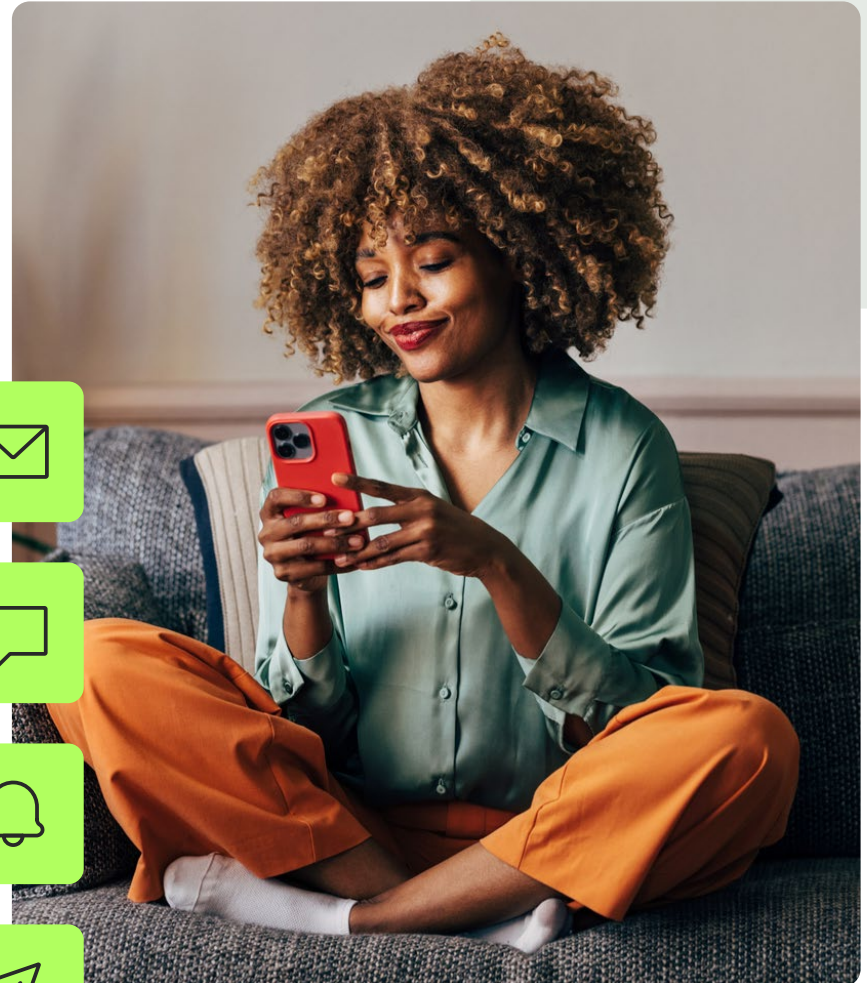
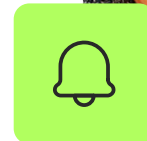




Mobile Compliance Overview



Mobile Ops Team



Kesley Cunningham
Principal Mobile
Operations Specialist



Irene Lynch
Mobile Operations Specialist



Agenda

1. Mobile Governing Bodies & Risks
2. Compliance Basics & Best Practices
3. Federal & State Regulations
4. Number Switching
5. Transactional Messaging
6. Recap

Mobile Governing Bodies & Risks

Governing Bodies

Who regulates text messaging?

- ✓ **Federal Communications Commission (FCC)**
- ✓ **Federal Trade Commission (FTC)**
- ✓ **CTIA – The Wireless Association**
- ✓ **Mobile Marketing Association (MMA)**
- ✓ **Telephone Consumer Protection Act (TCPA)**
- ✓ **Wireless Carriers (Verizon Wireless, AT&T, Sprint, T-Mobile, etc.)**
- ✓ **State-Specific Legislation**



Risks of Non-Compliance



Lawsuits



Fines



Audits



Suspension
or
Termination

Subject to change at any time. Non-compliant programs may result in fines up to \$1500 per phone number, per offense. Listrak to provide recommendations and boilerplate T&Cs. Your legal team should review all templates to determine final language.

T-Mobile Non-Compliance Fines

T-Mobile announced that it will administer fines for SMS/MMS programs found with severity 0 violations. Severity 0 violations are defined as causing "extreme consumer harm". The per audit fines will be tiered based on the criteria outlined below.

Tier 1: \$2,000

- Phishing
- Smishing
- Social engineering (the use of deception to manipulate individuals into divulging confidential or personal information that may be used for fraudulent purposes)

Tier 2: \$1,000

- For illegal content (must be legal in all 50 states and federally)
- Per T-Mobile Code of Conduct section 5.1 "Unlawful, Unapproved, or Illicit Content" this includes, but not limited to the promotion of:
 - CBD/Hemp/Cannabis/Marijuana
 - Adult Solicitation
 - Assault Rifles

Tier 3: \$500

All other violations including but not limited to the following:

- Messaging sent without a valid opt-in
- The sharing of opt-ins across short codes
- SHAFT content (promotion of Sex, Hate, Alcohol, Firearms – specifically Automatic Assault Rifles and Tobacco)

If you receive a Severity 0 audit, your mobile code will be shut down on all US operators to prevent unwanted messages or SPAM. Listrak will need to work with you to complete a required Root Cause Analysis and once reviewed by the carrier, a decision will be made if the originator will be un-blocked.

Deactivated Phone Numbers

What are deactivation files?

- Carrier files, provided daily, that include any mobile phone number deactivated from their network that day.
- Listrak receives and processes these files daily.
- Listrak also removes any phone number associated with a permanent failure code for added protection.

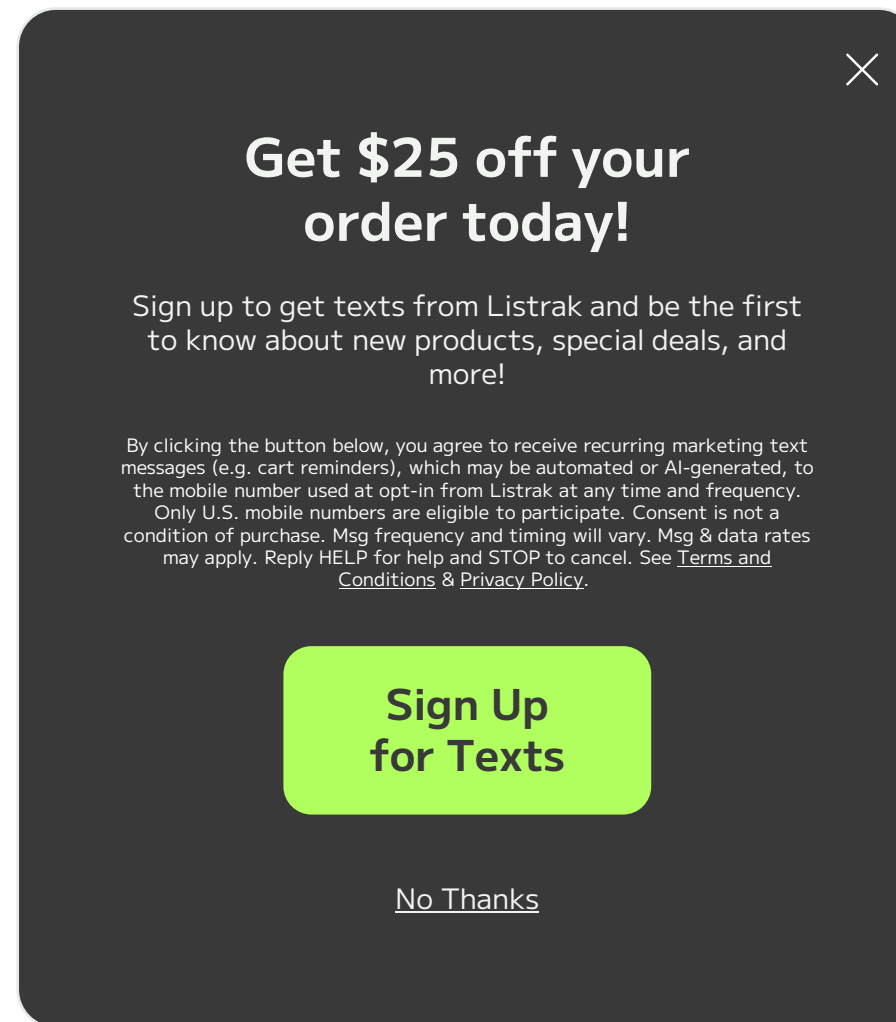
Why is it important to process deactivation files?

- Messaging reassigned numbers is prohibited by the TCPA
- Processing of these files is mandatory by the wireless carriers.
- Carriers reserve the right to disable the messaging campaign at the risk of the message sender and will conduct a full consent audit if a Content Provider is found not processing deactivation files
- Failure to process deactivated MDNs may lead to excessive consumer complaints and SPAM.

Compliance Basics & Best Practices

Call-to-Action Guidelines for Subscription Programs

- Program Name & Product description
 - Shopping cart reminder specifically mentioned
- Message frequency: "Msg Freq May Vary"
- Msg & Data rates may apply
- Opt-out instructions: "STOP" keyword
- Customer service information: "HELP" keyword
- Only U.S. mobile numbers may subscribe
- Link to privacy policy, or URL
- Link to T&Cs, or URL
- FCC PEWC disclosures (recommended)
 - Telephone may be messaged
 - Automated messages are sent
 - Consent is not a condition of purchase



Benefits of a Double Opt-In

✓ Keep a Digital Record of Consent

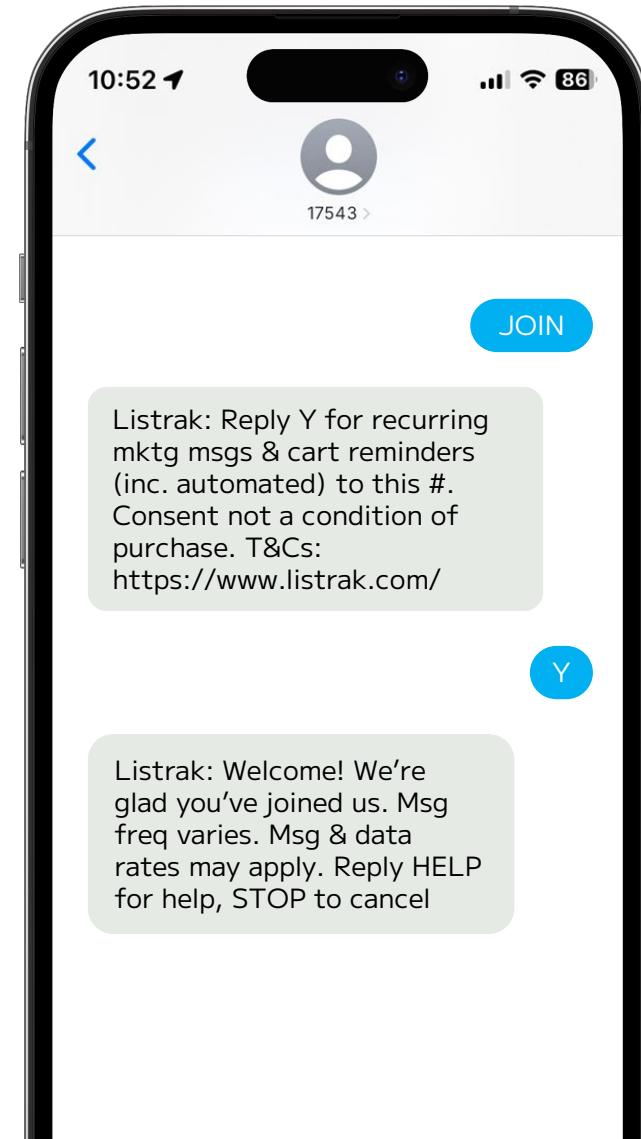
A double opt-in ensures you always have a record of the consumer consenting to your terms & conditions and takes care of Prior Express Written Consent (PEWC) under the TCPA regulations.

✓ Authenticate the Mobile Number

Specifically, with acquisition points such as webforms, it's important to account for consumer error while entering their number into a field, providing a landline and/or entering in the mobile number of a family member or friend.

✓ Stay Ahead of Changes

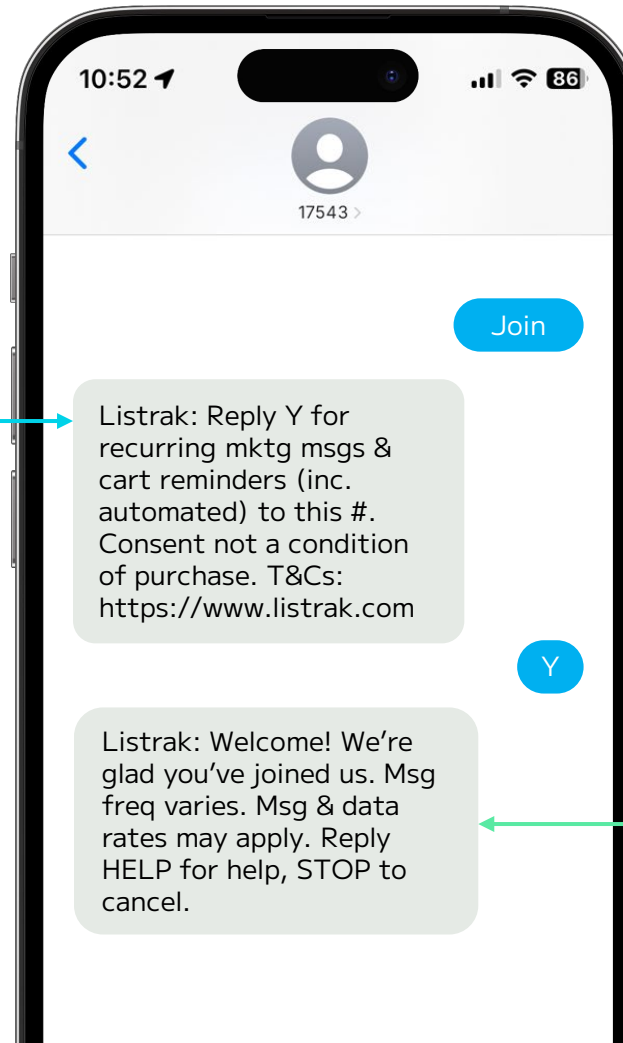
Regulations and policies from the CTIA, TCPA, FCC and wireless carriers are frequently updated.



Double Opt-In Compliance

Subscription Prompt (Reply Y)

- Program (brand) name & product description
 - Include cart reminders, if applicable
- Response command (Reply Y)
- FCC PEWC disclosures (Recommended)
- Link to Terms & Conditions (Recommended)



Welcome Message

- Program (brand) name
- Message frequency
- HELP & STOP instructions
- Msg & data rates may apply

Double Opt-In - Keyphrase

Subscription Keyphrase

- Program (brand) name & product description
 - Include cart reminders, if applicable

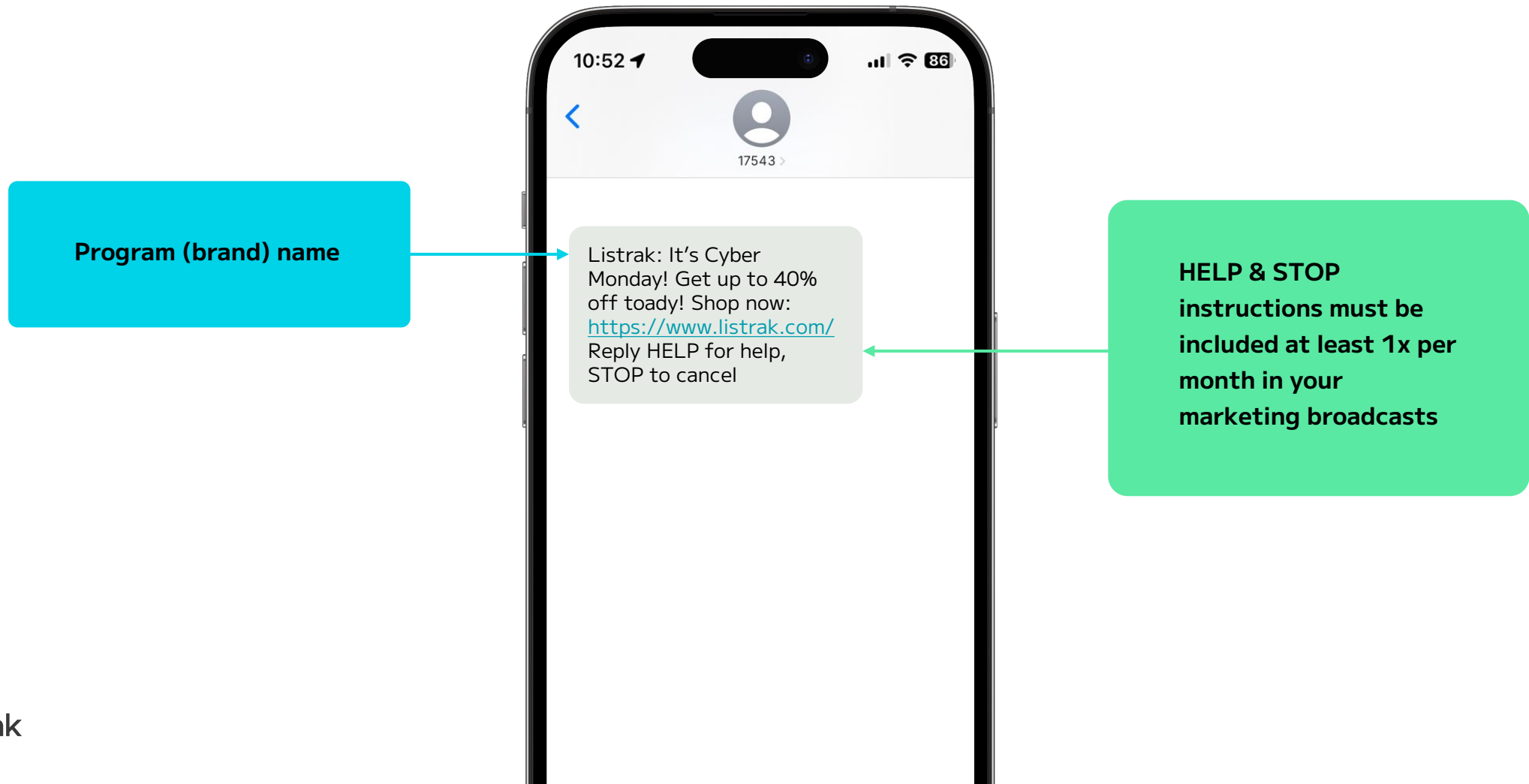
Send this text for recurring automated Listrak marketing alerts + cart reminders

Listrak: Welcome! T&Cs: <http://www.listrak.com/>
Msg freq varies. Msg & data rates may apply.
Reply HELP for help, STOP to cancel.

Welcome Message

- Program (brand) name
- Message frequency
- HELP & STOP instructions
- Msg & data rates may apply
- FCC PEWC disclosures (Recommended)
- Link to Terms & Conditions (Recommended)

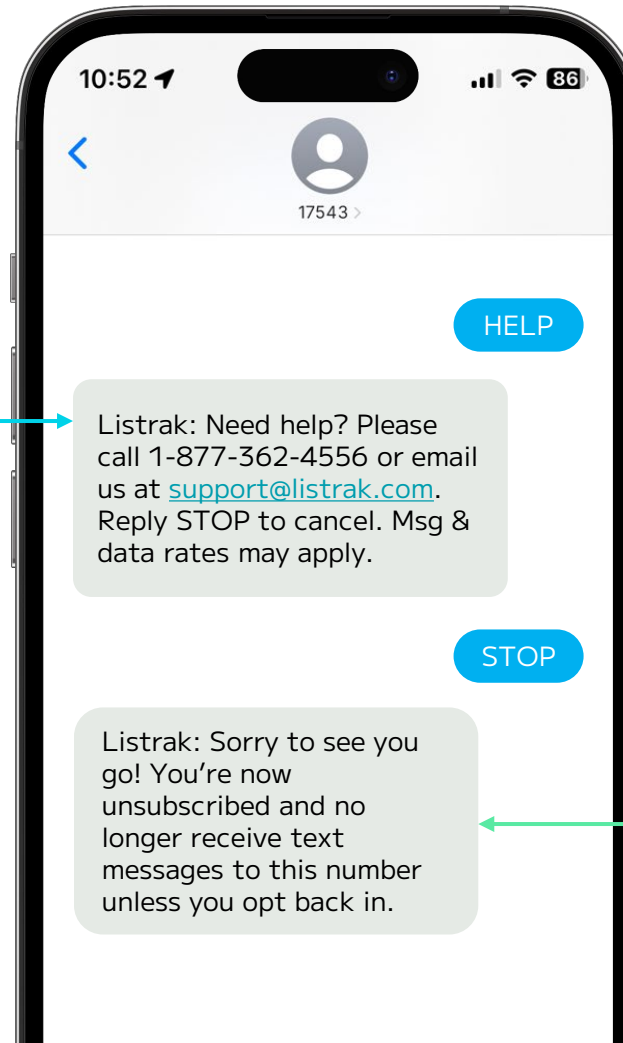
Ongoing Marketing Alerts Compliance



Short Code HELP & STOP Message Requirements

HELP

- Program name
- Customer service info:
 - Toll-free number
 - Email address
- Stop Instructions
- Msg & data rates may apply



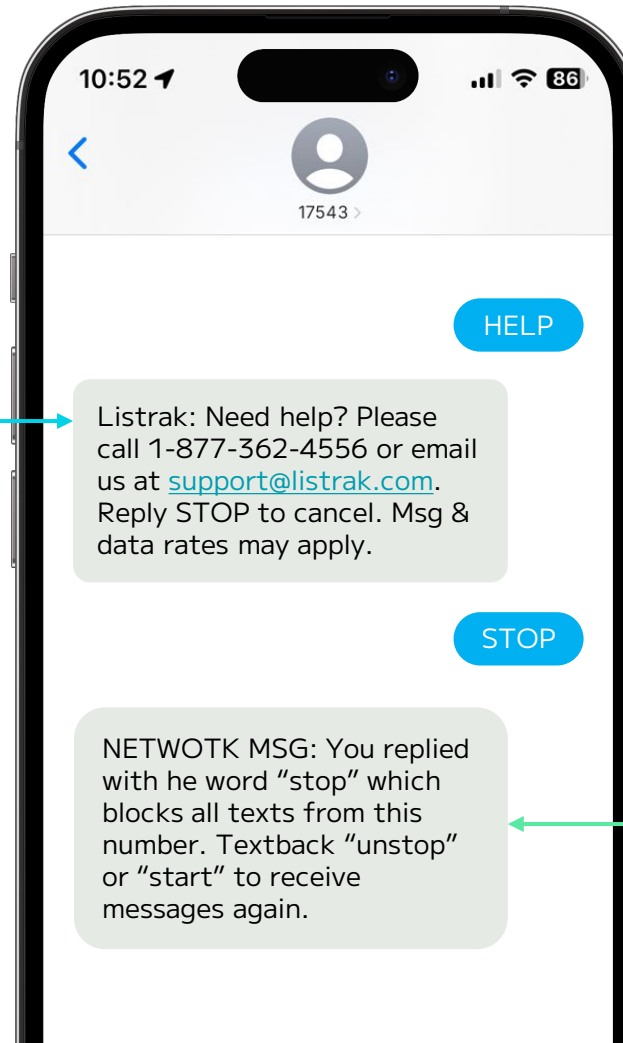
STOP

- Program name
- Confirmation that no additional messages will be sent

Toll-Free Number HELP & STOP Message Requirements

HELP

- Program name
- Customer service info:
 - Toll-free number
 - Email address
- Stop Instructions
- Msg & data rates may apply



STOP

- Program name
- Confirmation that no additional messages will be sent

Mobile Terms & Conditions

- Include the following information:
 - Program (brand) name & product description
 - Reference cart reminders if applicable
 - Message & data rates may apply
 - Customer support contact information
 - Message frequency
 - Opt-out instructions
- “The mobile carriers are not liable for delayed or undelivered messages”



May be presented in full beneath the CTA or accessible from a link located in close proximity to CTA

Additional Recommendations

- FCC PEWC disclosures
- Arbitration clause
- Severability clause
- Limitation of liability clause
- Change of terms clause including the ability to change terms at any time without notice
- Privacy statement or link to privacy policy
- Language indicating keywords for opting out



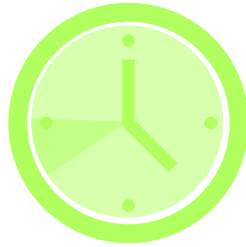
Shopping Cart Reminder Requirements

1. Calls-to-action disclaimers must mention the text program includes shopping cart reminders.
2. Program must include a double opt-in via text.
3. Double opt-in text language must include reference to cart reminders.
4. No more than one cart reminder text per shopping event may be sent.
5. Cart reminder must be delivered within 48 hours following abandonment.
6. Cart reminder must include STOP to opt out instructions.
7. Privacy policy must explicitly state that how information is captured by the ecommerce site to determine (or define) when a cart has been abandoned.
8. Cart reminders must not result in the brand completing a transaction on behalf of the customer or process payment.

Note: The consumer must complete the transaction themselves via a URL within the message to the ecommerce website.

Federal & State Regulations

Send Times & Quiet Hours



TCPA Guidelines

8am-9pm

Time Zone Optimized



Conservative

12pm-8pm

Time Zone Optimized

Marketing messages cannot be sent during "Quiet Hours"
System responses & Opt-in flows may deliver in real-time

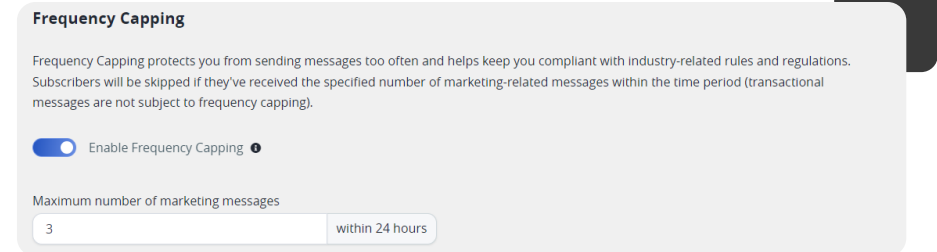
Frequency Capping

What is frequency capping?

- Limits the number of messages that a contact receives in the SMS channel within a 24-hour time period
- Enabled at the sender code level and applies to all lists across a given sender code
- Specifies the max number of messages a contact can receive
- If a contact is eligible for more than the max number above the count any additional messages will be skipped.

What messages are not included in the cap?

- Messages in the keyword or list subscription flow
- Transactional messages (includes Journey Hub Shopify transactional messages)
- System messages such as HELP and STOP
- Test messages
- Two-Way SMS Conversations



Frequency Capping

Frequency Capping protects you from sending messages too often and helps keep you compliant with industry-related rules and regulations. Subscribers will be skipped if they've received the specified number of marketing-related messages within the time period (transactional messages are not subject to frequency capping).

☒ Enable Frequency Capping ⓘ

Maximum number of marketing messages

3 within 24 hours

Florida Statute

Customer Service Phone Number

Listrak has recently been alerted that plaintiffs are making claims related to unclear language in a provision under the Florida Telephone Solicitation Act (FTSA).

This Florida statute, Fla. Stat. § 501.059(8)(b), requires any person “who makes a telephonic sales call or causes a telephonic sales call to be made to...transmit....the originating telephone number,” or, as a substitution, “the name of the seller on behalf of which a telephonic sales call is placed and the seller’s customer service telephone number, which is answered during regular business hours,” to the recipient’s “caller identification service.”

Plaintiffs are claiming that this obligation applies to text messaging.



Florida Statute

Customer Service Phone Number (cont.)

- There have been no court decisions to date on this requirement, however, until we see how judges rule on this issue, brands could be exposed to similar claims being filed.
- Options to consider talking through with legal team:
 - Option 1: Include a customer service telephone number in all your marketing messages.
 - Option 2: Include a customer service telephone number in your marketing messages at least once a month.
 - Similar to the standard HELP/STOP language that should be sent 1x/mo currently – you could include the phone number in that message
 - Option 3: Continue sending as you are today, not adjusting copy to include the phone number and monitor these claims as they progress through the system.
- Additionally, we recommend including a customer service telephone number in the contact card.



The information outlined above is for informational purposes only and is not legal advice. You are responsible for ensuring your marketing program complies with all federal and state laws. Your legal team should review and approve your marketing program.



Texas Telemarketing Legislation

SB-140



Expands the definition of “telephone solicitation” as it applies to Texas’s registration and disclosure requirements – **include text messages**

And makes violations of certain Texas telemarketing requirements violations of the Texas Deceptive Trade Practice Act - **allowing private right of action**

Telemarketer Registration



Effective 9/1/25, some brands may need to register as a seller with the Texas Secretary of State

Many exemptions are noted (publicly traded, brick & mortar stores in the state 2+yrs, etc.)

If required to register

- **Registration Fee**
- **Security Deposit**

Quiet Hours



Could see increased attention on Texas telemarketing requirements such as the sending of **unsolicited messages** during quiet hours

Mon-Sat 9pm-9am

Sundays/Holidays not before 12pm
or after 9pm

Number Switching

Number Switching Process

The CTIA and U.S. wireless carriers require that a business must inform their subscribers when transitioning their recurring messaging program from one number to another number.

Steps:

1. Deactivate current pop-ups
2. Send the Sunset message from your current platform
3. Wait 24-48 hours, then export your list of active subscribers and import it to Listrak
4. The Sunrise message is sent from Listrak after importing your list

Sunset Message

PROGRAM NAME: Hey friend, we're changing our number! You'll now hear from us on **[insert new #]**. Txt HELP for help; STOP to quit. T&C's: **[insert link to terms]**

Sunrise Message

PROGRAM NAME: Hello from our new number! Msg freq varies. Text HELP for help, STOP to opt out. Msg & Data rates may apply T&C's: **[insert link to terms]**

Transactional Compliance



Compliance for Transactional Programs

- Opt-in is typically only at checkout
- Customers cannot be forced subscribed at checkout even if their phone number is required
- Transactional opt-in must be separate from Marketing opt-in, not combined
- The Opt-in consent must be explicit
 - Unchecked checkbox
 - Disclaimer language present
 - Links to Terms & Privacy
- SMS sign up must also be separate from email
- Terms & Conditions need to list which transactional messages will be sent and on what sender code

Recap

Key Takeaways

- Double opt-in is enabled by default across ALL acquisition strategies
- Subscribers should only be collected with 'express written consent,' meaning by explicitly opting in with proper disclosures provided
- Thorough disclaimer language must be present at ALL subscription points
- Program Name must be included in ALL messages sent
- HELP and STOP instructions should be sent at least once per month to your full subscriber database
- Quiet Hours and Frequency Capping are enabled by default to adhere to federal and state regulations
- Only one message is triggered as part of your Shopping Cart Abandonment campaign, within 48 hours of abandonment event



In addition, please review state specific laws and regulations with your legal counsel to determine the best course of action for your business.

Thank you!