



March 5, 2024

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentation, CG Docket No. 02-278, CG Docket No. 21-402, CG Docket No. 17-49

Dear Ms. Dortch:

This *ex parte* Notice is submitted on behalf of the low-income clients of the **National Consumer Law Center, Consumer Action, Consumer Federation of America, Electronic Privacy Information Center (EPIC), National Consumers League, and U.S. Public Interest Research Group (U.S. PIRG)**. Representatives of these national consumer and privacy groups met with the following staff of the Consumer and Government Affairs Bureau on March 4, 2024: Jerusha Burnett, Zac Champ, Wesley Platt, Mika Savir, Mark Stone, David Tannenbaum, and Kristi Thornton. The attendees from the national groups included: me on behalf of the low-income clients of the National Consumer Law Center, Ruth Susswein of Consumer Action, Erin Witte of Consumer Federation of America, Chris Frascella of the Electronic Privacy Information Center, Eden Iscil of National Consumers League, and Teresa Murray of U.S. PIRG.

Most of the meeting was devoted to a full discussion of each of the points in our joint comments filed on February 26, 2024.¹ Additionally, we discussed the issue of whether the campaign registry's vetting and best practices' requirements developed by CTIA and implemented by its member companies and their messaging partners—the wireless service providers, CPaaS providers,

¹ *In re* Targeting and Eliminating Unlawful Text Messages, Comments of National Consumer Law Center, Consumer Action, Consumer Federation of America, Electronic Privacy Information Center, National Association of Consumer Advocates, National Consumers League, and U.S. PIRG, on Notice of Proposed Rulemaking in CG Docket No. 21-402, CG Docket No. 23-107, CG Docket No. 02-278 (filed Feb. 26, 2024), available at <https://www.fcc.gov/ecfs/document/102260762423180/1>.

aggregators, and registries²—should be permitted to continue without interference from the FCC.³ In particular we discussed whether the CTIA Messaging Principles and Best Practices protect consumers, particularly the requirement that business texts to consumers (called non-consumer texts in the CTIA document) are only permitted if the consumers have provided consent for those texts.

Our discussion raised the following points, which we would like to explain more fully in this *ex parte* Notice:

1. We believe that texting currently remains a valuable and trusted method of communication in the United States, largely because of the best practices developed by CTIA and adopted by its members and their partners. While we urge the Commission to do much more—as articulated most recently in the comments that were the initial subject of this meeting—the entire texting ecosystem would be a disaster if fewer industry-developed restrictions against unwanted texts were applied.
2. Despite the clear need to do more to stop unwanted and illegal text messages, the commenters urging the Commission to undo the protections triggered by the CTIA Messaging Principles simply want to send more texts. The goal of all of their arguments is to allow their text messaging practices to be unconstrained by the current protections imposed by CTIA, the wireless providers and other partners.⁴ In fact, at least one group urging that the CTIA consumer protections should be curtailed represents the telemarketers and lead generators responsible for flooding the nation’s telephones with unwanted telemarketing calls and texts.⁵ It would make absolutely no sense for the Commission to issue its December 18, 2023 Order⁶ clarifying the rule that one-to-one consent is required

² For example, the Campaign Registry conducts vetting of brands and campaigns that use ten-digit phone numbers to ensure that the text senders are who they purport to be. The Campaign Registry guidelines require users to follow CTIA’s Messaging Principles and Best Practices. *See* <https://www.campaignregistry.com/>.

³ *See* CTIA, Messaging Principles and Best Practices, at 4.2, (May 2023) available at <https://api.ctia.org/wp-content/uploads/2023/05/230523-CTIA-Messaging-Principles-and-Best-Practices-FINAL.pdf> (hereinafter CTIA Messaging Principles).

⁴ For example, the comments submitted by the National Opinion Research Center at the University of Chicago (“NORC”) request that texts sent by surveyors like it be “exempted from the use of wireless provider screening analytics.” Among other things, this would allow these texts to be sent without consent, and without a requirement that the texts must stop once a recipient has requested that they stop. *In re* Targeting and Eliminating Unlawful Text Messages, Comments of National Opinion Research Center at the University of Chicago at 2, on Notice of Proposed Rulemaking in CG Docket No. 21-402, CG Docket No. 23-107, CG Docket No. 02-278 (filed Feb. 26, 2024), available at <https://www.fcc.gov/ecfs/document/10227937513563/1>.

⁵ *See, e.g., In re* Targeting and Eliminating Unlawful Text Messages, Comments of REACH on Notice of Proposed Rulemaking in CG Docket No. 21-402, CG Docket No. 23-107, CG Docket No. 02-278 (filed Feb. 26, 2024), available at <https://www.fcc.gov/ecfs/document/102271147020746/1>.

⁶ *In re* Targeting and Eliminating Unlawful Text Messages; Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Advanced Methods to Target and Eliminate Unlawful Robocalls, Second Report and Order, Second Further Notice of Proposed Rulemaking in CG Docket Nos. 02-278 and 21-402, and Waiver Order in CG Docket No. 17-59, CG Docket Nos. 21-402, 02-278, & 17-59 (Rel. Dec. 18, 2023), available at <https://docs.fcc.gov/public/attachments/FCC-23-107A1.pdf>; Targeting and Eliminating Unlawful Text Messages; Implementation of the Telephone Consumer Protection Act of 1991,

for covered telemarketing calls and texts, while tying the hands of the industry to vet texters and the content of their texts. This outcome would be a major setback in the battle against unwanted calls and texts and it would be enormously unpopular among consumers, who are already flooded with unwanted spam (and scam) texts.

3. The commenters who seek to unwind and reduce existing protections fail to recognize that the reason that the text method of communication is currently so valuable is directly related to the protections the Messaging Principles and Best Practices and providers establish for these messages, particularly the control that these protections give consumers over the text messages they receive. If the Commission were to bend to the wishes of these commenters and constrain the current protective measures, text communications would unquestionably follow the sad path of voice calls⁷—people would no longer trust the mechanism and would no longer open and communicate by texts nearly as frequently as they do now. Text messages that consumers want, and need would be lost in a sea of unwanted messages.
4. In December 2022,⁸ we filed comments in this proceeding on behalf of 18 national and state consumer and privacy advocates, representing a broad swath of individual telephone subscribers across the United States. In those comments, we assured the Commission that the clients, members, and constituents represented by the organizations signing those comments are NOT clamoring for more text messages for which they have not provided consent.
5. While commenters challenge providers' authority to implement these protective measures, they are incorrectly arguing that because consent may not be required by the Telephone Consumer Protection Act (TCPA), the providers have no authority to require it.⁹ We strongly disagree that either the law or public policy considerations require these Messaging Principles and Best Practices and providers' protocols to be curtailed. There is nothing illegal about a private industry establishing rules that preserve the value of its services. And no consumer is prevented from receiving wanted texts—the primary requirement for these non-consumer texts is simply that the recipient must have consented to receive them.
6. If the consumer has not consented, the sender has a myriad of other ways of reaching that consumer. Alternative methods of providing senders' messages to consumers include (but

Proposed Rule, CG Docket Nos. 02-278, 21-402, 89 Fed. Reg. 5177 (Jan. 26, 2024), *available at* <https://www.govinfo.gov/content/pkg/FR-2024-01-26/pdf/2023-28833.pdf>.

⁷ TNS Survey: 75 percent of Americans Will Never Answer Calls from Unknown Numbers. *See* Business Wire, (July 26, 2022), *available at* <https://www.businesswire.com/news/home/20220726005226/en/TNS-Survey-75-of-Americans-Will-Never-Answer-Calls-from-Unknown-Numbers>; Seventy percent of phone subscribers no longer answer the phone for numbers they do not recognize; Octavio Blanco, Consumer Reports, Mad About Robocalls? (Apr. 2, 2019), *available at* <https://www.consumerreports.org/robocalls/mad-about-robocalls/>.

⁸ In our Reply comments (filed on behalf of 16 national and state consumer advocacy organizations, submitted December 9, 2022), we urged the Commission “to create and enforce incentives that will assist in limiting scammers’ use of texts as a tool to defraud vulnerable consumers. . . .” In re Targeting and Eliminating Unlawful Text Messages, Reply Comments of National Consumer Law Center et al. on Notice of Proposed Rulemaking in CG Docket No. 21-402, CG Docket No. 21-402 (filed Dec. 9, 2022), *available at* <https://www.fcc.gov/ecfs/document/12092983121644/1>.

⁹ *See* comments cited in Notes 4 and 5, *supra*.

are not limited to) emails, live voice calls, Facebook advertising, television, internet advertising, billboards, newspapers, blogs, podcasts, twitter, and more. CTIA's Messaging Principles for texts sent by businesses to consumers do not prevent these businesses from contacting consumers, but just prevent them from using mass texting campaigns to send them *unwanted* text messages. If unconsented-to texts were permitted, texting would soon lose its value for consumers. As the Commission noted with respect to ringless voicemail, "unwanted messages, messages the consumer has no control over, crowd potentially wanted messages out of the consumer's voicemail capacity."¹⁰ The same is true for text messages: if consumers do not have control over receipt of text messages, the text messaging function on their phones will rapidly become useless, as the messages they want and need will be lost in a sea of unwanted messages.

We would be glad to answer any questions. This disclosure is made pursuant to 47 C.F.R. § 1.1206.

Thank you very much for your consideration.

Sincerely,

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¹⁰ *In re* Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991, Petition for Declaratory Ruling of All About the Message, LLC, Declaratory Ruling and Order, CG Docket No. 02-278, at ¶ 12 (Rel. Nov. 21, 2022), available at <https://docs.fcc.gov/public/attachments/FCC-22-85A1.pdf>.