as Public Law 102-243. It amended the Communications Act of 1934. The TCPA is codified as 47 U.S.C. 227. The TCPA restricts telephone solicitations (i.e., telemarketing) and the use of automated telephone equipment. The TCPA limits the use of automatic dialing systems, artificial or prerecorded voice messages, SMS text messages, and fax machines. It also specifies several technical requirements for fax machines, autodialers, and voice messaging systems—principally with provisions requiring identification and contact information of the entity using the device to be contained in the message.

From Wikipedia: https://en.wikipedia.org/wiki/Telephone_Consumer_Protection_Act_of_1991

This guide may be useful for anyone who uses business SMS within the United States. When sending text messages or phone calls that aren't bidirectional or contact-initiated, you're engaging in "automated telephone dialing, the primary mechanism governed by the TCPA.

TCPA Requirements Prior Consent

Organizations are required to obtain prior written express consent from their contacts before sending messages. The E-SIGN Act requires prior written consent and may include electronic or digital forms of signature (i.e., agreements obtained via email, website form, text message, dial pad or voice recording). website form submissions or text message opt-ins.

When soliciting consent, consider the following:

1) The consumer's consent to receive such solicitations must be unambiguous, meaning that the consumer must receive a "clear and conspicuous disclosure" that he/she will receive future calls/text messages that deliver autodialed and/or pre-recorded telemarketing messages; that his/her consent is not a condition of purchase; and he/she must designate a phone number at which to be reached. Consent may not be a condition of sale.

2) When asking your contacts to participate in your service (either through a web form, point of sale, mobile opt-in, or paper document), you must disclose the following: "By participating, you consent to receive text messages sent through an automatic telephone dialing system."

3) This disclosure must be made clear and conspicuous to your contacts before they have opted into your SMS service. This means that you should disclose the use of an "automatic telephone dialing system" (equipment which has the capacity to dial without human intervention) in close proximity to the mobile phone number input.

Condition of Purchase

The TCPA requires that contacts be made aware that their consent is not a condition of making a purchase. This means that your contacts or constituents can't be forced to consent to receive text messages from your organization when they make a purchase from your organization. When asking your customers to participate in your message service, you must disclose the following: "Consent to these terms is not a condition of purchase."

Related considerations

- All advertising and promotional material must clearly indicate if the service is a subscription.
- Subscription terms and billing intervals must be disclosed to your contacts.
- You must clearly communicate all material terms and conditions of the program.
- All advertising, promotional material, and your "Help" message must clearly display the opt-out information.
- The service should not be promoted as "free" when premium fees are associated with the service that the subscriber will pay with a reasonable level of participation in the program.

CTIA Requirements

While this guide is focused on helping you understand and implement TCPA requirements, you might also want to consider Cellular Telephone Industries Association (CTIA) requirements. The CTIA is an international industry trade group representing the interests of wireless telecommunications companies. Below are the CTIA requirements for advertising a recurring SMS service to your contacts:

- Recurring program description (e.g., 'subscribe to receive recurring SMS offers')
- Stop instructions (e.g., 'Text STOP to opt out')
- Disclosure that message and data rates may apply (e.g., 'msg&data rates may apply')
- T&C/privacy policy link (e.g., 'T&C/Privacy Policy: www.acme.co/privacypolicy')

Opting-out

According to the TCPA, your contacts should have the ability to opt-out at any time.

How Twilio, alive5's SMS utility provider, Manages Opt-outs

When a contact sends STOP, STOPALL, UNSUBSCRIBE, CANCEL, END or QUIT to one of your Twilio numbers, Twilio will prevent them from receiving any additional messages until that contact responds START. Specifically, they'll receive the following message:

"You have successfully been unsubscribed. You will not receive any more messages from this number. Reply START to resubscribe."

When that contact resubscribes, they'll receive the following message:

"You have successfully been resubscribed to messages from this number. Reply HELP for help. Reply STOP to unsubscribe. Msg&Data Rates May Apply."

Sending Timeframe

The TCPA stipulates that text messages may only be sent between 8 a.m. and 9 p.m. in the time zone your recipient is in. If your service sends messages to contacts in different timezones, contact us about the various options we provide.

Record Keeping

To protect your organization from future disputes, it's advisable to maintain each contact's consent for at least four years from that date in which it was given, which is the federal statute of limitations for bringing an action under the TCPA.

2. How Does the TCPA affect SMS/Text Messaging?

In 2015, the FCC confirmed text messages are “calls” under the TCPA and also clarified that virtually all texting services fall under the broad definition of an “autodialer”. Why It Matters To You: Violation of the TCPA is a serious matter, with statutory damages between \$500-\$1,500 per violation (per call or text message).

3. The 2 SMS/Text Message Formats

1. Short Code - a 5-6 digit phone number (i.e. 53214)
2. Long Code - In US, a 10 digit phone number (i.e. 1-415-333-4444)

4. Use Cases and Compliance/Opt-In Requirements

When it comes to SMS and business, there are 3 main types of use cases:

1. Conversations - a one to one messages sent between a customer and customer service agent (CSR). This can be initiated by the customer or CSR and sent manually by person.
2. Reminders - a one-way message sent by an automated system like a scheduler to remind customers of an upcoming appointment or event.
3. Mass Texting - a one-way mass marketing message with a call to action. The message can contain a promotion, survey, or other call to action.

Use Case	Type	Example	Consent Required for TCPA Compliance	Alive5 Supported?
Conversations	Long code	One to one chat between customer and CSR	None, if customer initiates	Yes
Reminders	Long or short code	Appointment reminders	Text, Webform, Verbal, Written	Yes
Mass Texting*	Short code	Marketing messages /coupons	Webform or Written	No

*Alive5 currently focuses on SMS for customer support - everyday conversations between your company and its customers in a personal,non-marketing format.

5. Why Use alive5?

Trusted Network - Alive5's underlying infrastructure is powered by Twilio (www.twilio.com) and Amazon WebServices (aws.amazon.com) both major cloud computing platforms. Each one holds and represents the industrystandard for security, reliability, and compliance.

Specifically related to SMS and TCPA, Twilio handles standard English-language reply messages such as STOP, UNSUBSCRIBE or CANCEL which allow end users to prevent unwanted messages.

Messages can traverse carriers around the world, each with varying levels of dependability. Twilio rigorously evaluates carriers to rule out SIM farms and carrier filtering. A unique feedback API is then used to actively monitor quality and adjust routes for extreme reliability and message deliverability.

6. SMS Best Practices

Using common sense is the first step to ensure you're doing things in a compliant manner. Within Alive5 interfaces we've designed easy-to-follow safeguards to help with getting new users acquainted. Here's somebest practices for SMS 101:

DO	DON'T!
Be nice, be patient. "Do unto others as you would have them do unto you".	Be rude! An angry customer is never good for business but nowyou're messaging in their personal space via SMS. For example,if a customer does not reply in a timely manner, limit your responses and wait for them to reply before continuing.
Ask for permission if you are sending out a first, new textmessage. This can be verbal, written, or through a form.	Send out messages to contacts that aren't expecting it. Treat customers just like your own personal friends.
Identify yourself if you are sending out a first, new text message.	Send out the first message without indicating who you are by name in the message.
Allow customers to Opt Out.	Don't use a system that does not allow end users to STOP further messaging.
Choose a trusted platform for SMS.	Choose a SMS provider who does not take compliance seriously. Not only does Alive5 work with top tier cloud infrastructureproviders, Alive5 works with PACE (http://www.paceassociation.org/), a non-profit who works closely with the FCC and government agencies to adhere to compliance regulations.

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Text or Call 1-855-551-8858