

Outbound SMS Compliance & Best Practices

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Scope: Applies to all outbound SMS/MMS marketing and informational communications sent by or on behalf of [Your Company] to U.S. mobile numbers.

1. Purpose

This document establishes the compliance framework and operating procedures for all outbound SMS and MMS communications, ensuring adherence to applicable federal laws, state laws, and industry best practices. The goal is to minimize legal risk, preserve carrier eligibility, maintain consumer trust, and support auditable processes.

2. Federal Legal Requirements

2.1 Key Statutes & Regulations

- The Telephone Consumer Protection Act of 1991 (TCPA) governs text messages to mobile phones and requires prior express written consent for marketing SMS/MMS.
- The Federal Communications Commission (FCC) enforces TCPA rules and has issued orders clarifying that many automated texts constitute “calls” under the law.
- The Telemarketing Sales Rule (TSR) of the Federal Trade Commission (FTC) applies when SMS is used in telemarketing/purchase inducement contexts; requires disclosures, record-keeping, quiet hours.
- The CAN-SPAM Act of 2003 covers email and certain email-to-SMS (wireless domain forwarding) messages; requires opt-out mechanisms and certain disclosures.

2.2 Core Federal Compliance Obligations

- **Consent:** For marketing SMS/MMS to a cell phone number, obtain prior express written consent (PEWC). The consent must include a clear statement that the recipient agrees to receive recurring marketing messages, that the messages may be sent by autodialer/autonomous system, and that message and data rates may apply.
 - **Opt-out/STOP mechanism:** Each message must clearly allow the recipient to opt out (e.g., “Reply STOP to unsubscribe”). Opt-out must be honored **immediately**.
 - **Quiet hours/time of day:** Under TCPA/FTC guidance, marketing calls/texts should be restricted to between **8 a.m. and 9 p.m.** in the recipient’s local time zone.
 - **Do-Not-Call (DNC):** Must comply with the National Do Not Call Registry when applicable (for marketing calls/texts), and maintain an internal DNC list of opted out numbers.
 - **Content and carrier registration:** If using 10DLC or other A2P channels, brands must register campaigns, adhere to use-case restrictions, expect carriers to block unregistered traffic.
 - **Recordkeeping:** Maintain records of consent (time, date, method, version of disclosure), campaign details, opt-outs, DNC scrubs, message content for a recommended minimum (e.g., 5 years) to support audits or litigation.
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3. Industry Best Practices (Carrier/CTIA)

- Follow the Cellular Telecommunications Industry Association (CTIA) *Messaging Principles & Best Practices* – e.g., clear opt-in, immediate STOP/HELP functions, accurate identification of sender, proper use-case matching registration.
 - Use “HELP” keyword to offer support (e.g., “Reply HELP for help, STOP to end”).
 - Age-gate content if you provide regulated or sensitive use-cases (e.g., alcohol, gambling) or avoid such content for standard marketing.
 - Monitor frequency and topical relevance – avoid contacting the same recipient too many times for the same campaign/topic, as state laws may impose limits.
 - Ensure your data management practices (reassignments, number hygiene, opt-outs) are robust to reduce risk of wrong-party texting.
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4. State-Specific Compliance Considerations

Below are state laws **above and beyond** the federal baseline that we must operationalize when messaging recipients in those states. Because you may message recipients in any U.S. jurisdiction, your system must **identify the recipient's state (via area code + IP/geolocation of sign-up)** and impose the stricter of federal vs state rules.

Note: This list covers several high-impact states with unique SMS/telemarketing rules. It is not exhaustive. Consult counsel for full state-by-state review.

State	Key Unique Rules	Implementation Notes
Florida	Under the Florida Telemarketing Act (CS/SB 1120) – for SMS/telemarketing: must have prior consent; cannot send more than 3 contacts within 24 hours on same subject; cannot send outside 8 a.m.–8 p.m. local time.	For recipients with Florida area codes, enforce: no more than 3 texts per 24 h on same topic; schedule sends only between 8 a.m.–8 p.m. FL time; capture Florida consent clause.
Oklahoma	The Oklahoma Telephone Solicitation Act (2022) applies to SMS telemarketing: prohibits more than 3 messages in 24 hours on same subject; disallows messaging before 8 a.m./after 8 p.m. local; prior consent required for automated messaging.	For OK recipients: throttle 3 per 24 h; schedule only 8 a.m.–8 p.m. OK time; capture OK-specific consent if required.
Washington	Under RCW 19.190.060 and related laws: unsolicited commercial texts require clearly and affirmatively given consent . Violations may trigger state CPAct.	Recipients in WA: treat as opt-in only; do not rely on generic consent—ensure explicit affirmative consent for commercial SMS before sending.
Maryland	“Stop the Spam Calls Act of 2023” effective Jan 1 2024: requires prior express written consent to automated dialing/ prerecorded messages for telemarketing (including texts), limits on time & frequency.	For MD recipients: ensure PEWC prior to automated sends; monitor frequency and time windows according to statute (mirror or stricter than federal).

Texas	Under SB 140 (2025 update) all “calls” for telemarketing now include text/image messages made via autodialer. That triggers Chapter 302 registration/disclosure requirements.	For TX recipients: treat marketing SMS as a “telephone solicitation” under state law; ensure registration/disclosure compliance as per Chapter-302 if applicable; capture appropriate consents/disclosures.
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5. Procedure & Workflow

5.1 Consent Capture

1. Prior to sending any marketing SMS/MMS, route opt-in through a capture mechanism (web form, mobile form, IVR, etc).
2. The consent language must include:
 - The mobile phone number to receive messages.
 - That the person agrees to receive recurring marketing messages from [Brand].
 - That messages may be sent by autodialer or automated system.
 - That message & data rates may apply.
 - An estimate of message frequency (e.g., “up to 4 msgs/month”).
 - A link to Terms & Privacy.
 - A clear statement: “Consent is not a condition of purchase.”
3. Store audit evidence: timestamp, IP/UA, source, version of disclosure, checkbox or signature.
4. For recipients in states with stricter rules (e.g., WA, MD, TX, FL, OK), ensure the consent captures the state-required language (e.g., prior express written consent, opt-in only).
5. Tag the record with the recipient’s geo-metadata (state, timezone) for subsequent routing logic.

5.2 Message Sending & Scheduling

- Determine recipient's local time zone based on phone number (and optionally sign-up location) and schedule sends only within allowed time windows. Use the stricter of federal vs state. Example: default to 8 a.m.–8 p.m. local to satisfy FL/OK.
- Throttle message cadence: implement rules like “no more than 3 messages about the same campaign/topic per 24 h” when state law requires (e.g., FL, OK).
- Ensure campaign use case matches registration on 10DLC or other carrier channel; avoid messages outside the approved use.
- Each message must include the HELP/STOP keywords and a clear sender identity.
- Maintain a dynamic internal DNC list: when someone opts out (via STOP, email, portal) update immediately and exclude from all future marketing sends across states.

5.3 Opt-Out & Revocation

- Process opt-out (“STOP”, “UNSUBSCRIBE”, etc) immediately. No further marketing texts should be sent after receipt of opt-out request—with the exception of a single confirmation “You are unsubscribed” (non-marketing).
- For state DNC statutes requiring internal DNC list membership (or minimum retention), ensure data flagged accordingly and never used for marketing again.
- Revocation must be honored regardless of method (SMS reply, email, phone, web). Document the opt-out request and timestamp.
- For states with frequency/time restrictions (e.g., FL, OK), once a recipient opts out or is on internal DNC, they may not be contacted again for marketing unless they re-opt in.

5.4 Recordkeeping & Audit

- Retain: consent logs, opt-outs, message archives (content, timestamps, recipient state/timezone), campaign registration (10DLC/Toll-Free/Short Code), compliance routing logic (state/time/day filters).
- Recommended retention period: **5 years**, or longer if state statutes of limitations are longer.

- Produce periodic audits (e.g., quarterly) of: number of messages per recipient per 24h, state/time zoning correctness, DNC cleansing, and consent-archive completeness.
- Keep change logs whenever consent language or routing logic changes, including versioning and deployment date.

5.5 Training & Governance

- Roles: designate a compliance owner responsible for SMS campaigns and state-law tracking.
 - Provide training to marketing, lead-gen, campaign designers on: state/time restrictions, consent capture, opt-out handling, DNC obligations.
 - Monthly compliance review: monitor new legislation in states, update document and internal routing logic as needed.
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6. Implementation Checklist

Before launching any new SMS campaign, complete the following:

- ☐ Consent capture live and storing metadata
 - ☐ 10DLC/brand/campaign registration completed with carrier/CPaaS
 - ☐ Recipient state/timezone logic tested (including edge cases: area-code vs actual location)
 - ☐ Quiet hours and frequency limits enforced per federal & state rules
 - ☐ HELP/STOP keywords included in sample message(s)
 - ☐ Internal DNC list active and leading opt-outs excluded
 - ☐ Archive and record retention process verified
 - ☐ Review of use case content for compliance (no prohibited SHAFT, gambling, etc unless approved)
 - ☐ Training status: marketing stakeholders have read this document
 - ☐ Document versioning and change log updated
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7. Enforcement & Penalties

Violations of these rules (federal and state) can result in:

- Significant civil liability (legal damages to recipients) under TCPA.

- State Attorney General enforcement and fines (states may impose higher penalties for violation of mini-TCPA or state-telemarketing statutes).
 - Carrier filtering/blocking of unregistered or non-compliant traffic, brand reputation damage, loss of access to A2P channels.
 - Class actions from consumers where consent was not properly captured or DNC rules violated.
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8. Document Review & Update

This document should be reviewed at least **annually** or whenever new legislation/regulations are adopted (state or federal). The compliance owner must monitor for changes in each jurisdiction and update routing rules, consent language, and campaign policies accordingly.

9. Glossary

- **PEWC:** Prior Express Written Consent – required under TCPA for marketing texts to cell phones.
 - **DNC:** Do Not Call – list of numbers that opted-out of telemarketing communications; includes national registry and internal lists.
 - **10DLC:** 10 Digit Long Code – U.S. A2P messaging channel for business SMS/MMS; requires registration.
 - **A2P:** Application to Person – business-to-consumer messaging traffic.
 - **STOP:** Keyword by which a recipient opts out of further marketing texts.
 - **HELP:** Keyword used by recipient to request assistance regarding their subscription.
 - **Quiet Hours:** Time window during which marketing messages to consumers must not be sent.
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10. Appendices

Appendix A: Additional State-by-State References

- [“Text Messaging Laws by State” – Mailchimp resource] ([Mailchimp](#))
- [“Texting Laws by State” – SimpleTexting overview] ([SMS Marketing Services](#))
- [“State and Federal TCPA & Lead Gen Laws” – ClickPointSoftware blog] ([blog.clickpointsoftware.com](#))

Appendix B: Consent Language Template

By entering your mobile number and clicking “Subscribe,” you agree to receive recurring marketing text messages from [Brand] at the number provided, including messages sent by an autodialer or other automated system. Consent is not a condition of purchase. Message & data rates may apply. Msg freq varies. Reply STOP to cancel. Reply HELP for help. See our [Terms] & [Privacy Policy].

Appendix C: Sample Message Text (Marketing)

[Brand]: Thanks for joining! You’ll receive exclusive offers & updates. Msg & data rates may apply. Reply STOP to unsubscribe, HELP for help.

Appendix D: Sample Message Text (Transactional/Informational)

[Brand]: Your order #1234 has shipped and will arrive in 2-3 business days. Reply STOP to end marketing messages.

End of Document

Approved by: _____

Date: _____
