



**I. BEFORE ADOPTING A REGULATORY SOLUTION, THE COMMISSION MUST ANALYZE MORE INFORMATION ABOUT UNLAWFUL TEXT MESSAGES.**

The VON Coalition appreciates the need to address unlawful texting given the scant existing information and the reality that blocking legitimate texts will have an adverse impact on competition and the reliability of the text messaging network. Text messages' role in modern communications extends well beyond texting family and friends. Today, text messages provide timely notifications for doctor's appointments, school closings, dry cleaning pick-ups, parent-teacher conferences, extreme weather warnings, and restaurant reservations. Text messages allow employees and colleagues to communicate with each other as well as with family and friends—sometimes using employer-provided devices or accounts. Users rely on text messages for myriad communications that make up the fabric of everyday life. Unfortunately, text messages have also become a vehicle for fraudsters, and VON agrees that the Commission and the industry should collaborate to fight back against these unlawful text messages. But before acting on any particular solution, the Commission needs to gather, then analyze, additional information about unlawful texts as well as the currently available tools and solutions.

First, the scope and sources of unlawful text messaging are not well documented in the *NPRM*. VON recommends that the Commission gather and analyze more data about the magnitude of unlawful text messages and where and how they originate. In particular, the Commission should consider data from a range of reliable sources. The *NPRM* relies heavily on information from RoboKiller, which has a business interest in blocking texts.<sup>3</sup> In fact, other than

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<sup>3</sup> See *id.* ¶¶ 3, 43, 45.

the Commission’s own consumer complaints,<sup>4</sup> RoboKiller is the only quantitative source that the Commission relies on.<sup>5</sup>

Second, the Commission should consider the tools that consumers already have to combat unlawful texts and how additional consumer education can help consumers prevent unlawful texts from reaching their devices.<sup>6</sup> Tools to address robotexts already exist. VON members have deployed a variety of solutions, including filtering to identify suspected illegal texts and viruses, allowing users to activate spam filters, allowing users to block specific numbers, providing warning messages when a text might actually be spam, launching trust portals, and adopting stringent terms of use that all SMS/MMS users must agree to. These are just some of the solutions the industry has adopted, and the Commission should take account of all solutions when deciding whether to impose new rules.

Third, text messaging services differ from voice services in ways that suggest they require different approaches, both for technical reasons as well as because of how they are used. Voice and messaging work differently. Voice calls move in real time, while text message uses a “store-and-forward” model that allows more opportunities to identify and flag or otherwise address illegal texts. Caller ID authentication and STIR/SHAKEN help to solve the problem of trust in the voice traffic as it moves in real time, but that is not how text messages work, and simply applying the anti-robocall approach for voice is likely to be inappropriate for texts. In addition, the immediacy of a voice call makes that service fundamentally different from texting.

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<sup>4</sup> In 2020, the Commission received one consumer complaint for roughly every 80 million text messages. *Id.* ¶ 3 n.6.

<sup>5</sup> *See id.* ¶¶ 3, 43, 45.

<sup>6</sup> *See id.* ¶ 23 (asking about providers’ current voluntary device-level or application-based text blocking efforts to reduce illegal texts), ¶ 37 (seeking comment on consumer education).

When a customer receives a voice call that appears to be from a known or acceptable caller ID, the customer has two choices—answer immediately and take the risk that it is an unlawful or fraudulent call using spoofed caller ID, or do not answer and potentially miss a wanted or important call. By contrast, when a customer receives a text, the customer does not face the question of whether to “pick up” immediately. Rather, the customer can choose to take the time to examine the message to see whether it appears to be legitimate, and then choose to keep it, to reply, to block it, to ignore it, or to delete it if it is unwanted for any reason. While customers may choose to respond to a text right away,<sup>7</sup> they do not have to decide within a few seconds whether to do so, as they do with voice calls. The timing and methods for identifying and addressing illegal voice calls and illegal texts are different.

Put simply, VON agrees with the Commission’s effort to develop a better understanding of illegal texting. Doing so is prerequisite to deciding whether a regulatory solution is necessary and, if so, what that solution is.

## **II. SOLUTIONS FOR UNLAWFUL TEXT MESSAGES MUST BE COMPETITIVELY NEUTRAL, REASONABLE, AND TRANSPARENT.**

The *Notice* asks about applying various solutions to the problem of illegal texts. VON believes that an industry solution could be developed. That industry-wide solution, however, has not yet emerged, and currently available solutions for voice are ill-suited to texting. If the

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<sup>7</sup> The *NPRM* states that consumers “read nearly all texts they receive, and do so nearly immediately.” *Id.* ¶ 7 & nn.22 & 23 (citing *Petitions for Declaratory Ruling on Regulatory Status of Wireless Messaging Service*, Declaratory Ruling, 33 FCC Rcd. 12,075, 12,080 ¶ 12 n.41 (2018) (“*Text Messaging Declaratory Ruling*”). The Commission’s cited source is comments filed seven years ago. Even just four years ago, the Commission noted that “wireless messaging remains a relatively spam-free service,” which may have encouraged consumers at the time to read all texts and do so immediately. *Text Messaging Declaratory Ruling* at 12,080 ¶ 12 n.41. Consumer behavior may have evolved.

Commission decides to pursue a technological solution, the Commission can and should encourage industry standards organizations to develop solutions for future Commission consideration. This approach would be more effective than hastily applying a solution designed for voice calling, not text messaging.

Before adopting any mandatory solution for illegal texting, the Commission must carefully consider potential harms to consumers and competition.<sup>8</sup> The “solution” should not reduce competition or otherwise damage the market for these services.

Some solutions that have emerged provide tools for consumers and give them the ability to control which texts they receive and which are blocked.<sup>9</sup> But other solutions—like The Campaign Registry—raise concerns about harm to competition and innovation that are not necessary to accomplish the goal of preventing illegal texts from reaching consumers.

Competitive neutrality must be at the forefront of any solution to illegal texting. Future solutions must not endorse or enable anti-competitive practices that providers have seen from industry solutions available today. Such practices include:

- requiring the sharing of customer lists and phone numbers with competitors or otherwise using customer data for marketing;
- imposing unique obligations on application-to-person (A2P) text messaging when the Commission has recognized that all forms of text messaging are subject to abuse;<sup>10</sup>
- requiring registration of numbers or customers for some providers but not others;

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<sup>8</sup> See *id.* ¶ 24. VON suggests that the standard of competitive neutrality be considered in evaluating all potential solutions.

<sup>9</sup> See *supra* at 3.

<sup>10</sup> See *NPRM* ¶ 6 (discussing abuse of person-to-person text messaging in the form of SIM card fraud); see also *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 et al.*, Declaratory Ruling and Order, 30 FCC Rcd. 7961, 7970 ¶ 7 (2015) (stating that “[d]ialing options” are now “available via smartphone apps” that enable “[c]alling and texting consumers *en masse*” (emphasis in text)).

- allowing some providers but not others to decide which texts are blocked;
- allowing competitors to contact each other’s customers to “resolve” texting issues;
- assessing fees or charges on some providers but not others, or in an anti-competitive way; or
- deciding which texts should be blocked based on guidelines that are not shared and vetted.

Finally, if the Commission considers requiring providers to analyze their traffic, the Commission must be clear about two things. First, it must define an illegal text message.<sup>11</sup> Second, it must provide more guidance on the types of analytics that providers would be expected to perform. In the voice context, some types of analytics to identify illegal calls have proved to be imprecise, causing legitimate calls to be mischaracterized as spam or blocked.<sup>12</sup> For example, we understand that some voice providers could mark numbers newly added to customer accounts as spam by default pending a later assessment. The Commission should proceed carefully before mandating any solutions that have the potential to extend similar problems to texting.

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<sup>11</sup> See *NPRM* ¶ 23.

<sup>12</sup> See, e.g., Matt Gephardt, *Important Calls Mistakenly Blocked or Flagged as Spam are Costing Utahns*, KSL (Oct. 21, 2022), <https://www.ksl.com/article/50499965/get-gephardt-important-calls-mistakenly-blocked-or-flagged-as-spam-are-costing-utahns> (last visited Nov. 8, 2022).

### III. CONCLUSION

VON looks forward to continuing to work with the Commission to prevent illegal text messages from reaching consumers. As we do so, it is important to ensure that any solution reflects a thorough understanding of the scope and sources of illegal texts and preserves competition and the interests of consumers.

Respectfully submitted,



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