

November 30, 2023

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
45 L St. NE
Washington, DC 20554

Re: *Notice of Ex Parte Meeting in Re: WC Docket No. 17-97;
CG Dockets 17-59; 21-402 & 02-278*

Dear Ms. Dortch:

On Tuesday, November 28, 2023, Elizabeth Sullivan, Senior Director of Advocacy and Counsel, Credit Union National Association; Amanda Smith, Senior Regulatory Affairs Counsel, National Association of Federally-Insured Credit Unions; Jonathan Thessin, Vice President/Senior Counsel, Regulatory Compliance and Policy, American Bankers Association; Leah Dempsey, counsel for ACA International, Brownstein, Hyatt Farber Schreck; and Michael Pryor, counsel for the Credit Union National Association (collectively, the Associations), met virtually with Commissioner Anna Gomez; Deena Shetler, Acting Chief of Staff and Legal Advisor for Media and International; Edyael Casaperalta, Acting Legal Advisor for Wireless, Public Safety and Consumer Protection; and Hayley Steffen, Acting Legal Advisor for Wireline and Space.

During the meeting, the participants discussed the Federal Communications Commission's draft Second Report and Order and Second Further Notice of Proposed Rulemaking regarding illegal automated text messages.¹ We also addressed, consistent with previous comments, the Commission's ongoing proceedings regarding revocation of consent under the Telephone Consumer Protection Act (TCPA).²

We reiterated our strong support for actions to remove bad actors and illegal calling and texting traffic from the network. We noted that banks, credit unions, and other financial services providers make informational calls to their customers, often providing critical information such as fraud alerts, past-due notices, and payment reminders. These calls are

¹ *Targeting and Eliminating Unlawful Text Messages*, CG Docket No. 21-402, 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, FCC-CIRC2312-02, Nov. 22, 2023 (Draft Robotext Order or Draft Robotext Further Notice).

² See, e.g., Comments of ACA International and the Credit Union National Association, CG Docket No. 02-278, filed July 31, 2023; Comments of the American Bankers Association, et al, CG Docket No. 02-278, filed July 31, 2023.

often erroneously blocked or mislabeled by terminating carriers and their analytic engine partners.

The Draft Robotext Second Order and Further Notice

We expressed our support for the Draft Robotext Order’s proposal to require terminating providers to block texts following Commission notification. We also welcomed the Draft Robotext’s Further Notice’s language seeking comment on providing protections against erroneous blocking of text messages.³ We stated that the Commission should specifically seek comment on whether it should adopt the same general redress protections for erroneously blocked text messages that are required when providers are engaged in blocking calls based on reasonable analytics, which are set forth in section 64.1200(k)(8) and (9) of the Commission’s rules. Although some modification of the specific language in these rules may be required in the context of text messages, the general obligations are applicable. These include providing notification of blocking; providing a single point contact that is readily available on the provider’s public-facing website; resolving disputes within a reasonable period of time and, at a minimum, providing an update within 24 hours; and promptly lifting blocking upon a creditable claim of erroneous blocking. The Commission already required terminating providers to provide a single point of contact for erroneous text blocking, including blocking done pursuant to voluntary wireless industry efforts.⁴ Consistent with its decision requiring a point of contact to resolve voluntary text blocking disputes, the Commission should also seek comment on applying all of the redress protections described above not only to Commission authorized or mandated blocking based on analytics, but also to blocking based wireless industry voluntary initiatives such as CTIA’s’s “Messaging Principles and Best Practices.”⁵ As described more fully in the next paragraph, wireless providers have blocked lawful collection-related text messages pursuant to these Best Practices.

We also recommended that the Commission seek comment on requiring content-neutral blocking practices for the wireless industries’ voluntary, private blocking initiatives. As noted in the Draft Robotext Further Notice, unlike calls, providers have the ability to block texts based on a review of the text’s content. The Draft Robotext Further Notice thus seeks comment on whether the Commission should “require that blocking be content as well as competitively neutral.”⁶ We appreciate the Commission seeking comment on this question but also recommend that the question be extended to the private blocking that the wireless industry conducts. We noted that some wireless carriers’ codes of conduct disallow text

³ Draft Robotext Further Notice at para. 69. *See, e.g.*, Comments of American Bankers Association et al, CG Docket No. 02-278, at 12-13, filed June 6, 2023 (urging Commission to require mobile wireless providers to provide protections for erroneously blocked text messages sent by legitimate companies).

⁴ *Targeting and Eliminating Unlawful Text Messages*, CG Docket No. 21-402, Report and Order and Further Notice of Proposed Rulemaking, FCC 23-31, paras. 27- (rel. March 17, 2023).

⁵ *See, e.g.*, CTIA Messaging Principles and Best Practices, <https://api.ctia.org/wp-content/uploads/2023/05/230523-CTIA-Messaging-Principles-and-Best-Practices-FINAL.pdf> (May 2023) (last visited November 29, 2023).

⁶ Draft Robotext Further Notice at para. 61.

messages based solely on their content, even if the sender has received consent from the recipient and otherwise complies with TCPA and wireless best practices.⁷ We thus propose the following additional, highlighted language be added to the Draft Robotext Further Notice at paragraph 61:

61. Should we limit the length of time for which blocking is required? If so, how long should we require providers to block? Alternatively, should we require originating and/or terminating providers to block using the “substantially similar” standard applied in our call blocking rules?¹²⁸ We believe that texting may present concerns unique from calling that justify a different standard, or require additional guidance for compliance. For example, while a voice service provider will not have the content of a particular call prior to that call reaching the recipient, a texting provider likely does have access to this information. Given that, should we require that blocking be content as well as competitively-neutral? **Should the Commission require content-neutral blocking for both Commission authorized or mandated blocking as well as blocking undertaken pursuant to wireless industry voluntary blocking efforts?** Are there any other standards we should consider?

Finally, during the meeting, we addressed the Draft Robotext Order’s provisions regarding ‘lead generation.’ The Draft Robotext Order would require senders of text messages and callers to obtain a consumer’s prior express written consent from a single seller at a time before placing marketing calls or texts.⁸ We expressed support for the Commission’s efforts to ensure consumers understand the entities to which the consumer is providing consent to be called. Although the Associations are still reviewing this language, we noted that the proposal could potentially harm consumers by making it more burdensome for consumers to utilize comparison-shopping websites—i.e., websites that consumers visit for the purpose of receiving a limited number of price quotes for a product or service, such as a mortgage or personal loan, that the consumer specifically seeks when visiting the website.

Revocation of Consent

With respect to the Commission’s proceeding regarding revocation of consent, we explained that our members respect and carry out customer requests to opt out of receiving autodialed or prerecorded voice calls or text messages, and rarely use these technologies for marketing purposes. Customers may hold several accounts with a financial institution or business—e.g., a deposit account, mortgage, and credit card—and they consent to receive different types of informational messages related to each account. To avoid consumer harm, it is critical that businesses not be compelled to apply a customer’s revocation request to a broader category of messages than the customer intends. We explained that consumers are unlikely to expect that their request to stop receiving communications about a discrete matter would result in the elimination of *all* communications from their financial institution, including fraud alerts and text messages required to be sent for the consumer to access the account under multi-factor authentication.

⁷ See, e.g., Inside ARM, At Least One Carrier Now Expressly Prohibits Debt Collection Text Campaigns, Feb. 11, 2021 [At Least One Carrier Now Expressly Prohibits Debt Collection Text Campaigns \(insidearm.com\)](https://www.insidearm.com/2021/02/11/at-least-one-carrier-now-expressly-prohibits-debt-collection-text-campaigns/).

⁸ Draft Robotext Order at para. 29.

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We also discussed our practical concerns, consistent with filed comments, regarding the Commission's proposal to require callers to honor revocation requests within 24 hours. Financial institutions and other companies may find it infeasible to implement a 24-hour requirement for processing these requests because companies receive revocation requests through multiple channels; may not be able to process all revocations through automated means; and may manage customer numbers by line of business, and not in a centralized manner. Implementing a revocation request this quickly is particularly impracticable if businesses are not able to require the use of standardized language.

Please contact the undersigned if you have any questions.

Sincerely,p

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