

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Advanced Methods to Target and Eliminate Unlawful Robocalls)	CG Docket No. 17-59
)	
Call Authentication Trust Anchor)	WC Docket No. 17-97
)	
Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991)	CG Docket No. 02-278
)	
Dismissal of Outdated or Otherwise Moot Robocalls Petitions)	CG Docket No. 25-307
)	

**COMMENTS OF THE ECOMMERCE INNOVATION ALLIANCE IN
RESPONSE TO THE FEDERAL COMMUNICATIONS COMMISSION'S
NINTH FURTHER NOTICE OF PROPOSED RULEMAKING**

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I. EXECUTIVE SUMMARY AND INTRODUCTION

The Ecommerce Innovation Alliance (EIA) respectfully submits these comments in response to the Federal Communications Commission’s (Commission or FCC) *Ninth Further Notice of Proposed Rulemaking* (FNPRM).¹ As a nonprofit trade association dedicated to representing the broad spectrum of the electronic commerce sector—ranging from small, independent online retailers to major technology solution providers and digital platforms—the EIA is committed to advocating for “common sense policies that strengthen the e-commerce ecosystem while protecting consumer privacy.” Our membership comprises the driving force behind the modern digital economy, entities that rely heavily on efficient, trusted, and compliant communication channels to serve millions of American consumers daily.

The EIA emphatically supports the Commission’s current initiative, colloquially known as “Delete, Delete, Delete,” which seeks to modernize the regulatory landscape governing the Telephone Consumer Protection Act (TCPA) by excising outdated rules and reforming those that have inadvertently stifled innovation or fostered abusive litigation. The regulatory framework must evolve in lockstep with technological advancement and shifting consumer behaviors.

These comments focus specifically on the proposals contained in paragraphs 101 through 104 of the FNPRM, categorized under “More Recent Rules That Might Harm Consumers.” The EIA submits that the 2024 codification of the “Consent Revocation Rules”—specifically the mandate to treat a revocation for one type of communication as a revocation for all (the “Revoke One, Revoke All” rule) and the ambiguous “reasonable means” standard—represents a regulatory overcorrection that has demonstrably harmed the business-consumer relationship.

¹ *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, Ninth Further Proposed Rulemaking in Docket No. 17-59; Seventh Further Notice of Proposed Rulemaking in Docket No. 17-97; Further Notice of Proposed Rulemaking in CG Docket No. 02-278; Public Notice in Docket No. 25-307, FCC 25-76 (Oct. 29, 2025).

First, regarding the “Revoke One, Revoke All” rule discussed in paragraphs 101 and 102, the empirical evidence is overwhelming that consumers view text messaging and voice calls as distinct channels with distinct utilities. Treating them as a monolith under a single consent framework threatens to sever critical communication lifelines—such as fraud alerts, shipping notifications, and healthcare reminders—merely because a consumer opted out of a marketing campaign. Second, regarding the “reasonable means” standard discussed in paragraphs 103 and 104, the record confirms that vague regulatory language has been weaponized by serial litigants. We provide examples of litigation where plaintiffs utilized ambiguous language (e.g., “No stop”) in direct contravention of explicit instructions to reply “STOP,” solely to manufacture a lawsuit when the automated system failed to recognize the non-standard phrase. This “gamesmanship” undermines the TCPA’s protective purpose and imposes a debilitating litigation tax on law-abiding businesses.

Accordingly, the EIA urges the Commission to take the following decisive actions:

- 1. Eliminate the “Revoke One, Revoke All” requirement**, thereby allowing consumers to maintain granular control over their communication preferences across different channels (voice vs. text) and content types (marketing vs. informational).
- 2. Reverse the “Reasonable Means” rule** (47 CFR § 64.1200(a)(10)) and permit businesses and consumers to rely on standardized revocation methods (e.g., replying “STOP”). This change provides necessary certainty to businesses, clarity to consumers, and immunity from the predatory tactics of professional plaintiffs.

II. BACKGROUND AND CONTEXT: THE EVOLUTION OF TCPA REVOCATION STANDARDS

To fully appreciate the necessity of the proposed reforms in paragraphs 101-104, one must situate them within the broader historical and legal context of the TCPA. Enacted in 1991, the TCPA was designed to address consumer frustration with invasive telemarketing calls to landlines. Over the ensuing three decades, the statute has been stretched to regulate technologies—such as SMS and MMS—that did not exist at its inception.² This adaptation process has often been jagged, resulting in periods of regulatory uncertainty that fueled massive class action litigation.

A. The 2015 Declaratory Ruling And The “Any Reasonable Means” Doctrine

The genesis of the current controversy lies in the Commission’s 2015 *Omnibus Declaratory Ruling and Order*.³ In that ruling, the Commission determined that consumers have a right to revoke consent “at any time and through any reasonable means,” and that callers “may not limit the manner in which revocation may occur.”⁴ While well-intentioned—aimed at preventing businesses from erecting onerous barriers to revocation, such as requiring certified mail—the ruling introduced a subjective standard (“reasonable”) into a strict liability statute. This subjectivity has spurred a wave of litigation. Serial Plaintiffs test the limits of “reasonableness,” employing non-standard phrases and communication methods to bypass automated opt-out systems. Courts were left to adjudicate these disputes on a case-by-case basis, often reaching divergent conclusions.

² See, e.g., *Jones v. Blackstone Med. Servs.*, 792 F. Supp. 3d 894 (C.D. Ill. 2025) (“Text messaging was not an available technology in 1991, and thus ‘telephone call’ would not have included text messages or SMS messages.”).

³ *In re Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, FCC 15-72, 30 FCC Rcd 7961, ¶¶ 47, 55, 63-70 (2015).

⁴ *Id.* ¶ 47.

While the D.C. Circuit upheld the “reasonable means” standard in *ACA International v. FCC*,⁵ it did not resolve the practical difficulties of implementation of this requirement in high-volume automated systems, like those that facilitate the consent-based text messaging campaigns for tens of thousands of ecommerce brands and millions of consumers on a daily basis. Instead, the Court merely observed that the Commission’s “ruling absolves callers of any responsibility to adopt systems that would entail ‘undue burdens’ or would be ‘overly burdensome to implement,’” and that “any effort to sidestep the available methods in favor of idiosyncratic or imaginative revocation requests might well be seen as unreasonable.”⁶ These observations have provided the industry with no meaningful guidance regarding the boundaries of what is reasonable and, instead, have created an issue that is ripe for lawsuit abuse.

B. The 2024 Codification And The “Revoke One, Revoke All” Expansion

In February 2024, the Commission adopted a Report and Order codifying the revocation rules in 47 CFR § 64.1200(a)(10).⁷ This codification expanded the scope of revocation significantly. It mandated that a revocation request made in response to one type of message must be treated as applicable to “all future robocalls and robotexts from that caller on unrelated matters.”⁸ This effectively created the “Revoke One, Revoke All” rule. Specifically, the Commission stated:

[W]e take this opportunity to confirm that, when consent is revoked in any reasonable manner, that revocation extends to both robocalls and robotexts regardless of the medium used to communicate the revocation of consent. For

⁵ *ACA Int'l v. FCC*, 885 F.3d 687, 709-10 (2018).

⁶ *Id.* at 710.

⁷ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order and Further Notice of Proposed Rulemaking, FCC 24-24, 39 FCC Rcd 1988 (rel. Feb. 16, 2024) (*TCPA Consent Order*).

⁸ *Rules & Regulations Implementing the TCPA Act of 1991*, Order, DA No. 25-312, 40 FCC Rcd 2395, 2395, ¶ 1 (citing 47 CFR § 64.1200(a)(10), which had not yet been published in the CFR); *see also TCPA Consent Order*, ¶¶ 29-32.

example, if the consumer revokes consent using a reply text message, then consent is deemed revoked not only to further robotexts but also robocalls from that caller.⁹

Simultaneously, the *TCPA Consent Order* codified the “reasonable means” standard, prohibiting callers from designating an exclusive means of revocation. Although the Commission identified certain standard keywords (“stop,” “quit,” “end,” “revoke,” “opt out,” “cancel,” or “unsubscribe”) as “per se reasonable,” it explicitly stated that consumers could use *other* words if a “reasonable person” would understand them.¹⁰ This retention of ambiguity effectively sanctioned the continued use of non-standard revocation language by litigants seeking to manufacture claims.

C. The Current Proceeding: A Necessary Course Correction

The release of FCC 25-76 signals a recognition that these 2024 rules may have overshot the mark. By placing these rules under the “Eliminating Outdated Rules” and “Rules That Might Harm Consumers” headers, the Commission acknowledges that the rigid application of these standards may be counterproductive. The EIA submits that the evidence gathered since the 2024 Order confirms these fears: the rules have created operational chaos for legitimate businesses and a windfall for abusive litigants, without meaningfully enhancing consumer privacy.

III. THE “REVOKE ONE, REVOKE ALL” MANDATE: A DISSERVICE TO CONSUMER CHOICE AND SAFETY

In paragraphs 101 and 102 of the FNPRM, the Commission rightfully questions whether the requirement to treat an opt-out request made in response to one type of message as applicable to all future robocalls and robotexts “unduly restricts consumers’ ability to receive wanted calls.”⁵ The EIA submits that the answer is an unqualified “yes.” The imposition of a monolithic consent revocation structure contradicts the nuanced way modern consumers utilize mobile

⁹ *TCPA Consent Order*, ¶ 32.

¹⁰ *Id.* ¶¶ 12-13; *see also* 47 CFR § 64.1200(a)(10).

communications and threatens to sever vital information flows.

A. The Distinct Utility of Text vs. Voice: Consumer Preference Data

The fundamental flaw in the “Revoke One, Revoke All” rule is the assumption that consumers view their communication channels as interchangeable. In 2025, this is demonstrably false. Text messaging has superseded voice calling as the preferred channel for business-to-consumer (B2C) interaction, particularly for transactional and informational purposes, while voice is often reserved for urgent or complex interactions.

1. The Dominance of SMS in the Consumer Ecosystem

Current market data for the 2024–2025 period illustrates a decisive preference for text-based engagement. According to the *2025 Consumer Texting Behavior Report*, 86% of consumers have actively opted in to receive texts from businesses, representing a significant 20% increase since 2021.¹⁰ This surge in opt-ins is not a passive acceptance of marketing spam; it is an active demand for connectivity. In fact, 71% of consumers subscribe to business texts without even making a purchase, driven by a desire for information and engagement.¹¹

The engagement metrics for SMS are staggering when compared to voice or email, highlighting its unique role in the consumer’s daily life.

Table 1: Comparative Engagement Metrics (2025 Data) ¹¹

Metric	SMS (Text)	Voice Call	Email
Open Rate	98%	< 20% (Answer Rate)	20%
Response Rate	45%	N/A	6%
Read Time	90% in < 3 mins	N/A	Hours/Days
Preference (Support)	High (Preferred)	Low (Intrusive)	Medium
Opt-In Growth	+20% (2021-25)	Decline	Steady

As the data in Table 1 indicates, SMS is the “high-velocity” channel. It is where consumers look for immediate updates. Conversely, voice calls are increasingly viewed as intrusive, particularly by younger demographics. For Generation Z and Millennials, a phone call is often perceived as an interruption or an emergency, whereas a text is viewed as a convenient, asynchronous communication method.¹² In fact, 83% of consumers list texting as their top

¹¹ 2025 SMS Marketing Consumer Behavior Report | EZ Texting, accessed December 22, 2025, <https://www.eztexting.com/report/2025-consumer-texting-report>; 2025 Consumer Texting Behavior Report: Consumers Demand SMS Notifications and Conversations - PR Newswire, accessed December 22, 2025, <https://www.prnewswire.com/news-releases/2025-consumer-texting-behavior-report-consumers-demand-sms-notifications-and-conversations-302346459.html>; SMS Marketing Statistics 2025: Trends, Insights, and Data - Notifyre, accessed December 22, 2025, <https://notifyre.com/us/blog/sms-marketing-statistics>; 89% Customer Have A Preference for Texting Over Phone Calls, accessed December 22, 2025, <https://blog.protexting.com/2024/04/89-of-customers-prefer-to-text/>; Why You Must Provide Text-Based Support (Plus Our Top 10 Customer Service Texting Software Recommendations!) - LTVplus, accessed December 22, 2025, <https://www.ltvplus.com/customer-service/customer-service-texting/>; 6 practical reasons why consumers prefer text over calls - Aloware, accessed December 22, 2025, <https://aloware.com/blog/text-messaging-over-phone-calls>.

¹² “Just Text Me”: The History And Growth of SMS/MMS Texting As A Marketing Channel, accessed December 22, 2025, <https://captivated.works/blog/history-and-growth-of-sms-mms-texting-as-a-marketing-channel/>

mobile activity, significantly outpacing social media and email.¹³

2. The Danger of Conflating Channels

The “Revoke One, Revoke All” rule ignores this channel stratification. A consumer’s relationship with a business is rarely singular; it is multifaceted. A consumer may wish to opt out of robocalls but continue to receive less-intrusive promotions sent via SMS (e.g., “Flash Sale: 20% Off”) and maintain consent for *transactional* updates (e.g., “Your order has shipped”). Conversely, if a consumer replies “STOP” to a marketing text, and the Commission’s rule forces the business to also sever the voice channel or other text categories, the consumer is effectively punished for managing their inbox. The data supports the notion that consumers want *control*, not total disconnection:

- **Critical Alerts:** Consumers explicitly rely on SMS for time-sensitive information. 78% of consumers want to use mobile messaging to troubleshoot issues, and 68% use it for billing questions.¹⁴
- **Service vs. Sales:** “Marketing fatigue” is a real phenomenon, often cited as the primary reason for opting out.¹⁵ However, fatigue with sales promotions does not equate to a desire to sever the service relationship.
- **High Engagement, Low Opt-Out:** The overall opt-out rate for SMS marketing remains extremely low, ranging between 0% and 1.5%.¹⁶ This suggests that when

¹³ SMS Marketing Statistics 2025: Key Insights - SimpleTexting, accessed December 22, 2025, <https://simpletexting.com/blog/2025-texting-and-sms-marketing-statistics/>

¹⁴ 44 Mind-Blowing SMS Marketing and Texting Statistics [UPDATED] - SlickText, accessed December 22, 2025, <https://www.slicktext.com/blog/2018/11/44-mind-blowing-sms-marketing-and-texting-statistics/>

¹⁵ SMS Marketing Statistics 2025: Key Insights - SimpleTexting, accessed December 22, 2025, <https://simpletexting.com/blog/2025-texting-and-sms-marketing-statistics/>

¹⁶ SMS Marketing Statistics 2025: Trends, Insights, and Data - Notifyre, accessed December 22, 2025, <https://notifyre.com/us/blog/sms-marketing-statistics>

consumers do opt out, it is a specific, targeted decision responding to a specific campaign, not a wholesale rejection of the brand's utility.

By mandating that an opt-out in one channel essentially “nukes” the entire communication relationship, the Commission forces businesses to over-block communications that consumers actively value and rely upon. This can create a “safety gap” where critical information—such as a bank fraud alert or a utility outage notification—is suppressed because the consumer unsubscribed from a weekly newsletter text.

B. The Impracticability of Global Revocation

Beyond consumer preference, the “Revoke One, Revoke All” rule ignores the technical architecture of modern enterprise communications. Businesses do not typically run all communications through a single, monolithic server. Instead, they frequently utilize a “best-of-breed” ecosystem of specialized vendors and platforms.

1. The Technology Stack Silos

A typical ecommerce enterprise may utilize the following distinct platforms:

- **Email:** (e.g., Klaviyo, Salesforce Marketing Cloud) Handles promotional email campaigns.
- **SMS:** (e.g., Postscript) Handles SMS marketing campaigns.
- **Transactional Gateway:** (e.g., Twilio, SendGrid) Handles automated shipping notifications and order confirmations, often integrated directly with logistics providers like FedEx or UPS.
- **Customer Service Platform (CCaaS):** (e.g., Zendesk, Talkdesk, Genesys) Handles inbound/outbound voice calls and support tickets.
- **Fraud/Security Systems:** (e.g., internal banking systems) Handles Two-Factor

Authentication (2FA) and security alerts.

These systems are often siloed for security and efficiency purposes. An opt-out received by an SMS marketing platform (e.g., replying “STOP” to a short code managed by Postscript) is processed instantly within that system to ensure compliance for future marketing sends.

However, propagating that revocation signal instantaneously across a disparate technology stack to block *all* future robocalls (including voice calls from a separate system) is fraught with technical complexity and latency.

B. Recommendation: Revocation Should Mirror Consent

The EIA submits that the most “reasonable” approach—and the one most aligned with the consumer interest—is to put revocation on par with consent. That is, if a distinct consent was obtained by a caller to make a certain type of call or send a certain type of text message, then a caller is entitled to require a corresponding revocation. For example, if a consumer consents to receive marketing text messages and later replies “STOP” to a text, it should revoke consent for *that specific medium* (texting), for that *specific category of communication* (marketing messages).

The Commission’s proposal in paragraph 101 to modify this rule is a welcome recognition of these realities. We urge the Commission to finalize a rule that:

- 1. Recognizes Channel Distinctness:** An opt-out of text messages should not automatically revoke consent for voice calls, and vice versa.
- 2. Recognizes Content Distinction:** An opt-out of marketing communications should not revoke consent for informational or transactional communications (as defined by the consumer’s established business relationship).
- 3. Permits Confirmation:** Allows (but does not require) callers to send a confirmation

text seeking to clarify the scope of the opt-out, and if the consumer does not respond, applies the narrowest interpretation (channel/content specific) to protect the flow of essential information.

IV. THE “REASONABLE MEANS” STANDARD: A BREEDING GROUND FOR GAMESMANSHIP

The EIA strongly supports the Commission’s proposal in paragraphs 103 and 104 to reconsider the “reasonable means” rule codified in 47 CFR § 64.1200(a)(10). While the “reasonable means” standard was born from a desire to protect consumers from bureaucratic obstacles to revocation, in the context of modern high-volume SMS communications, it has mutated into a tool for litigation extortion. It has enabled a tactic where litigants intentionally bypass clear, simple, and automated opt-out instructions in favor of ambiguous phrases designed to evade recognition, thereby manufacturing lawsuits.

The mechanism of this abuse is straightforward and devastatingly effective under the current rules:

- 1. The Setup:** A serial litigant subscribes to a text message program using a burner phone.
- 2. The Instruction:** The business sends a compliant welcome message with clear instructions: “Reply STOP to cancel.”
- 3. The Trap:** Instead of replying “STOP” (which would immediately end the messages and the potential for a lawsuit), the litigant replies with a phrase they know the system is unlikely to parse, such as “I desire that you cease these transmissions” or “Please cease!”
- 4. The Violation:** The automated system, configured to look for standard keywords (STOP, CANCEL, UNSUBSCRIBE, END, QUIET, CANCEL, OPT OUT), does not

recognize the revocation command. The messaging continues.

5. The Lawsuit: Despite realizing that the non-standard word was ineffective in stopping the text messages, the litigant intentionally waits for messages to accumulate, maximizing the damage calculation (\$500 to \$1,500 per message), and then sues, arguing that their natural language request was a “reasonable means” of revocation that the business failed to honor. Importantly, given the vagueness of the rule, the serial plaintiff knows that most courts will determine that the “reasonableness” question is an issue of fact to be decided by the jury and thus sufficient to survive summary judgment.¹⁷ Therefore, a Defendant will be faced with the choice of incurring potentially hundreds of thousands of dollars in legal fees to go to trial or paying a sizable settlement. The “reasonable means” standard thus stacks the deck against the business and in favor of the serial plaintiff before the first message is even sent.

A. A Pattern of Abuse: *Epps, Viggiano*, and Other “Opt-Out Evaders”

The current version of section 64.1200(a)(10) was adopted despite a clear record of opt-out evaders attempting to leverage the court’s prior uncodified rule to pursue frivolous litigation and in an apparent effort to make it harder for courts to dispense with this frivolous litigation. The Commission first suggested that consent could be revoked in any reasonable manner in 2015, but did not codify a rule at that time.¹⁸ In the years that followed, a pattern of "opt-out evasion" tactics was documented and the courts were left to try to address the abuses occurring

¹⁷ *In re FCC Adopts Rules to Empower Consumers to Stop Robocalls & Robotexts*, Report and Order and Further Notice of Proposed Rulemaking, FCC 24-24, 39 FCC Rcd. 1988, 1992, ¶ 13 (2024) (“the court as the finder of fact will conduct a totality-of-circumstances analysis to determine whether the request to revoke consent has been conveyed in a reasonable manner”).

¹⁸ *See, e.g., id.* ¶ 5 (discussing the Commission’s 2015 conclusion that a consumer should be allowed to revoke consent in any reasonable manner).

under the "reasonable means" standard. While some courts have ruled in favor of defendants, the inconsistency of rulings created massive uncertainty.

In *Epps v. Earth Fare, Inc.*, Epps was a serial “Opt-Out evader”—she filed multiple suits against retailers with identical allegations, most of which were settled due to the costs and uncertainty of defense. In this case, she ignored instructions to “Text STOP” and instead sent verbose messages like “I would appreciate if we discontinue any further texts” and “Thank you but I would like the text messages to stop can we make this happen.”¹⁹ Earth Fare decided to fight back and the court ultimately dismissed the case, finding that the plaintiff’s choice to ignore clear instructions and use natural language was “entirely unreasonable” given the totality of circumstances.²⁷ However, achieving this dismissal required expensive briefing and the luck of drawing a judge willing to apply common sense over rigid textualism. It also required Earth Fare to incur the costs of an appeal to the Ninth Circuit Court of Appeals to preserve its win at the trial court.

Similarly, in *Viggiano v. Kohl’s Dep’t Stores, Inc.*, the plaintiff replied to automated texts with phrases like “I’ve changed my mind and don’t want to receive these anymore” and “This is your last warning!” instead of the instructed “STOP.”²⁰ The court dismissed the putative class action, ruling that the plaintiff “adopted a method of opting out that made it difficult or impossible for Defendant to honor her request.”²¹

In *Rando v. Edible Arrangements Int’l, LLC*, the court dismissed a claim brought by an opt-out evader summarizing the situation as follows:

¹⁹ *Epps v. Earth Fare, Inc.*, 2017 U.S. Dist. LEXIS 63439 (C.D. Cal., 2017), *aff’d* 740 Fed. Appx. 627 (9th Cir. Oct. 26, 2018).

²⁰ *Viggiano v. Kohl’s Dep’t Stores, Inc.*, No. 17-0243-BRM-TJB, 2017 U.S. Dist. LEXIS 193999, at *2 (D.N.J. Nov. 27, 2017).

²¹ *Id.* at 10.

The Court finds that, in the totality of the circumstances, a reasonable person seeking to revoke consent would have tried, at least at some point during the back-and-forth, simply replying “STOP” to cancel--as instructed, rather than ignoring Defendant's revocation method and sending ten long text messages to that effect, most of which did not include the word “stop” at all. There can be no question on these factual allegations but that Plaintiff did not comply, nor even attempt to comply, with the apparently simple directions repeatedly given to her: “Reply . . . STOP to cancel.”²²

While *Earth Fare*, *Kohl’s*, and *Edible Arrangements* resulted in defense wins at the early stages of litigation, numerous other cases reached contrary conclusions. For example, in *Viggiano v. Lakeshore Equip. Co.*, a different judge in the same federal court rejected the reasoning in *Kohl’s* and allowed Viggiano to proceed through costly discovery, finding that “any determination on the reasonableness of Plaintiff’s revocation to be premature.”²³ And, more recently, courts have relied on the revised version of 47 C.F.R. 64.1200(a)(10) to find that ambiguous phrases such as “No stop” should be interpreted in favor of the Plaintiff and against the Defendant, despite the Plaintiff ignoring clear instructions on how to revoke consent.²⁴

Collectively, these cases illustrate the extreme vulnerability of businesses. For every *Earth Fare*, *Kohl’s*, and *Edible Arrangements* where a judge rules the conduct unreasonable and ends the costly litigation early, there are countless cases reaching conflicting decisions and settlements being paid to plaintiffs who are intentionally ignoring clear instructions solely for the purposes of generating litigation or threatened litigation. The ambiguity of the “reasonable means” rule is the oxygen that fuels this litigation fire.

²² *Rando v. Edible Arrangements Int’l, LLC*, No. 17-701(JBS/AMD), 2018 U.S. Dist. LEXIS 51201, at *19-20 (D.N.J. Mar. 28, 2018).

²³ *Viggiano v. Lakeshore Equip. Co.*, No. 17-cv-00707 (PGS), 2018 U.S. Dist. LEXIS 243577, at *10 n.1 (D.N.J. Jan. 10, 2018).

²⁴ *Bosley v. A Bradley Hosp. LLC*, No. 25-cv-22336, 2025 U.S. Dist. LEXIS 183986, at *20-22 (S.D. Fla. Sep. 18, 2025).

B. The Fallacy of Natural Language Processing (NLP) as a Compliance Standard

Proponents of the “reasonable means” standard often argue that businesses should utilize Natural Language Processing (NLP) or Artificial Intelligence (AI) to interpret consumer intent, rendering standardized keywords unnecessary. This argument is flawed for two critical reasons:

- 1. Reliability vs. Liability:** While AI has advanced, it is not infallible. And, indeed, trying to understand the intent of a particular phrase or use of words to determine intent can be quite challenging. In the context of the TCPA, a “false negative” (failing to recognize a revocation) results in strict liability damages. No responsible business can rely solely on probabilistic AI models for compliance when the penalty for error is absolute liability. Standardized keywords (STOP) are deterministic and 100% reliable.
- 2. Burden on Small Business:** While large tech companies might afford sophisticated NLP engines to parse inbound SMS replies, not all ecommerce merchants utilize systems with this capability built in. Many continue to rely on standard SMS gateways that operate on keyword logic. Mandating that these businesses interpret “any reasonable” phrase forces companies to adopt prohibitively expensive technology or resort to manual review of thousands of inbound messages, which is operationally impossible.

C. The Solution: Reversing the Rule to Allow Designated, Standardized Means

To solve this crisis of gamesmanship, the Commission should return certainty to the marketplace. The EIA supports the proposal in paragraphs 103-104 to allow callers to designate the reasonable means for revocation that it commits to honoring. The EIA also supports retaining that part of rule species the specific opt-out keywords that text-based systems should

honor.

If a business provides a clear, free, and easy-to-use method for revocation it should be permitted to require consumers to use that method if the consumer wants to be able to sue for statutory damages. The Commission’s rules should promote:

- **Clarity for Consumers:** Consumers are trained by years of mobile usage to reply “STOP.” It is the universal standard.
- **Certainty for Businesses:** Businesses can automate compliance with 100% accuracy, ensuring that valid revocations are honored instantly.
- **Elimination of Gamesmanship:** If the rule states that a consumer *must* follow the designated reasonable instruction (e.g., “Reply STOP”), then plaintiffs who reply “Please cease!” to manufacture a lawsuit would have no standing. The ambiguity—and the litigation value—disappears.

The Commission codified “STOP” and other keywords as “per se reasonable” in 2024.²⁵ EIA encourages maintaining this portion of the rule, which provides a clear series of words that a consumer can rely upon to opt-out of receiving future marketing text messages. However, by simultaneously adding that consumers can use *other* words if a “reasonable person” would understand them, the Commission invited the opt-out evader lawsuits. The new proposal to *reverse* the prohibition on exclusive designation is the necessary fix.

States like Florida, which adopted a state mini-TCPA that led to a flood of similar litigation in their courts, successfully amended their statute and embraced this approach in order

²⁵ 47 C.F.R. 64.1200(a)(10) (“Any revocation request made using an automated, interactive voice or key press-activated opt-out mechanism on a call; using the words ‘stop,’ ‘quit,’ ‘end,’ ‘revoke,’ ‘opt out,’ ‘cancel,’ or ‘unsubscribe’ sent in reply to an incoming text message; or pursuant to a website or telephone number designated by the caller to process opt-out requests constitutes a reasonable means per se to revoke consent.”).

to combat the litigation gamesmanship.²⁶ Similarly, in Virginia, the EIA worked with the Virginia legislature to garner unanimous, bipartisan support to amend Virginia Telephone Privacy Protection Act to clarify who an individual must revoke consent to text messages.²⁷ These states serve as useful models for the Commission’s efforts to correct the lawsuit abuses that have been spawned by the “reasonable means” approach.

D. Proposed Modification to 47 C.F.R. § 64.1200(A)(10)

The EIA proposes that the Commission adopt the following specific policy shifts regarding 47 CFR § 64.1200(a)(10), consistent with the questions raised in the FNPRM and the imperative to reduce gamesmanship.

In order to avoid gamesmanship, the Commission should adopt a reasonable middle ground that insures consumers have clarity on how they may revoke consent and that businesses have certainty that they will not need to incur hundreds of thousands of dollars in litigation costs to defend class action litigation brought by an opt-out evader intentionally seeking to manipulate the Commission’s rules for financial gain. The rules should ensure that opt-out methods are:

²⁶ Fla. Stat. 501.059(10)(c) (“Before the commencement of any action for damages under this section for text message solicitations, the called party must notify the telephone solicitor that the called party does not wish to receive text messages from the telephone solicitor by replying “STOP” to the number from which the called party received text messages from the telephone solicitor. Within 15 days after receipt of such notice, the telephone solicitor shall cease sending text message solicitations to the called party and may not send text messages to the called party thereafter, except that the telephone solicitor may send the called party a text message to confirm receipt of the notice. The called party may bring an action under this section only if the called party does not consent to receive text messages from the telephone solicitor and the telephone solicitor continues to send text messages to the called party 15 days after the called party provided notice to the telephone solicitor to cease such text messages.”).

²⁷ Virginia S.B. 1339 (2025) (amending Va Code 59.1-514 to insert the following: “In the case of a telephone solicitation via text message, such statement shall be made by replying to the text message with the word ‘UNSUBSCRIBE’ or ‘STOP.’”), *available at*: <https://legiscan.com/VA/text/SB1339/id/3207177>; *see also* Ecommerce Innovation Alliance, *EIA Secures Major Victory In Virginia to Protect E-commerce Businesses from Frivolous Lawsuits*, *available at*: <https://www.ecomm-alliance.org/blog/eia-secures-major-victory-in-virginia/>

1. **Clearly Disclosed:** An instruction (e.g., “Reply STOP to opt out”) must be prominently displayed during the opt-in process.
2. **Functionally Available:** The method must work (e.g., the short code must process the “STOP” command).
3. **Low Burden:** The method must not be overly burdensome (e.g., replying to a text is low burden; requiring a certified letter is high burden).

With this in mind, EIA encourages the Commission to amend § 64.1200(a)(10) to explicitly state that individuals may revoke their consent to receive text marketing text messages using the words “stop,” “quit,” “end,” “revoke,” “opt out,” “cancel,” or “unsubscribe” sent in reply to an incoming text message. This list should be the definitive “safe harbor” vocabulary for SMS revocation. If a consumer uses one of these words, revocation is absolute. If a consumer uses a different phrase (like “Please cease”), and the caller has instructed them to use a standard keyword, the caller should have no liability for failing to recognize the non-standard phrase. The rule should also make clear that individuals who have provided their consent to receive marketing text messages may not seek recovery under the TCPA unless consent is revoked in accordance with the designated manner and messages continue after the ten day period to honor revocations as elapsed. This creates a predictable environment for both parties.

EIA further suggests retaining the portion of the existing rule, which addresses the rare circumstances in which a business is not able to receive inbound text messages and believes the Commission should retain that portion of the rule. That portion provides:

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 on each text reasonable alternative ways to revoke consent.²⁸

²⁸ 47 C.F.R 64.1200(a)(10).

A proposed revised 47 C.F.R 64.1200(a)(10) is included as Appendix A to these comments.

VII. CONCLUSION

The Ecommerce Innovation Alliance commends the Commission for revisiting these more recent rules that might harm consumers. The evidence is clear: the “Revoke One, Revoke All” mandate is a solution in search of a problem that actively disrupts preferred consumer communication channels. The “Reasonable Means” standard, while well-intentioned, has mutated into a tool for litigation extortion, exemplified by opt-out evader cases.

We respectfully urge the Commission to:

1. **Eliminate the requirement** that a revocation in one channel applies to all channels.
2. **Reverse the rule** categorically prohibiting the designation of exclusive revocation methods and instead define clear minimum standards for what businesses must support in order to protect consumers.
3. **Establish a clear safe harbor** for businesses that honor standard keywords and provide clear instructions to consumers.

These changes will modernize the TCPA, protect legitimate businesses from gamesmanship, and ensure that consumers continue to receive the communications they want and need.

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Respectfully submitted,



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APPENDIX A
RECOMMENDED REVISED 47 CFR 64.1200(A)(10)

(10) Before the commencement of any action for damages under this section by a party that provided prior express consent, including prior express written consent, a called party must revoke consent to receive calls or text messages made pursuant to paragraphs (a)(1) through (3) and (c)(2) of this section by using a reasonable method to clearly express a desire not to receive further calls or text messages from the caller or sender. Any revocation request made using an automated, interactive voice or key press-activated opt-out mechanism on a call; using the words “stop,” “quit,” “end,” “revoke,” “opt out,” “cancel,” or “unsubscribe” sent in reply to an incoming text message; or pursuant to a website or telephone number designated by the caller to process opt-out requests constitutes a reasonable means per se to revoke consent. If a called party uses any such method to revoke consent, the consent given for that specific medium (e.g., texting or prerecorded/automated voices), for that specific category of communication (e.g., marketing messages) is considered definitively revoked. If a reply to an incoming text message uses words other than “stop,” “quit,” “end,” “revoke,” “opt out,” “cancel,” or “unsubscribe,” the caller is not required to treat that reply text as a valid revocation request. 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 on each text reasonable alternative ways to revoke consent. All requests to revoke prior express consent or prior express written consent made in a manner that comports with this rule must be honored within a reasonable time not to exceed ten business days from receipt of such request. Callers or senders of text messages covered by paragraphs (a)(1) through (3) and (c)(2) of this section may not designate exclusive means to request revocation of consent unless those designated means at a minimum, include the methods set forth in this rule, and do not impose requirements that are unduly burdensome on consumers.