Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Lyft, Inc.	)	File No.: EB-TCD-15-00019865
	)	
	)	

CITATION AND ORDER

PRERECORDED MESSAGE VIOLATIONS

Adopted: September 11, 2015 **Released: September 11, 2015**

By the Chief, Enforcement Bureau:

I. NOTICE OF CITATION

1. This **CITATION AND ORDER** (Citation) notifies Lyft, Inc. (Lyft), that it violated the law by infringing consumers' rights to be free from unauthorized marketing calls. Specifically, Lyft violated provisions of the Communications Act of 1934, as amended (Act), Federal Communications Commission (FCC or Commission) regulations, and the Commission's rules (collectively, Rules) that regulate marketing and advertising calls that use autodialers or artificial or prerecorded messages to residential and wireless phones. We therefore direct Lyft to take immediate steps to comply with the Rules, FCC orders, and the Telephone Consumer Protection Act's (TCPA) prohibition against unlawful marketing and advertising calls. If Lyft fails to comply with these laws, it may be liable for significant penalties.

2. ***Notice of Duty to Comply with the Law***: We issue this Citation pursuant to Section 503(b)(5) of the Act, which states that the Commission may not impose monetary forfeitures against non-regulatees who violate Commission Rules or the Act unless and until: (a) the Commission issues a citation to the violator; (b) the Commission provides the violator a reasonable opportunity to respond; and (c) the violator subsequently engages in conduct described in the citation.[1] Accordingly, Lyft is hereby on notice that it must comply with Section 227 of the Act and Section 64.1200 of the Rules.[2] If Lyft subsequently engages in any conduct of the type this Citation describes — and specifically any violation of the TCPA and accompanying Rules—it may be subject to civil penalties, including but not limited to, substantial monetary forfeitures. In assessing such forfeitures, the Commission may consider both the conduct that led to this Citation and the conduct following it.[3]

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[1] *See* 47 U.S.C. § 503(b)(5).

[2] 47 U.S.C. § 227; 47 C.F.R. §§ 64.1200. Section 227 was added to the Communications Act by the Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (codified at 47 U.S.C. § 227), and is most commonly known as the TCPA. The TCPA and the Commission's rules restrict a variety of practices that are associated with telephone solicitation and the use of the telephone network to deliver unsolicited advertisements or prerecorded and autodialed telephone calls.

[3] *See* S. Rep. No. 95-580, 95th Cong., 1st Sess. at 9 (1977) , *reprinted in* 1978 U.S.C.C.A.N. 109 (If a person or entity that has been issued a citation by the Commission thereafter engages in the conduct for which the citation of violation was sent, the subsequent notice of apparent liability "would attach not only for the conduct occurring subsequently *but also for the conduct for which the citation was originally sent*.") (emphasis added).

II. BACKGROUND

3. For more than two decades, Congress and the Commission have sought to protect consumers from the nuisance, invasion of privacy, cost, and inconvenience of autodialed calls and prerecorded or artificial voice messages (robocalls).[4] Congress found that consumers consider these kinds of calls, "regardless of the content or the initiator of the message, to be a nuisance and an invasion of privacy"; that businesses also complain that these kinds of calls "are a nuisance, are an invasion of privacy, and interfere with interstate commerce"; and that banning such calls, except when made for an emergency purpose or when the called party consents to receiving the call, "is the only effective means of protecting telephone consumers from this nuisance and privacy invasion."[5] In 1991, Congress passed the TCPA and enacted strict limitations on the use of autodialed calls and robocalls to wireless and residential phones—particularly with respect to telemarketing and advertising. The Commission adopted regulations implementing the TCPA in Section 64.1200 of the Rules.[6] Among other things, the Rules prohibit making autodialed calls and robocalls for the purposes of telemarketing and advertising unless the caller has the prior express written consent of the called party.[7] In addition, to protect consumers from being forced to give consent unwillingly, FCC regulations forbid requiring consumers to agree to receive marketing robocalls/autodialed calls as a condition of purchasing any goods, services, or property.[8] The FCC enforces the TCPA by conducting investigations and taking enforcement actions against violators.

4. Lyft provides a transportation matchmaking service to consumers in various metropolitan areas throughout the United States. Lyft describes its services as providing "a marketplace where persons who seek transportation to certain destinations ('Riders') can be matched with persons driving to or through those destinations ('Drivers')."[9] Consumers who wish to purchase rides from Lyft drivers do so by accessing the Lyft website or and creating an account via the Internet,[10] or by downloading the Lyft mobile application onto a smartphone device and following the prompts to sign up for the service. Prior to entering their names, email addresses and phone numbers in the signup screen, consumers are required to check a box stating "I agree with the Terms of Service."[11] The signup page includes a link to the Lyft Terms of Service.[12] Section 6 of the Lyft Terms of Service reads as follows:

> 6. Lyft Communications
>
> By becoming a User, **you expressly consent and agree to accept and receive communications from us, including via e-mail, text message, calls, and push notifications to the cellular telephone number you provided to us.** By consenting to being contacted by Lyft, **you understand and agree that you may receive communications generated by automatic telephone dialing systems and/or which will deliver prerecorded messages sent by or on behalf of Lyft, its affiliated companies and/or Drivers, including** but not limited to: operational communications concerning your User account or use of the Lyft Platform or

[4] *See* S.REP. NO. 102-178, 1st Sess., 102nd Cong., at 2, 4–5 (1991), *reprinted in* 1991 U.S.C.C.A.N. 1968.

[5] Telephone Consumer Protection Act, Pub L. No. 102-243, § 2, 105 Stat. 2394 (1991).

[6] *See* 47 C.F.R. § 64.1200; *see also Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 7 FCC Rcd 8752 (1992).

[7] 47 C.F.R. § 64.1200(f)(8).

[8] *Id*.

[9] *See* Lyft Terms of Service, *available at* https://www.lyft.com/terms (Apr. 29, 2015).

[10] *See* Lyft Website, "Signup - Lyft," *available at* https://www.lyft.com/signup (last visited Sept. 2, 2015).

[11] *Id.*

[12] *Id.*

> Services, updates concerning new and existing features on the Lyft Platform, **communications concerning promotions run by us or our third party partners,** and news concerning Lyft and industry developments. **IF YOU WISH TO OPT-OUT OF PROMOTIONAL EMAILS, TEXT MESSAGES, OR OTHER COMMUNICATIONS, YOU MAY OPT-OUT BY FOLLOWING THE UNSUBSCRIBE OPTIONS PROVIDED TO YOU.** Standard text messaging charges applied by your cell phone carrier will apply to text messages we send. **You acknowledge that you are not required to consent to receive promotional messages as a condition of using the Lyft Platform or the Services. However, you acknowledge that opting out of receiving text messages or other communications may impact your use of the Lyft Platform or the Services.**[13]

The Lyft Terms of Service agreement is a blanket agreement—that is, an agreement that Lyft requires all consumers to affirm in order to obtain service, but that does not allow any opportunity for consumers to provide input on the terms.

5. As part of its investigation into Lyft's compliance with FCC regulations, FCC staff discovered that—contrary to the explicit representations in the Lyft Terms of Service—Lyft does not, in fact, provide "unsubscribe options" for consumers to follow.[14] In order to opt out of receiving text messages from Lyft, users must search for opt-out instructions on the Lyft website's "help center," which is the only place they are available.[15] Even then, while instructions for opting out of receiving texts can be found, no such instructions for opting out of calls are available. When a user searches "opt out" in the help center, a result titled "Stop Receiving Text Messages from Lyft" is returned. When the user clicks that result, they are told:

> If you no longer wish to receive text messages from us, all you have to do is reply "STOP" to the message, and you'll receive a final text confirming that you no longer want to receive texts from us.[16]

FCC staff also discovered that when they followed the opt-out instructions, they were no longer able to receive security confirmation text messages needed to log in to their Lyft accounts.[17] In other words, exercising the option to decline marketing messages made it impossible to use Lyft's services. Accordingly, the evidence shows that Lyft's opt-out representations are illusory in nature, and Lyft effectively requires all consumers to agree to receive marketing text messages and calls on their mobile phones in order to use services.

III. APPLICABLE LAW AND VIOLATIONS

6. Federal law imposes limits on the use of autodialed calls and robocalls delivered to both landline and wireless phones. In particular, FCC regulations require prior express written consent for all telephone calls that use an automatic telephone dialing system or a robocall to deliver an advertisement or

[13] Lyft Terms of Service, *available at* https://www.lyft.com/terms (Apr. 29, 2015) (bolded emphasis added).

[14] *See* Appendix. Section 6 of the Lyft Privacy Policy claims that "Lyft provides Users the opportunity to opt-out of receiving communications from Us and Our partners at the point where We request information about the visitor." As shown in the Appendix, this statement is untrue.

[15] *Id.*

[16] Lyft, Stop Receiving Text Messages from Lyft, *available at* https://lyft.com/help/article/1517251 (last visited Setp. 10, 2015).

[17] *Id.*

telemarketing message to a wireless number or a residential line.[18] Under longstanding FCC precedent, text messages are considered "calls" to a wireless number for the purposes of the TCPA.[19]

7. Section 64.1200(f)(8) of the FCC rules requires that the "prior express written consent" collected from consumers must include all of the following characteristics and features:[20]

- The agreement must be in writing;
- The agreement must bear the signature of the person who will receive the advertisement/telemarketing calls or texts;
- The language of the agreement must clearly authorize the caller to deliver or cause to be delivered advertisements or telemarketing messages via autodialed calls, texts, or robocalls;
- The written agreement must include the telephone number to which the person signing authorizes advertisements or telemarketing messages to be delivered; and
- The written agreement must include a clear and conspicuous disclosure informing the person signing that:
    - By executing the agreement, the person signing authorizes the caller to deliver or cause to be delivered ads or telemarketing messages via autodialed calls, texts, or robocalls; and
    - The person signing the agreement is not required to sign the agreement (directly or indirectly), or agree to enter into such an agreement as a condition of purchasing any property, goods, or services.

Callers contending that they have fulfilled the prior express written consent requirement "bear the burden of demonstrating that a clear and conspicuous disclosure was provided and that unambiguous consent was obtained."[21]

8. The Lyft Terms of Service agreement violates FCC regulations. As stated above, it is unlawful to require a consumer to consent to receive autodialed or prerecorded telemarketing or advertising calls/texts as a condition of purchasing any property, good, or service. The Terms of Service

[18] *See* 47 C.F.R. § 64.1200(a)(2)–(3); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report & Order, 27 FCC Rcd 1830, 1838–44, paras. 20–34 (2012) (2012 TCPA Order). The caller must also get prior express consent (either oral or written) for such calls to wireless phones if the call is not telemarketing. *See id.* at § 64.1200(a)(1)(iii). The prior express written consent requirement went into effect on October 16, 2013. *See* Telephone Consumer Protection Act of 1991, 77 Fed. Reg. 63,240 (Oct. 16, 2012).

[19] *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014, 14115, para. 165 (2003) (statutory prohibition against unlawful telemarketing calls to wireless numbers "encompasses both voice calls and text calls to wireless numbers including, for example, short message service (SMS) calls"); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, FCC 15-72, para. 107 (Rel. Jul. 10, 2015) (addressing the issue of "whether SMS text messages are subject to the same protections under the TCPA as voice calls" and stating that "[w]e reiterate that they are. [. . . .] the Commission in 2003 determined that the TCPA applies to SMS texts. Thus, we find no uncertainty on this issue. . . ." (internal citations omitted)).

[20] *See* 47 C.F.R. § 64.1200(f)(8) (definition of "prior express written consent"); *see also* 2012 TCPA Order, 27 FCC Rcd at 1838–44, paras. 20–34.

[21] 2012 TCPA Order, 27 FCC Rcd at 1844, para. 33. *See also Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling, 23 FCC Rcd 559, 565, para. 10 (2008) (concluding that "[s]hould a question arise as to whether express consent was provided, the burden will be on [the caller] to show it obtained the necessary prior express consent.").

agreement purports to recognize the consumer's right to refuse consent to receive promotional messages as a condition of receiving service by declaring that "[y]ou acknowledge that you are not required to consent to receive promotional messages as a condition of using the Lyft Platform or the Services."[22] However, this statement is contradicted by the consumer's actual experience using the Lyft app and website, as described above.[23] In reality, there is no way to refuse consent to receive promotional messages without precluding use of Lyft's services. Moreover, because the opt-out disclosure Lyft provides in the Terms of Service is illusory in nature, we find that Lyft fails to provide a clear and conspicuous disclosure informing the consumer of his or her right to refuse to consent to receive telemarketing or advertising messages.

9. Based on the record developed in this case, the Enforcement Bureau, acting through its delegated authority, finds that Lyft (1) unlawfully conditioned consumers' ability to use Lyft's services on their agreement to receive marketing text messages, and (2) illegally circumvented the FCC's disclosure requirements for prior express written consent, in violation of FCC orders[24] and the requirements set forth in Section 64.1200(f)(8) of the Rules.[25] Moreover, to the extent that Lyft sent any telemarketing or advertising texts to consumers (1) after the FCC rules requiring prior express written consent went into effect (i.e., October 16, 2013), and (2) without first having collected conforming prior express written consents of each recipient of the text(s), each such text message also constitutes a separate violation of Section 227 of the Act and Section 64.1200(a)(2) of the Rules.[26]

IV. OPPORTUNITY TO RESPOND TO THIS CITATION

10. Lyft may respond to this Citation within thirty (30) calendar days from the release date of this Citation by any of the following methods: (1) a written statement, (2) a teleconference interview, or (3) a personal interview at the Commission Office nearest to Lyft's place of business. The Commission Field Office nearest Lyft is located in San Francisco, California.

11. If Lyft requests a teleconference or personal interview, contact Kristi Thompson at (202) 418-1318. We note that such teleconference or interview must take place within 30 calendar days of the release date of this Citation. If Lyft prefers to submit a written response with supporting documentation, it must send the response within thirty (30) calendar days of the release date of this Citation to the contact and address provided in the paragraph below.

12. All written communications should be sent to the address below.

Kristi Thompson
Deputy Division Chief, EB-TCD
Room 4-C220
Federal Communications Commission
445 12th St SW, Washington DC 20554
Re: EB-TCD-15-00019865

13. Upon request, the Commission will make reasonable accommodations for persons with disabilities. If applicable, Lyft should provide a description of the accommodation required, and include as much detail as possible, and also provide a telephone number and other contact information. Lyft

[22] Lyft Terms of Service, *available at* https://www.lyft.com/terms (Apr. 29, 2015).

[23] *See supra* para. 5; Appendix.

[24] 2012 TCPA Order, 27 FCC Rcd at 1838–44, paras. 20–34; *see also* 47 U.S.C. §§ 154(i), 154(j) (authority of FCC to make rules, regulations, and issue orders as necessary to execute its functions; authorization of FCC to conduct proceedings "as will best conduce to the proper dispatch of business and to the ends of justice.").

[25] 47 C.F.R. § 64.1200(f)(8).

[26] 47 C.F.R. § 64.1200(a)(2).

should allow at least five business days advance notice; last minute requests will be accepted, but may be impossible to fill. Lyft should send an e-mail to fcc504@fcc.gov or call the FCC's Consumer & Governmental Affairs Bureau:

> For sign language interpreters, CART, and other reasonable accommodations: 202-418-0530 (voice), 202-418-0432 (tty);
>
> For accessible format materials (braille, large print, electronic files, and audio format): 202-418-0531 (voice), 202-418-7365 (tty).

14. We advise Lyft that it is a violation of Section 1.17 of the Rules[27] for any person to make any false or misleading written or oral statement of fact to the Commission. Specifically, no person shall:

> (1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and
>
> (2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.[28]

15. Further, the knowing and willful making of any false statement, or the concealment of any material fact, in reply to this Citation is punishable by fine or imprisonment.[29]

16. Violations of Section 1.17 of the Rules or the criminal statute referenced above may result in further legal action, including monetary forfeitures pursuant to Section 503 of the Act.

17. Finally, we warn Lyft that, under the Privacy Act of 1974,[30] Commission staff will use all relevant material information before it, including information disclosed in interviews or written statements, to determine what, if any, enforcement action is required to ensure Lyft's compliance with the Act and Rules.

V. FUTURE VIOLATIONS

18. If, after receipt of this Citation, Lyft again violates FCC regulations, the notice requirements set forth in Section 64.1200(f)(8) of the Rules, or makes any telemarketing or advertising calls or texts in violation of Section 227 of the Act or Section 64.1200 of the Rules,[31] the Commission may impose sanctions for each such violation. For example, the Commission may impose monetary forfeitures. The Commission may impose forfeitures not to exceed $16,000 for each such violation or each day of a continuing violation, and up to $112,500 for any single act or failure to act.[32]

19. The Commission may further adjust any forfeiture(s) to reflect enumerated statutory factors, which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters

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[27] 47 C.F.R. § 1.17.

[28] 47 C.F.R. § 1.17(a)(1)–(2).

[29] 18 U.S.C. § 1001.

[30] 5 U.S.C. § 552a(e)(3).

[31] *See supra* n. 25.

[32] *See* 47 U.S.C. § 503; 47 C.F.R. § 1.80(b). This amount is subject to further adjustment for inflation. *See* 47 C.F.R. § 1.80(b)(9)).

as justice may require.[33] The Enforcement Bureau will continue to monitor the Company's practices with respect to federal law and FCC rules. If the Enforcement Bureau finds additional or continued violations after the issuance of this Citation, the Commission may assess forfeitures on both the conduct that led to this Citation and the conduct following it.[34]

VI. ORDERING CLAUSES

20. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 4(j) of the Act,[35] Lyft, Inc. must take immediate steps to comply with FCC regulations, Section 227 of the Act, and Section 64.1200 of the Rules.[36]

21. **IT IS FURTHER ORDERED** that a copy of this Citation and Order shall be sent by first class mail and certified mail, return receipt requested, to Lyft, Inc., 2300 Harrison Street, San Francisco, CA 94110.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau

[33] *See* 47 U.S.C. § 503(b)(2)(E); 47 C.F.R. § 1.80(b)(8).

[34] *See supra* paragraph 2.

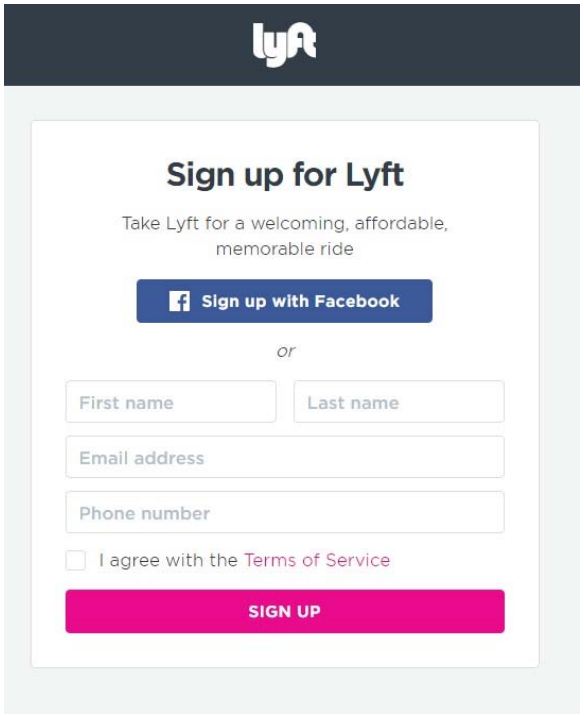
[35] 47 U.S.C. §§ 154(i), 154(j).

[36] 47 U.S.C. § 227; 47 C.F.R. § 64.1200.

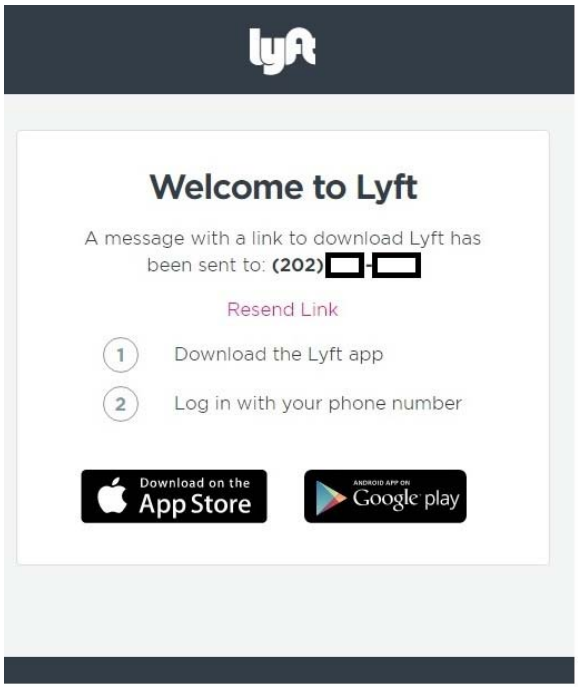
APPENDIX

Lyft Website and Mobile App

In order to purchase car share rides using Lyft's service, consumers sign up on the Lyft website by entering their name, email address and phone number. Users must agree to the Lyft Terms of Service by checking a box.

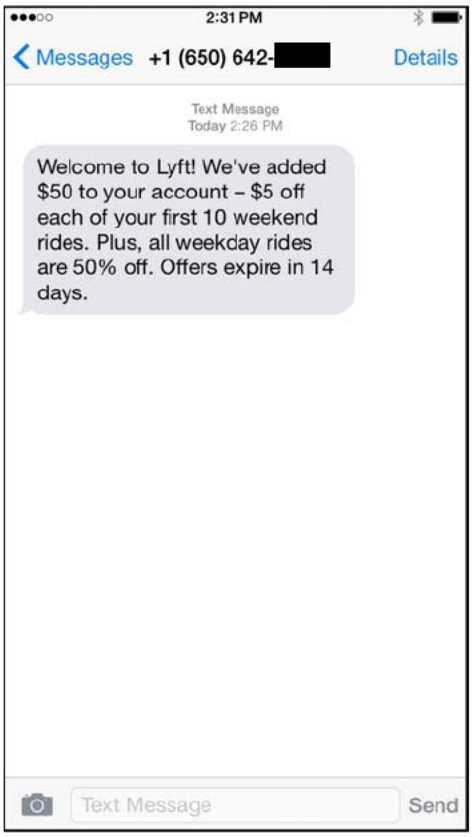


When a user completes the signup process, Lyft notifies the user that it has sent a text message with a link to download the app. The text is sent to the phone number used to create the account.

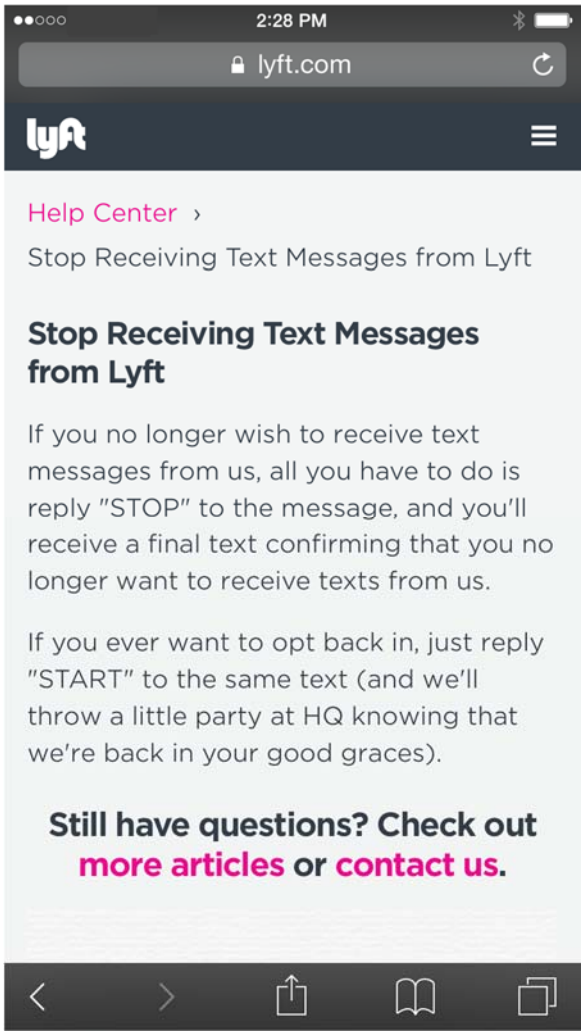


Lyft then sends two more text messages to the user's phone nearly simultaneously. The first message contains an access code needed to sign in to the Lyft smartphone app. Users must access the smartphone app in order to purchase a car ride from a Lyft driver.

The second text message is a "welcome" message to the new account holder. These are the only two communications that Lyft users receive upon signing up for the service. Neither message provides instructions on how to opt out of marketing texts.



The Lyft smartphone app does not indicate how users can opt out of receiving marketing messages – opt-out instructions or options are not included in the app's settings, not provided when a user signs up for the service, and not identified in a user's profile options. By searching on the "Help" function of the app, the app launches the user's browser program. This article appears when the user conducts a keyword search for "opt out."



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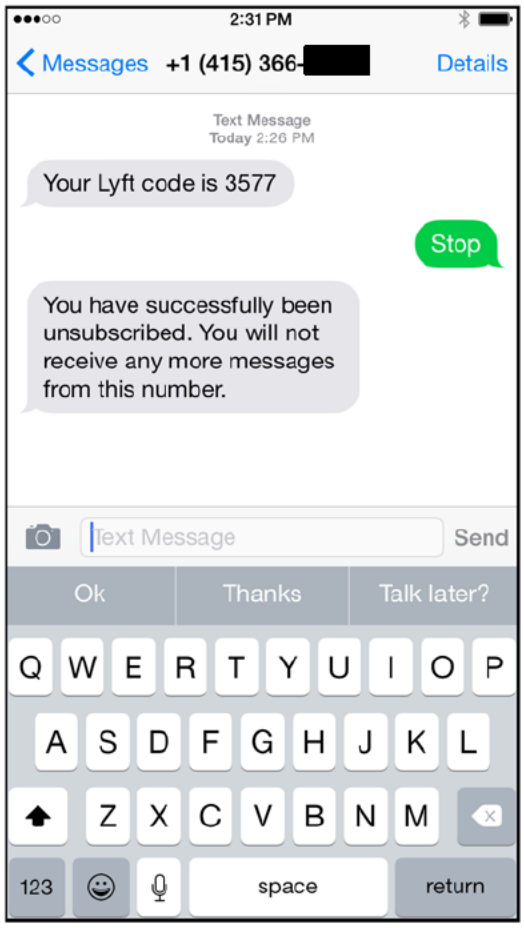
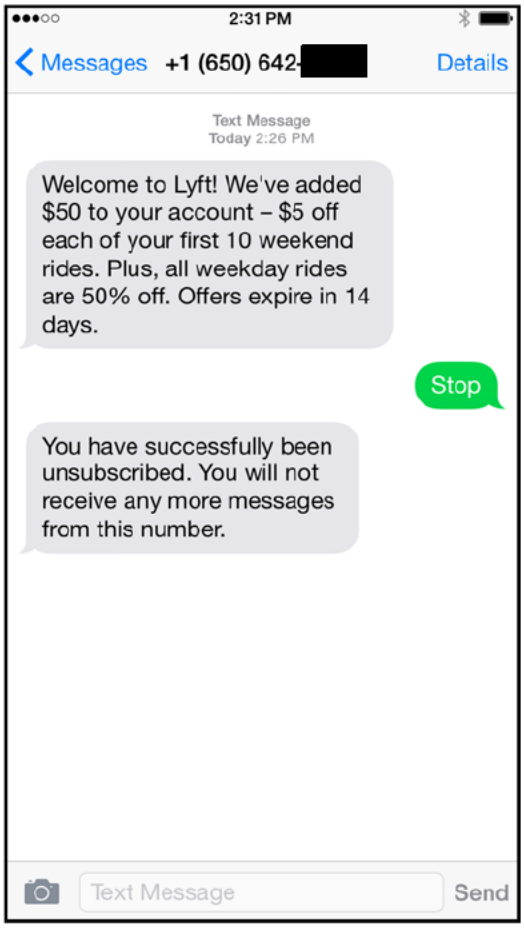
When a user follows the guidance from the Lyft Help Center web page, Lyft sends text responses confirming that the user will no longer receive texts from Lyft:





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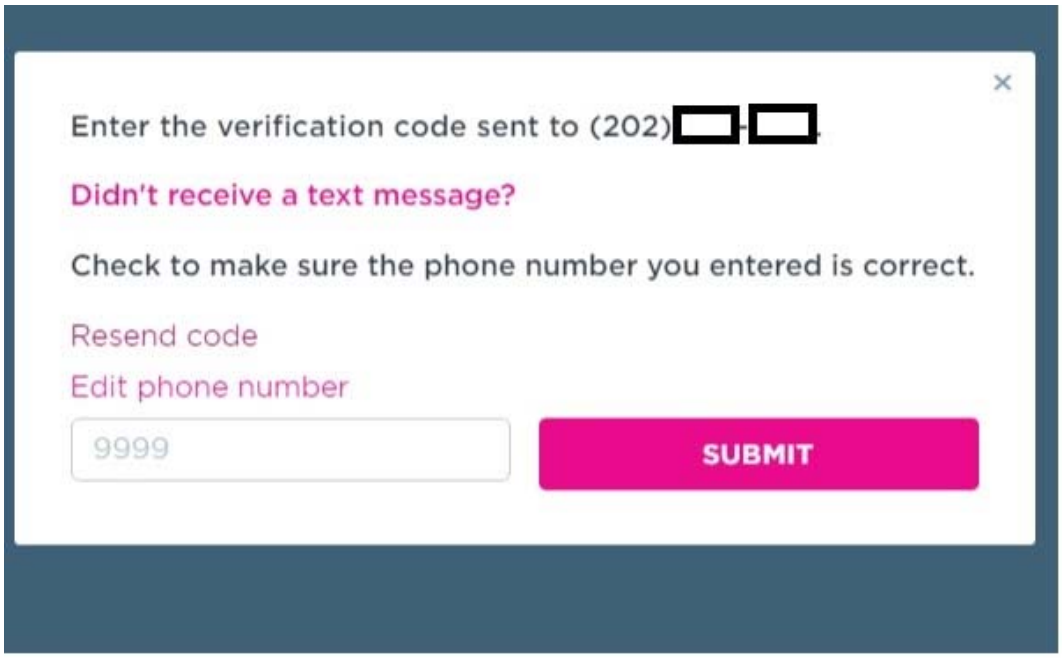
Afterward, the user is no longer able to access his or her account. Any attempt to log in using the Lyft website or app generates the following screen, indicating that the Lyft system requires entry of a text message verification code as an additional security measure. The opt out process prevents delivery of the verification code, thus preventing the user from logging in and purchasing a ride from a Lyft driver. The user is only able to access their account again if they opt back in to receiving text messages, including promotional text messages, by texting "START" to the original text messages.