TCPA COMPLIACE: BEST PRACTICES

Introduction

As businesses search for a business-text platform, it's important to consider how each platform provides tools and features to minimize TCPA risk. Businesses looking for a text platform should consider choosing one that connects directly to wireless carrier networks and supports two-way conversational texting messaging. Unlike one-way, short code-based platforms, a two-way texting platform is designed to support real human conversations. With a two-way conversation, it allows consumers to give consent and continue to give consent by participating in an active exchange of texting messaging. Additionally, having a platform that can initiate one on one messages is considered manual, not automated, which assists in TCPA compliance.

History of TCPA

TCPA was enacted in 1991 to protect consumers from robocalls. In the late 80's and early 90's marketers discovered this new way of reaching a great deal of consumers through random or sequential number generators. Since then, the compliance has expanded to cover newer technologies, such as texting messaging. Ultimately, TCPA was put in place to protect consumers from unwanted marketing messages but as technology evolves, many of the TCPA key definitions are under review. To ensure compliance with this ever-changing obligation, seeking guided council is important and strongly encouraged.

Best Practices of TCPA Compliance

- ✓ Avoid one-way mass texting
- ✓ Let your consumers talk first- or ask permission before you text
- ✓ Support the STOP keyword for opt-out
- ✓ Avoid texting re-issued mobile phone numbers
- ✓ Keep complete records of opt-in and consent
- ✓ Use a real phone number- not a short code
- ✓ Talk like a person, not a robot

Consent

The TCPA limits how businesses can contact consumers on their mobile phones. It allows consumers to opt-out of receiving unwanted calls and text messages. The FCC established compliance obligations that trigger most TCPA litigation (see 47 C.F.R. § 64.1200). The types of actions that most commonly lead to litigation or enforcement actions are:

✓ Texting or calling mobile phone numbers in bulk using a generic or pre-recorded message without permission; and

✓ Place telemarketing calls or texts to consumers after they have already opted out.

In order to make these calls or text legally, a company must have permission from the consumer beforehand. Permission includes:

✓ Express written consent for text that are sent for marketing or sales purposes *(47 C.F.R. § 64.1200(a)(2))*; or

✓ Verbal or written consent for informational, non-telemarketing texts *(47 C.F.R. § 64.1200(a)(1)(iii)).*

A consumer is consenting if they initiate the text conversation. As long as the text conversation flows naturally based on a call-and-response pattern, it is no different from answering the phone and having a voice conversation.

If the business initiates a text-message conversation, its important to collect consent. The employee can introduce themselves and ask for permission before texting, or, permission to communicate via text can be included in a downloaded web document or paper document.

Revoking Consent

A consumer reserves the right to make a do-not-contact request, such as opting out of a text messaging program. Many texting platforms have implemented the opt-out keyword, STOP. When a customer sends the word STOP, the business should immediately take them out of all reoccurring texting notifications and cease text messaging in the future. There are two ways to implement the STOP, or opt-out command:

Manual	**Automatic**
Requires businesses to acknowledge the stop request and respond manually.	The most secure texting platforms implement a STOP keyword at the network layer, so every consumer request is processed automatically.

Record Keeping

Keeping clean records is a safeguard that will minimize the risk of TCPA litigation. A platform that is compliance friendly will archive conversations and STOP requests so that all customer interactions, including opt-in and opt-out requests, are recorded. Having those two-way conversations and archiving conversations correctly is useful in demonstrating regulatory compliance efforts.

One-way Short Codes vs. Two-way, Real Phone Numbers

There are many short-code messaging platforms in today's market. Traditionally, the short-code texting is used for mass marketing, blasting out high volumes of single canned messages. These one-way messaging platforms exemplify a typical TCPA claim.

Short code mass text campaigns give an unnatural experience that many consumers may feel is a hacker trying to gain information or a robot simply spamming a sales pitch. Using a real phone number allows for two-way conversational texting. It feels far more personal and gives businesses a way to communicate with consumers that is convenient, quick, and trust-worthy.

Common Sense Do's & Dont's of SMS

DO

- ☑ Keep texts short & relevant
- ☑ Text consumers who have expressed interest in your business or have texted before
- ☑ Send reminders, confirmations, and follow-ups
- ☑ Let customers know they can opt-out
- ☑ Respect opt-out when received

DON'T

- ☒ Add promotional language that isn't relevant
- ☒ Attempt to promote or sell via text out of nowhere, with no permission
- ☒ Send texts to prospects you have no relationship with
- ☒ Spam customers with unwanted messages

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