

SMS Compliance

Understanding the details of SMS compliance and text message laws and regulations is crucial for businesses and organizations **before** gathering contacts or sending text messages.

Here are the 5 most important things to know about SMS compliance:

1) Express Written Consent

According to the Telephone Consumer Protection Act (TCPA), customers must give businesses “express written consent” before the business sends them automated promotional text messages. This written consent cannot be buried in a pages-long form full of legalese. It must be clear and conspicuous, so the recipient knows what they are signing up for. Even informational text messages require consent. Here are some of the ways a customer can give consent:

- Send a keyword to your number based on an ad that includes the required terms
- Enter a phone number into a web form online with the required terms
- Sign up in-person at a physical location using a form with required terms

Also, you not allowed to require a user to opt in to your text program as a condition to purchase property, goods, or services.

Express consent is not implied or assumed. Just because someone has given your business their cell phone number does not mean they have agreed to receive text messages from you.

2) Rules for Imported Contacts

Express written consent includes ALL contacts, new contacts or those imported from subscriber lists. You must ensure that the subscriber list you are importing was gathered in a compliant way. Before you import a list, be sure that each subscriber who has provided you with a phone number has given you permission to send them messages.

3) Call-to-Action Requirements

A call-to-action is the message that prompts the individual to opt in to your SMS campaign. It should consist of the following:

Automated Marketing Messages

The federal rules for “express written consent” require consumers to agree to receive automated marketing messages, so be sure to make that clear in your CTA. Also, as noted above, advise them that they do not have to agree to receive the texts as a condition of buying anything from you.

SMS Campaign Purpose

Let your subscribers know what they are signing up for. Are they getting reminders? Coupons? Tips? Specify what you are offering so there are not any surprises.

Message Frequency

Let them know if they will only receive one message (like a coupon) or if they are agreeing to sign up for a recurring message campaign, like weekly alerts or deals. You can include the approximate number of messages the customer should expect to receive in a given week or month.

Message and Data Rates

Even though unlimited texting has become more common, some users may have to pay a small fee to receive text messages. The wireless carriers require you to inform your subscribers that these charges may be incurred if they sign up to your program.

Terms and Conditions

List all the terms and conditions in full beneath the CTA or provide a link nearby. This list should contain:

- The identity of your company/brand/program
- Customer care contact information
- Description of the product people are signing up for
- Opt-out instructions in bold type (e.g., Reply STOP to unsubscribe)

Privacy Policy

List the privacy policy in full beneath the CTA or provide a link nearby.

Here is an example of a compliant call-to-action:

*Text Chocolate
To 4235551111*

*To sign up for monthly deals and coupons
from John's Ice Cream Shop!*

*You agree to receive automated promotional messages.
This agreement isn't a condition of any purchase. Terms and Privacy policy
can be found at johnsicecreamshop.com/terms. You may receive up to 4 messages/mo.
Reply STOP to end or HELP for help.*

4) Confirmation Message

Regardless of how users signed up, your very first text must be a carrier compliance message confirming opt-in. It should reiterate some important information, including:

- Your identity
- Message Frequency
- The fact that message and data rates may apply
- How to opt out

To assist you, the confirmation message will be sent automatically. When a new user subscribes to one of your lists, your campaign sends out the required disclosures in a

text that comes at no extra cost to you. You will just need to adjust how many messages you plan to send, the frequency, and your message will be sent when your customers opt in to your campaign.

The automatic confirmation message will look like this:

*4235551111: John's Ice Cream Promotion Alerts!
Msg&Data rates may apply. 4msg/mo.
Reply HELP for help, STOP to cancel.*

5) What You Can NOT Text – SHAFT

The CTIA is an association of mobile carriers who set rules and best practices for the text marketing industry. One of these rules is known as SHAFT—sex, hate, alcohol, firearms, and tobacco. Including content related to any of these topics in your call-to-action or any of your messages is considered one of the highest violations and may result in an immediate ban.

There are a few exceptions to this rule. If, for example, you operate a bar you may still be able to send messages about happy hour specials. However, it is crucial that you operate on a dedicated toll-free number and have an age gate preventing under the age of 21 from signing up for your texts.

Other Important Information

Approved Abbreviations

The CTIA developed a list of approved abbreviations you can use in your text marketing that will help you save space without sacrificing clarity.

Approved CTIA abbreviations include:

- Msg instead of Message
- / instead of Per
- Txt instead of Text
- mo, ea. mo. or /mth instead of Per Month
- Msg&Data Rates May Apply instead of Message and Data Rates May Apply

Terms & Conditions

The CTIA allows you to slightly abbreviate your terms and conditions when advertising into a shortened summary linking out to the full version. The TCPA also requires that the terms of the written agreement be clearly and conspicuously disclosed, so the TCPA consent language should always be in a readable font and type and close to where they provide their phone number and their “signature” (whether that is via checkbox, initialing, clicking an “Agree” button or any other form of compliant consent).

If you choose to abbreviate, know that there are a few requirements:

- The abbreviation must be **clearly visible** below your CTA (call to action)
- The first three lines of your abbreviation must appear above the fold on a 1024×768 resolution computer screen.
- If you are utilizing a checkbox to indicate agreement, it CANNOT be pre-checked.
- Your abbreviated terms must be accessible using the primary browser scroll bar. No hiding!
- In addition, there cannot be any pop-ups, banners, or nested scroll boxes blocking the terms and conditions.
- Text must maintain a color contrast value of 125 against all points of the background. A fancy way of saying you cannot turn it into the same color as your background.
- Finally, if you are advertising your text marketing program on television or web, the ads must be static when you get to the T&C.

When it comes to writing out your full terms and conditions document, the CTIA has some requirements as well. We have listed them out for you below. The bolded items are required to appear in your abbreviated version.

- Page Title
- **Business Name**
- **Program Name**
- Short code Usage Disclosure
- Opt-In Instructions
- **STOP Instructions**
- **HELP Instructions**
- Toll-Free Number or Email
- Supported Wireless Carriers
- **Frequency**
- **T&C/Privacy Policy Link**
- Privacy Policy
- **Message and Data Rates May Apply**

Privacy Policy

A privacy policy (or link to it) is required in both your full and abbreviated terms & conditions documents. Think of your privacy policy as a tool for customer peace of mind.

In a world of data breaches and confidentiality leaks, it is a huge leap in trust for customers to voluntarily share personal information with your business. Return the favor by spelling out for them exactly what you intend to do with the numbers you collect, who they will be shared with, how they will be stored, and any other relevant information.

Other Requirements

Outside of the privacy policy and your T&A, there are a few other CTIA required stipulations on promotion:

- **Avoid the word free.** You are playing with fire by including it considering different data plans for different people may result in overage fees etc. It is best to just steer clear of the word entirely.

- If you are offering an incentive for opting-in (like a discount) keep it simple and follow through. Do not promise something that you cannot deliver on. And do not give customers any extra hoops to jump through that weren't clearly stated in the promotion.
- Do not share, endorse, demonstrate or depict violence or illegal behavior of any kind including illegal or illicit drugs. You cannot share "adult content" as defined by the CTIA. And of course, no profanity or hate speech.

Transactional vs. Promotional Texts

As part of their regulatory measures, the TCPA and FCC draw a distinction between promotional messages and transactional messages. Therefore, anyone using texting as part of their communication strategy should understand this important difference.

Promotional messages

These are messages sent with the purpose of increasing sales, promoting your product, or raising awareness about your business. You may have heard promotional messages referred to as marketing or advertising messages. In the eyes of the TCPA, these are all synonymous.

Promotional text messages are a great addition to any business's marketing plan under one condition. You must have permission from your customers. Express written consent **is required to send promotional texts**. Express consent can never be implied or assumed. It must be written electronically, on paper or in a recorded verbal agreement.

Examples:

- Coupons and discounts
- Fundraising requests
- New product announcements

Transactional messages

These are messages which contain information that is necessary for your customers to use your product or service. The important term here is "necessary".

Transactional texts usually contain additional information that customers have requested. Customers consent to transactional texts when they provide their number. For example, if during a checkout process the customer is given a prompt that says "provide your mobile number for shipping and delivery updates," they provide consent by entering their numbers.

Examples:

- Order confirmations with tracking numbers
- Two-factor authentication
- Password resets
- Reservation confirmations (With prompt to reply Y/N to confirm)

It all comes down to consent. You always need to have permission to text your customers. What constitutes permission varies based on whether the messages you are sending are transactional or promotional. And remember, if someone consents to transactional messages, they are not by default consenting to promotional messages as well.

Who oversees creating and enforcing these regulations?

There are a few layers of regulation governing text message marketing. We will explore each one in descending authority.

- *Federal/Industry Regulators*: These are the lawmakers who put forth the rules every subsequent party in the chain must follow. They include...
 - **Federal Communications Commission (FCC)**: The FCC regulates media and phone communications in the U.S. They set the wireless carriers' regulations, and issue the rules and orders implementing the TCPA.
 - **Federal Trade Commission (FTC)**: The enforcers. The FTC collects complaints about businesses theft, deception, and violence through the media. They crack down on businesses who use texts, calls, or faxes to scam people.
 - **Telephone Consumer Protection Act (TCPA)**: This is the actual legislation that was passed in 1991 with the rules surrounding telemarketing calls, auto-dialed calls, prerecorded/artificial voice calls, text messages (even though the law does not mention them by name), unsolicited faxes, and the national Do-Not-Call list. The FCC also has enforcement authority under the TCPA.
 - **Cellular Telecommunications Industry Association (CTIA)**: This trade group is how telecommunications moguls get a seat at the table from a legislative standpoint. This group represents the interests of the wireless industry.
- *Mobile Carriers*: Without them, texting would not exist. With that power comes some say over how some texts are sent. For example, AT&T has recently made the decision to not allow messaging from shared short codes to their customers. This has forced messaging providers to shift their attention towards text enabling landlines and other toll-free numbers.
- *Messaging Providers*: We are the groups who make text marketing possible. At 5PC Texting, we take our compliance very seriously. We constantly monitor accounts for suspicious activity and take an active role in cutting down on deceptive business practices.
- *Senders*: That's you and your business! While you may not have a seat at the law-making table, you do have an ethical responsibility to your audience. As such, it is your responsibility to learn the rules and stick to them!

Text Marketing Rules

The most straightforward do's and don'ts of every text marketing campaign.

- You **cannot** buy lists of phone numbers and add them as subscribers.
- For commercial texts, your consent **must** be in writing.
- You cannot send copyrighted or trademarked material that has not been licensed for your use.
- In your confirmation, the CTIA wants the consumer to understand if they are agreeing to a single-message response or a recurring-messages campaign.
- For non-commercial, informational texts (such as those sent by or on behalf of tax-exempt non-profit organizations, political purposes, and other non-commercial purposes, like school closings) you still need prior express consent (but the consent does not necessarily need to be written).
- You can only send messages pertaining to alcohol to age-verified subscribers.
- You cannot send confidential information, threats of violence, hate speech, or graphic violence.

What is the TCPA?

The TCPA is the Telephone Consumer Protection Act. It is a piece of federal legislation that protects consumers' right to privacy and is designed to cut back on annoying—and more specifically unwanted—telephone calls and texts.

What constitutes a TCPA violation?

- Unsolicited automated calls or texts to cell phones
- Unsolicited prerecorded or artificial voice calls or texts to residential phone numbers
- Calls to those listed on the Do Not Call Registry

What are the penalties for violating the TCPA?

Penalties—in the form of “statutory damages”—associated with violations of the TCPA can include \$500 per each violation and up to \$1,500 per willful violation. It is not uncommon to see settlements in the tens of millions of dollars for class action TCPA lawsuits. In addition to private citizen lawsuits, the FTC and FCC both have authority to bring actions for violations of the TCPA, as do individuals and state attorneys general on behalf of citizens of their states.

Disclaimer: Please note that this advice is for informational purposes only and is neither intended as, nor should be substituted for consultation with appropriate legal counsel and/or your organization's regulatory compliance team.