

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

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| In the Matter of |) | |
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| 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 |
| |) | |

COMMENTS OF THE VOICE ON THE NET (VON) COALITION

The Voice on the Net (“VON”) Coalition provides these comments in response to the *Second Further Notice of Proposed Rulemaking* (“FNPRM”) issued in the above-referenced proceedings.¹ In these comments, the VON Coalition asks that the Commission provide necessary oversight and guidance to any industry-led solution for reducing robotexts and other unwanted text messages—both to promote longstanding principles of technological neutrality in use of North American Numbering Plan (“NANP”) numbers, and to further the shared goal of reducing unlawful and unwanted text messages.

In contrast to the Commission’s oversight role with industry-led solutions to combat unlawful robocalls (e.g., the Industry Traceback Group), currently the Commission has no guidelines or ongoing oversight of industry-led policies and practices that determine whether,

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.

how, and under what circumstances text messages from and within businesses, government agencies, non-profit organizations and other entities are sent over the PSTN. This policy vacuum should not continue, as it leaves too many important questions around use of NANP numbers on the PSTN entirely to unregulated private interests. It also has resulted in inconsistent application of vetting policies and procedures, with some industry participants subject to more rules than other participants, depending upon whether a text is initiated via a unified communications as a service (“UCaaS”) platform or on a mobile network operator’s (“MNO’s”) own network.

For example, under the current system, a small business customer of a non-MNO UCaaS provider is subjected to significant vetting and costs before it can even allow its own employees to use texting via the UCaaS platform for conversational purposes. If that same small business uses an MNO-provided account to send texts, however, there may be little or no vetting involved. This risks a process that is both under- and over-inclusive, by allowing some text messages to go out to the PSTN without third-party vetting while subjecting other texts to substantial burdens ultimately borne by end users. These lopsided outcomes are inconsistent with the Commission’s goals and its plenary authority and obligation to oversee the use of NANP numbers.

The VON Coalition accordingly urges the Commission to promote competition and transparency, protect the usefulness of the PSTN and the NANP, and set a strong foundation for mitigating unlawful text messages by implementing even-handed rules that establish a level playing field for originating providers of all kinds. In establishing such rules, the Commission would further its important goal of preventing unlawful text messages.

I. THE PROCESS FOR VETTING AND AUTHORIZING PHONE NUMBERS FOR TEXT MESSAGING CURRENTLY LACKS COMMISSION OVERSIGHT NECESSARY TO PROTECT CONSUMERS AND PRESERVE COMPETITION.

Businesses, governments, and non-profit organizations rely on texting to reach consumers on their mobile devices. SMS and MMS (collectively referred to as SMS or text messaging throughout) services are provided both by competitive, IP-based providers, such as the members of the VON Coalition, and MNOs, such as the large wireless carriers. With texting a growing medium of communication, the Commission naturally should ensure that it understands and has an appropriate level of involvement in this ecosystem—both as part of its broader oversight of the PSTN and the NANP and as part of its ongoing efforts to “ensure consumers can continue to trust text messaging.”² Today, however, this ecosystem lacks oversight, to the detriment of the Commission’s consumer protection goals in this proceeding and broader principles of technological neutrality on the PSTN.

The situation today: non-tech neutral policies that do not apply industry-wide. All providers of SMS have an interest in, and a responsibility for, the process by which their non-conversational text message campaigns are vetted. For example, VON Coalition members in the UCaaS space develop, implement, and maintain detection systems that identify and quickly mitigate unlawful or inappropriate text messages based on sender- and message-level signals, stopping many such text messages or campaigns well before they reach their intended targets. Where applicable, VON Coalition members work with partners in industry and government—including with the MNOs—to identify and mitigate unlawful text messaging campaigns.

UCaaS providers and their customers also are subject to rules established by MNOs that apply only to third-party, non-MNO traffic. In recent years, MNOs have designated a single, for-

² *Second Report and Order* ¶ 2.

profit entity, The Campaign Registry (“TCR”), as the principal intermediary for any text messaging, whether conversational (e.g., from one employee to another employee) or non-conversational (e.g., an appointment reminder or marketing message) in nature, sent via SMS by a non-MNO customer. Each non-MNO customer must register itself (known as a “brand”) and its use for text messages (known as “campaigns”), including for uses such as political outreach or person-to-person conversational texting. If TCR approves both the brand and the campaign, such text messages likely make their way onto the MNOs’ networks for delivery to end users; if TCR rejects or delays approval (whether on its own initiative or at the direction of an MNO), the text messages will not reach their intended recipients. The role currently played by TCR is an important one and can be beneficial to both senders and recipients of non-conversational SMS and mass-messaging campaigns. But lack of oversight over this process gives a private entity an outsized role, making the consequences of any error or imbalance in its processes, even if unintentional, substantial.

Notably, the processes administered by TCR apply only to text messaging *not* originated over the MNO’s network. This asymmetry in vetting poses risks to the PSTN on multiple fronts. To the extent that the policies TCR has established are effective in reducing unlawful texts *when those policies are applied*, failure to apply those policies on a consistent basis across the industry undermines the Commission’s consumer protection goals. There likewise are obvious competition and technological neutrality concerns that arise from applying *significant*, third-party vetting to texts originated on a non-MNO UCaaS platform but *not* to traffic originated directly on an MNO’s network. If all traffic is subject to the same rules and policies, there is a decent chance that the policies will be reasonable and tailored to *bona fide* consumer protection purposes. But when rules and policies apply unequally, there is risk that unnecessary burdens

will creep in, undermining competition and raising prices artificially for UCaaS providers and their customers.

Costs are significant, magnifying the competitive harm of not applying vetting policies to all traffic. TCR registration requirements obligate customers to endure a substantial administrative process in which they must provide TCR with information about their business and pay administrative fees, which are increased for high-volume texting campaigns subject to additional vetting.³ Processing of customers' applications can result in weeks-long delays in accessing SMS capabilities,⁴ and campaigns may be cancelled with little or no warning, thus shutting off a customer's SMS access. VON Coalition members themselves also must register with TCR under a separate process that involves payment of fees and disclosure of business information. These significant costs and burdens only magnify the competitive imbalances described above, such that costs for UCaaS providers and their customers are higher than those of MNOs not required to vet traffic through TCR.

Non-MNO conversational traffic is subject to unnecessary procedures—further magnifying competitive harms. Today any text messaging traffic from a UCaaS platform is categorized as application to person (“A2P”) traffic that requires full vetting, even when that traffic *is* in fact person-to-person (“P2P”) traffic, such as messages exchanged between coworkers over SMS through the UCaaS platform. This practice effectively subjects all such

³ The Campaign Registry, *The Campaign Registry CSP User Guide* at 8-26 https://www.campaignregistry.com/Assets%2FTCR-CSP-User-Manual_Doc_V6.pdf. This customer information is sensitive competitive information that exposes gives the wireless carriers insight into UCaaS providers' customer base.

⁴ The Campaign Registry, *10DLC and The Campaign Registry* at 8 (“Campaign review times can range from 1-4 weeks.”), https://www.campaignregistry.com/Assets%2FTCR-Intro_V4.pdf; see also RingCentral, *Registering your business SMS/MMS* (“The approval process for your campaign(s) typically takes 20-30 days.”), <https://support.ringcentral.com/sms-registration.html>.

traffic originated on a UCaaS platform to limiting rules designed primarily for marketing campaigns. In contrast, conversational texts originated directly on an MNO's network are not subject to vetting rules for A2P traffic. This is wrong, as traffic is either conversational or not; the level of vetting should not differ based on the platform on which the traffic is originated.

Vetted traffic is still subject to erroneous blocking – again magnifying competitive harms of inconsistently applied policies. A further problem is that in the experience of VON Coalition members, text messaging that has been fully vetted *still* is subject to erroneous blocking and deliverability problems after it leaves the UCaaS provider's platform. Many VON Coalition members' customers have seen important messages blocked, including: texted dental appointment reminders, medical office texts with links for a patient's test results, texts from personal transport companies informing drivers that they need to move their vehicles to avoid being towed, and texts directing sports league participants to the correct event facilities. One hotel in Nevada even had text messages it sent to guests via a UCaaS platform (e.g., reservation reminders, texts to arrange housekeeping services) blocked by an MNO because the MNO incorrectly believed the texts were related to "gambling." The consequences of errant blocking can be catastrophic for VON Coalition members' customers, making it nearly impossible to do daily business and send wanted information to their customers and employees. Again, were the vetting policies to be applied uniformly, including to traffic originated on an MNO's network, we would have more confidence that erroneous blocking would be properly addressed.

II. THE COMMISSION SHOULD STEP IN TO ENSURE THAT ANY TEXT MESSAGING SAFEGUARDS APPLY INDUSTRY-WIDE, PROTECT COMPETITION, AND FURTHER THE GOAL OF REDUCING UNLAWFUL AND UNWANTED TEXT MESSAGES.

While industry-led efforts play a critical role, the goal of reducing unlawful text messaging is too important to leave to private interests alone. The result of a lack of oversight is

plain: without basic guidelines akin to what the Commission has done for the ITG and other industry processes affecting the PSTN, there presently is a system that is both over- and under-inclusive, and that is competitively imbalanced. As the Commission considers “additional steps to protect consumers from unwanted and unlawful text messages,” it should be guided by its fundamental goal of minimizing such messages across the entire text messaging ecosystem. To that end, the Commission should require that all industry rules and processes to protect consumers apply industry-wide and be technology-neutral. Specifically, the VON Coalition suggests that the Commission implement the following principles:

1. A single set of rules that apply industry-wide. Any guidelines or best practices for the sending of text messages should distinguish only between message types, and not between types of providers or the technology used to send messages. Any registration mechanism for non-conversational text messaging should cover all such traffic regardless of the originating source and technology, including traffic originated with MNOs. No category of originating providers should be exempt or subject to less exacting requirements than any other category.
2. Selection of a neutral entity via a public process, with opportunity for comment. The Commission should select the entity tasked with administering registration and review of campaigns through a public process that considers broad input from stakeholders. TCR would of course be able to participate and compete in this process.⁵
3. Efficient and effective policies and procedures. The entity responsible for vetting campaigns should have policies and procedures that are as efficient as possible, without unnecessary burden to users of the system.
4. Transparency and logical connection to purpose. Policies and procedures governing registration and vetting should be clear and logically connected to the goal of stopping

⁵ VON takes no position on whether TCR or another entity could be the Commission-chosen registration entity, provided that the entity is neutral and subject to Commission rules and oversight. TCR has expressed its “commitment to working collaboratively with carriers, direct connect aggregators, and campaign service providers and confirmed the company’s willingness to engage directly with stakeholders regarding these or other issues to the extent any concerns arise.” *See* Letter from Matthew A. Bill, Counsel for TCR and Tata Communications to Marlene H. Dortch, Secretary, CG Docket Nos. 21-402, 02-278, and 17-59 (filed Feb. 7, 2024). The VON Coalition applauds this commitment, and would willingly serve on any working group established to refine TCR’s policies and procedures, much as it has participated in the efforts by USTelecom to establish rules for Traceback.

unlawful text messages. For example, conversational text messaging traffic should not be miscategorized as “A2P” traffic subjected to vetting intended for marketing campaigns.⁶

Adoption of these principles in Commission rules requiring competitive and technological neutrality in the text message space would be consistent with other instances in which the Commission has overseen selection and operating principles for critical intermediaries, including in the PSTN. The Commission has ample precedent for such involvement, most notably from its experience overseeing and approving registration of USTelecom’s Industry Traceback Group as the single entity for private-led traceback efforts for robocalls. Among other things, the Commission required any entity that wished to serve in this role to submit a Letter of Intent in which it demonstrated its qualifications, including its neutrality.⁷ Similarly, while an industry, multi-member body, North American Portability Management, LLC (“NAPM”), contracts with the Local Number Portability Administration (“LNPA”) for managing all aspects of number portability, the Commission oversees and approves the selection of the LNPA and requires that the contract between NAPM and the LNPA meet rigorous standards for, among other things, cybersecurity, competitive neutrality, and reliability.⁸ While the Commission of course need not follow the exact same procedures for a text message registry, the Commission should promptly move to bring the critical functions performed today by TCR under the same form of important Commission oversight.

⁶ For example, conversational traffic treated as P2P could be defined as covering (a) traffic between non-commercial endpoints, (b) two-way traffic between a business and its customers (e.g., a financial advisor texting with a client) or between two businesses, and (c) traffic between employees of a business.

⁷ *In re Implementing Section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act*, Report and Order, 37 FCC Rcd 9509 ¶ 3 (rel. Aug. 22, 2022).

⁸ *Wireline Competition Bureau Opens Proceeding and Seeks Comment on the Selection Process for the Local Number Portability Administrator*, Public Notice, DA 23-940 at 3 (Rel. Oct. 10, 2023).

III. THE COMMISSION HAS AUTHORITY TO ADOPT STANDARDS GOVERNING INDUSTRY-LED POLICIES FOR VETTING TEXT MESSAGES, INCLUDING TO CREATE AN INDUSTRY-WIDE, NEUTRAL FRAMEWORK.

The *Second Further Notice of Proposed Rulemaking* requests comment on whether the Commission has authority to “adopt rules addressing” unlawful texts under the TCPA or TRACED Act,⁹ and whether “section 251(e) of the [Communications] Act grant[s] . . . authority to adopt implementation of authentication for text messages.”¹⁰ Both authorities support the Commission’s ability to oversee industry-led policies on use of SMS and MMS on the PSTN.

First, the TRACED Act directed the Commission to “initiate a rulemaking to help protect a subscriber from receiving unwanted calls or text messages from a caller using an unauthenticated number.”¹¹ It also directed the Commission to consider “the best means of ensuring that a subscriber or provider has the ability to block calls from a caller using an unauthenticated North American Numbering Plan [(NANP)] number” in making such rules.¹² Adoption of a process for approving and overseeing the entity responsible for vetting text messaging would further these statutory directives by ensuring that all similar traffic is subject to the same vetting process.

Second, Section 251(e) of the Communications Act gives the Commission “exclusive jurisdiction over those portions of the [NANP] that pertain to the United States.”¹³ Text messaging uses NANP numbering. Today, however, there is a system operating outside of Commission oversight that governs who may send texts, pursuant to what policies, and under

⁹ *Second Further Notice of Proposed Rulemaking* ¶ 90.

¹⁰ *Id.* ¶ 91.

¹¹ 47 U.S.C. § 227 note (Protections From Spoofed Calls).

¹² *Id.*

¹³ 47 U.S.C. § 251(e)(1).

what circumstances. Given the Commission’s plenary authority over NANP numbering, it would be entirely appropriate for the Commission to step in and take a greater role in overseeing the registration and vetting process for text messaging.

CONCLUSION

For the reasons set forth above, the Commission should step in to oversee industry-led processes for vetting of text messages, including to ensure application of any policies in an industry-wide and technologically neutral manner.

Respectfully submitted,

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