

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of )

Rules and Regulations Implementing the )  
Telephone Consumer Protection Act of 1991 )

CG Docket No. 02-278

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**COMMENTS OF THE VOICE ON THE NET COALITION**

The Voice on the Net Coalition (“VON”)<sup>1</sup> respectfully files these comments in support of the petition for clarification submitted by the P2P Alliance in the above-captioned proceeding.<sup>2</sup>

The P2P Alliance seeks Commission clarification that peer-to-peer (“P2P”) text messaging is not subject to the Telephone Consumer Protection Act (“TCPA”)<sup>3</sup> restrictions on calls to mobile phone numbers. VON agrees that P2P messaging is not the type of communication technology that Congress intended to be subject to the TCPA’s restrictions or that the FCC has sought to proscribe in its implementation of the TCPA.

Despite its recent introduction, P2P text messaging has shown to be enormously popular with the public. As the P2P Alliance states, P2P is now used in myriad industries. Schools and universities leverage this messaging technology to share information with students and alumni about class registration and other activities, non-profit organizations can use P2P to efficiently

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<sup>1</sup> The VON Coalition works to advance regulatory policies that enable Americans to take advantage of the promise and potential of IP-enabled communications, including interconnected Voice over Internet Protocol (“VoIP”). For more information, see [www.von.org](http://www.von.org).

<sup>2</sup> *Consumer and Governmental Affairs Bureau Seeks Comment on The P2P Alliance Petition for Clarification Under the Telephone Consumer Protection Act*, Public Notice, CG Docket No. 02-278 (rel. May 23, 2018); *Petition for Clarification of the P2P Alliance*, CG Docket No. 02-278 (filed May 3, 2018) (“*Petition*”).

<sup>3</sup> Codified at 47 U.S.C. § 227. See 47 C.F.R. § 64.1200.

communicate with employees and volunteers, and job recruiters can stay connected with potential applicants. Political campaigns have also successfully used this technology to engage supporters.

Further, as the P2P Alliance correctly points out, P2P messaging by definition does not involve the use of an autodialer<sup>4</sup> and is a means of communication to a consenting recipient.<sup>5</sup> P2P messages sent for political purposes are also outside of the TCPA's scope.<sup>6</sup>

First, P2P messages are not crafted by what the TCPA calls an "autodialer."<sup>7</sup> Unlike an autodialer, P2P messaging requires deliberate human intervention to send messages by manually dialing and transmitting each message. As a result, P2P messages are also not sent by an autodialer.<sup>8</sup>

The TCPA's restrictions are also inapplicable to calls or messages made with the recipient's prior consent.<sup>9</sup> Mindful of the FCC's policy that "Congress did not expect the TCPA to be a barrier to normal, expected, and desired communications,"<sup>10</sup> commercial entities use P2P technology to communicate with individuals who have already consented to such interactions.<sup>11</sup>

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<sup>4</sup> *Petition* at 3-4.

<sup>5</sup> *Id.* at 4.

<sup>6</sup> *Id.* at 6.

<sup>7</sup> An autodialer has the ability "(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers." 47 U.S.C. § 227(a)(1). Such a device must have "the capacity to dial numbers without human intervention." *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, CG Docket No. 02-278, 30 FCC Rcd 7961, 7973, ¶ 14 (2015) ("2015 Order"). See also *ACA International v. FCC*, No. 15-1211, slip op. at 28 (D.C. Cir. Mar. 16, 2018) (affirming that the "'auto' in autodialer ... would seem to envision non-manual dialing of telephone numbers.").

<sup>8</sup> See 47 U.S.C. § 227(b)(1)(A).

<sup>9</sup> 47 U.S.C. §§ 227(b)(1)(A), (b)(1)(B), and (b)(2)(A).

<sup>10</sup> *GroupMe, Inc./Skype Communications S.A.R.L.*, Declaratory Ruling, CG Docket No. 02-278, 29 FCC Rcd 3442, 3444, ¶ 8 (2014).

<sup>11</sup> "[P]ersons who knowingly release their phone number have in effect given their invitation or permission to be called at the number which they have given[.]" *Rules and Regulations Implementing the Telephone Consumer*

As a result, P2P messaging is not subject to the TCPA’s prohibition on calls made without “prior express consent of the called party.”<sup>12</sup> The P2P Alliance also accurately reiterates that texts made for political purposes are exempt from the TCPA’s restrictions on telephone solicitations.<sup>13</sup>

P2P messaging enables parties to communicate with each other through personalized, human-to-human interactions. These individual communications rooted in pre-existing relationships are not within the letter or spirit of the TCPA’s restrictions on autodialers and other intrusive solicitations. For these reasons, the VON Coalition urges the Commission to grant the petition.

Respectfully submitted,  
VOICE ON THE NET COALITION

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*Protection Act of 1991*, Report and Order, 77 FCC Rcd 8752, 8769, ¶ 31 (1992); *Request of ACA International for Clarification and Declaratory Ruling*, Declaratory Ruling, CG Docket No. 02-278, 23 FCC Rcd 559, 566, ¶ 9 (2008); *2015 Order* at ¶ 49.

<sup>12</sup> 47 U.S.C. § 227(b)(1)(A).

<sup>13</sup> 47 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200(f)(14). *See also Telephone Consumer Protection Act Robocall and Text Rules: Biennial Reminder for Political Campaigns About Robocalls and Text Abuse*, Enforcement Advisory No. 2016-03, 31 FCC Rcd 1940 (rel. Mar. 14, 2016).