

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington DC 20544**

In the Matter of)	
)	
Targeting and Eliminating Unlawful Text Messages)	CG Docket No. 21-402
)	
Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991)	CG Docket No. 02-278
)	
Advanced Methods to Target and Eliminate Unlawful Robocalls)	CG Docket No. 17-59
)	

REPLY COMMENTS OF THE VOICE ON THE NET (VON) COALITION

The Voice on the Net (“VON”) Coalition provides these reply comments in response to the *Second Further Notice of Proposed Rulemaking* (“FNPRM”) issued in the above-referenced proceedings.¹ In its comments, VON Coalition urged the Commission to correct a deficit of oversight and the uneven application of mechanisms that mobile network operators (“MNOs”) have developed for reducing robotexts. Consumers, small businesses, and other legitimate users of text messaging services deserve consistent, technologically neutral safeguards for such services that apply industry-wide.² Today, a system that operates without enforceable safeguards has resulted in inconsistent application of anti-robotext policies, competitive imbalances, the

¹ *In re Targeting and Eliminating Unlawful Text Messages*, Second Report and Order and Second Further Notice of Proposed Rulemaking, FCC 23-107 (rel. Dec. 18, 2023) (hereinafter variously “*Second Report and Order*” and “*Second Further Notice of Proposed Rulemaking*”). The VON Coalition is a group of service providers, software providers, and equipment manufacturers, some of whom provide texting services to businesses of all sizes, nonprofit organizations, and other entities through unified communications as a service platforms.

² Comments of The Voice on the Net Coalition, CG Docket Nos. 21-402, 02-278, 17-59 (Feb. 26, 2023) (“VON Comments”).

blocking of legitimate messages, and insufficient transparency. The Commission can and should correct that.

The record compiled to date reflects significant support for the types of Commission safeguards that VON Coalition has proposed. A diverse set of commenters representing competitive providers, businesses of all sizes, researchers, and consumers have called on the Commission to adopt a common-sense system of oversight to govern appropriate text message vetting and blocking practices. In short, the record reflects the need for Commission involvement in the industry-led development of robotext mitigation strategies that serve the public interest.

I. THE RECORD DEMONSTRATES THAT OPAQUE AND INCONSISTENTLY APPLIED TEXT MESSAGE BLOCKING IS HARMING CONSUMERS AND SMALL BUSINESSES.

There is broad agreement among text messaging providers (including VON Coalition members), consumer groups, and trade organizations that consumers need protection from unlawful text messages *and* that an effective blocking program need not come at the expense of legitimate communications. Unfortunately, the record also reveals that some of the practices engaged in by MNOs are causing lawful, legitimate, and wanted text messages to be blocked. Even if unintentional, these inconsistent practices harm consumers, small businesses, and other organizations and deprive them of legitimate channels of communication.³

³ See Comments of INCOMPAS at 4-7, CG Docket Nos. 21-402, 02-278, 17-59 (Feb. 26, 2023) (“INCOMPAS Comments”); Comments of the American Bankers Association, ACA International, American Financial Services Association, America’s Credit Unions, Bank Policy Institute, Mortgage Bankers Association, and Student Loan Servicing Alliance at 10-11, CG Docket Nos. 21-402, 02-278, 17-59 (Feb. 26, 2023) (“ABA Comments”); Comments of the Ad Hoc Telecom Users Committee at 2, CG Docket Nos. 21-402, 02-278, 17-59 (Feb. 26, 2023) (“Ad Hoc Comments”); Comments of the National Opinion Research Center at the University of Chicago at iii, 7, CG Docket Nos. 21-402, 02-278, 17-59 (Feb. 26, 2023) (“NORC Comments”); Comments of Responsible Enterprises Against Consumer Harassment at 2, 4, CG Docket Nos. 21-402, 02-278, 17-59 (Feb. 26, 2023).

In some cases, MNOs have adopted inflexible policies, based entirely on their own judgements, that result in the blocking of text messages that consumers actually want to receive.⁴ As the University of Chicago’s National Opinion Research Center observed, MNOs can “use [the] vague [“unwanted” call] standard as justification to block far more than simply illegal texts,” which “places all discretion on what to block in the hands of wireless providers or their analytics partners.”⁵ The American Bankers Association (“ABA”)⁶ pointed to MNOs’ “unfair application” of “voluntary blocking practices” in certain industries, and noted that some blocking criteria have led to the “mislabeling and erroneous blocking of legitimate and sometimes critical messages.”⁷ INCOMPAS similarly noted that “wireless carriers’ broadly applied methods of blocking . . . deprecate and degrade competitive offerings relative to comparable wireless offerings in the marketplace.”⁸ These observations reflect the experiences of VON Coalition members’ own customers, many of whom have seen important and wholly legitimate text messages blocked by MNOs with little or no justification—sometimes with severe consequences for them the people they serve.⁹

Multiple commenters pointed out the need for consistent notification and clear pathways for redress after a text message is blocked, a serious gap under the current MNO-directed robotext mitigation regime. The ABA dedicated an entire section of its comments to the notion

⁴ NORC Comments at 9-10, 13; ABA Comments at 11; INCOMPAS Comments at 5-6.

⁵ NORC Comments at iii.

⁶ Note that the American Bankers Association’s comments were made jointly with several other trade associations as indicated in the footnote above. We refer to these commenters collectively as the “American Bankers Association” or “ABA” for the sake of brevity.

⁷ ABA Comments at 10-11, 13; Ad Hoc Comments at 2-3.

⁸ INCOMPAS Comments at 4-6.

⁹ VON Comments at 6.

that MNOs should “provide notification to the sender when a provider blocks a text message and to promptly resolve claims of erroneous text blocking,” noting that “the members of the Associations who have experienced the blocking of their outbound text messages continue to report that they do not consistently receive notice when their texts are blocked.”¹⁰ Similarly, the Ad Hoc Telecom Users Committee, which represents enterprise communications users, would like to “ensur[e] that businesses and their customers receive important, time-sensitive text communications” and suggests terminating providers “clearly and immediately notify text message originators when their outbound texts are blocked.”¹¹

Blocking lawful, legitimate messages does not advance the shared goal of preventing unlawful and unwanted text messages. And doing so without adequate notification only compounds the problem. This conduct deprives consumers of communications and prevents small businesses and other organizations from reaching their customers. The solution is for the Commission to oversee a competitively and technologically neutral system that targets unlawful text messages and allows legitimate text messages to reach consumers.

II. THE RECORD REFLECTS SUBSTANTIAL SUPPORT FOR COMPETITIVELY AND TECHNOLOGICALLY NEUTRAL TEXT MESSAGING SAFEGUARDS, OVERSEEN BY THE COMMISSION.

The record reflects substantial agreement on the need for competitively and technologically neutral text messaging safeguards that are developed collaboratively by the text messaging industry and other affected stakeholders, with oversight by the Commission. The Commission can and should pursue such safeguards through three principal means: (1) Commission administration of a public process for selecting a neutral, third-party entity tasked

¹⁰ ABA Comments at 13.

¹¹ Ad Hoc Comments at 2.

with administering registration of application-to-person (“A2P”) texting;¹² (2) oversight of the neutral registration entity and any related industry-led solutions intended to curb unlawful texts, with assurance that such solutions will apply equally to *all* providers, and with recourse to address erroneous blocking;¹³ and (3) making anti-robotext efforts subject to clear and transparent policies that are logically tailored to the goal of reducing unlawful texts,¹⁴ including by ending the practice under which MNOs and/or The Campaign Registry (“TCR”) mis-categorize third-party, person-to-person text messages as “A2P” traffic.

MNOs currently enjoy unilateral authority to decide when, whether and under what conditions text messages are sent. Indeed, multiple commenters documented the ways that the current, wholly unregulated framework leaves too much discretion to MNOs. For example, the University of Chicago’s National Opinion Research Center suggested that the Commission “cannot simply turn a blind eye to the nearly absolute discretion that wireless providers claim to have and to exercise in their screening and blocking of texts.”¹⁵ INCOMPAS likewise suggested that “[t]o meaningfully address robotexting, the Commission must examine and correct for market distortions in this messaging framework,” including “operational and economic burdens

¹² There is precedent for all of these suggestions in the rules that the Commission adopted for oversight of an industry traceback consortium. *Cf.* 47 C.F.R. § 64.1203 (requiring “an entity that seeks to register as the single consortium that conducts private-led efforts to trace back . . . robocalls” to “[d]emonstrate that [it] is a neutral third party.”).

¹³ *Cf. id.* (requiring the traceback consortium to “[c]onduct an annual review to ensure compliance” with Commission rules).

¹⁴ *Cf. id.* (requiring the traceback consortium to file “a copy of the consortium’s written best practices, with an explanation thereof” and to certify that its efforts “focus on fraudulent, abusive, or unlawful traffic”).

¹⁵ NORC Comments at 7.

that are unevenly applied, especially for smaller companies.”¹⁶ ABA also expresses concern that MNOs’ practices in this area “are undertaken without any government oversight.”¹⁷

Commission oversight would benefit both competition *and* consumer protection. As to competition, MNOs offer services in competition with unified communications as a service (“UCaaS”) platforms, and like all providers they are rational economic actors. Given this market structure, the Commission has a logical role to play in ensuring a level playing field in which all traffic is subject to the same policies, while also enabling both MNOs and UCaaS platforms (among other stakeholders) leeway to adjust anti-robotext strategies as events warrant.¹⁸ As to consumer protection, consistent application of policies to traffic from MNOs, UCaaS providers, and other senders increases the likelihood that bad texts will get blocked before they can reach consumers. If a process for vetting and/or blocking of text messages is effective, it is only natural that it would work best when applied to all traffic.

VON thus disagrees with the view that MNOs *alone* should develop and administer best practices, policies, and procedures.¹⁹ To ensure transparent, evenly applied, and effective

¹⁶ INCOMPAS Comments at 4.

¹⁷ ABA Comments at 11.

¹⁸ For instance, there is at a minimum a lack of clarity and transparency around the degree to which MNOs’ enterprise customers are required to register text campaigns with The Campaign Registry (“TCR”). CTIA’s comments suggest that “all non-consumer message senders—including customers of wireless providers—are expected to register [with TCR].” Comments of CTIA at 10. VON Coalition has been unable to locate specific MNO policies to that end. Even assuming for the sake of argument that MNOs require registration of actual A2P traffic, the fact remains that UCaaS providers’ enterprise customers today are required to register employee-to-employee text messaging sent over a UCaaS platform as though it were A2P traffic. In contrast, the same employees could text over an enterprise wireless account supplied by an MNO without being subjected to the voluminous requirements for A2P traffic. Whether intentional or not, this competitive imbalance is exactly the sort of market distortion that Commission oversight could readily correct.

¹⁹ *See, e.g.*, Comments of Verizon at 4, CG Docket Nos. 21-402, 02-278, 17-59 (Feb. 26, 2023) (taking the position that the wireless industry should have “the autonomy to enforce its own best practices” without “second guessing from the sidelines”).

methods to mitigate unlawful and unwanted robotexts, a broad coalition of stakeholders should develop best practices, policies, and procedures. MNOs can and should play an important role in developing these systems, but so should competitive providers, businesses, and consumer representatives.

To be clear, the Commission’s oversight over text messaging safeguards need not involve the promulgation of prescriptive rules governing, for example, when and how text messages should be blocked. VON Coalition agrees with CTIA in that stakeholders working to mitigate robotexts should “have the flexibility to adopt and adapt solutions and processes” to mitigate unlawful and unwanted robotexts.²⁰ Again, however, where VON Coalition parts ways with CTIA is with regard to the need for *some* oversight, just as there is basic oversight in other critical functions that impact use of NANP resources (e.g., the Industry Traceback Group, the LNPA, etc.). But so long as there is a neutral arbiter exercising basic oversight to ensure technological and competitive neutrality, transparency, and accountability, the Commission need not adopt prescriptive rules at this time.

III. THE COMMISSION HAS AUTHORITY TO IMPLEMENT THESE TEXT MESSAGING SAFEGUARDS UNDER BOTH THE TCPA AND SECTION 251(e) OF THE COMMUNICATIONS ACT.

As VON Coalition noted in its prior comments, the Commission has authority to set standards for and oversee the implementation of competitively and technologically neutral text messaging safeguards under the TCPA and the TRACED Act, as well as Section 251(e) of the Communications Act. VON Coalition and CTIA have agreed that the TCPA is a source of authority in this proceeding. VON Coalition respectfully disagrees with CTIA, however, in its

²⁰ Comments of CTIA at 10, CG Docket Nos. 21-402, 02-278, 17-59 (Feb. 26, 2023) (“CTIA Comments”).

assertion that “[t]he *Second Report and Order* was wrongly decided” with respect to its conclusion that Section 251(e) provides the Commission with authority to regulate text message blocking practices.²¹ CTIA’s principal argument is that because text messages “are not telecommunications and do not touch the PSTN,” they are not subject to regulation under Section 251(e).²² However, as the Commission stated in the *Second Report and Order*, “the authority granted in [S]ection 251(e)(1) is not restricted to voice calls routed via the PSTN”²³ and “Section 251(e)(1) provides [the Commission] independent jurisdiction to prevent the abuse of NANP resources, regardless of the classification of text messaging.”²⁴ The Commission’s plenary authority over NANP numbering under Section 251(e) therefore provides a strong basis for its implementation of regulatory measures such as those addressed above.

²¹ CTIA Comments at 26.

²² *Id.* at 25.

²³ *Second Report and Order* ¶ 64.

²⁴ *Id.*

CONCLUSION

For the reasons described above, in VON Coalition's prior comments, and in the broader record, the Commission should exercise its authority to guide the development and implementation by industry of technologically and competitively neutral text messaging safeguards.

Respectfully submitted,

/s/

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