



November 9, 2022

Re: CG 21-402;
FCC 22-72

To: Federal Communications Commission

**Comment to Notice of Proposed Rule Making
Targeting and Eliminating Unlawful Text Messages**

The Consumer Relations Consortium (CRC) is an organization comprised of more than 60 national companies representing creditors, data and technology providers, and compliance-oriented debt collectors that are larger market participants. Established in 2013, CRC is dedicated to a consumer-centric shift in the debt collection paradigm. It engages with all stakeholders—including consumer advocates, federal and state regulators, academic and industry thought leaders, creditors, and debt collectors—and challenges them to move beyond talking points. The CRC’s focus is on fashioning real world solutions that seek to improve the consumer’s experience during debt collection. CRC’s collaborative and candid approach is unique in the market.

CRC members exert substantial positive impact in the consumer debt space, servicing the largest U.S. financial institutions and consumer lenders, major healthcare organizations, telecom providers, government entities, hospitality, utilities, and other creditors. CRC members engage in millions of compliant and consumer-centric interactions every month at all stages of the revenue cycle. Our members subscribe to the following core principle:

“Collect the Right Debt, from the Right Person, in the Right Way.”

We appreciate the opportunity to respond to the Notice of Proposed Rulemaking dated September 27, 2022 (FCC 22-72) with respect to the proposal requiring mobile wireless providers to block illegal text messages. Generally, The CRC supports the proposed regulations, however, as explained in the enclosed comment, we believe particular care must be taken to ensure that valid and legal text messages sent by companies in the accounts receivable sector are not blocked. We believe the FCC can work with mobile wireless providers to ensure that this preferred method of communication with consumers remains a viable option for the accounts receivables industry.

Sincerely,

Missy Meggison
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Executive Director, Consumer Relations Consortium

COMMENT TO NOTICE OF PROPOSED RULEMAKING

The FCC Should Not Conflate “Unwanted” with “Illegal”

While the CRC overwhelmingly supports the FCC’s goal of requiring mobile wireless providers to block illegal text messages, CRC is concerned that the FCC is conflating the terms “unwanted” and “illegal.” For instance, the FCC states that “we propose to require mobile wireless providers to block texts, at the network level, that purport to be from invalid, unallocated, or unused numbers, and numbers on a Do-Not-Originate (DNO) list.” 87 Fed. Reg. 61271, 61274. However, many participants in the accounts receivable space, including CRC members, are not subject to the DNO rules and provisions.

Many CRC members were hopeful about their ability to utilize text messaging as a way to communicate with consumers as that is preferred method of communication according to the Consumer Financial Protection Bureau (“CFPB”). But just because a particular consumer deems a text message “unwanted” does not mean that the text message is “illegal.” Whether a text message is “unwanted” is going to be subjective based on the consumer; whereas an “illegal” text message must objectively violate some statute or regulation. The CFPB took very specific steps to ensure that consumers who receive “unwanted” text messages can opt-out of such communications. There is an entire section in Regulation F (“Reg. F”) devoted to providing consumers with an opt-out and it is required on every single message sent to a consumer. *See* 12 C.F.R. § 1006.42. At a bare minimum, the FCC should ensure that any rule related to text messaging does not create a conflict with the text messaging rules promulgated by the CFPB related to debt collection. *See, e.g.*, 12 C.F.R. § 1006.6(d)(5).

The CRC believes that the FCC’s continued reliance on the subjective “unwanted” nature of some text messages is problematic because in some instances, a text message may be the only way a debt collector can reach a consumer.

In general, industry commenters supported the use of electronic communications, noting that, compared to non-electronic communications such as mail and telephone calls, electronic communications are faster and more cost effective; enable debt collectors to reach consumers who do not answer the telephone or who change addresses frequently; provide consumers with more privacy and greater control over the time and place of engagement; and create a digital record of a

consumer’s interactions with a debt collector... The Bureau determines that electronic communications can offer benefits to consumers and debt collectors. Technologies such as email and text messaging allows consumers to exert greater control over the timing, frequency, and duration of communications with debt collectors, including by choosing when, where, and how much time to spend responding to a debt collector’s email or text message. For debt collectors, these technologies are a more effective and efficient means of communicating with some consumers. The Bureau declines to categorically prohibit the use of these potentially beneficial communication media where Congress has not amended the FDCPA to prohibit their use.

85 Fed. Reg. 76734, 76755.

CRC is concerned that by conflating “unwanted” text messages with “illegal” text messages, the FCC could do what the CFPB refused to do—categorically prohibit the use of text messages for debt collectors.

This consequence could lead to an argument regarding the First Amendment to the United States Constitution. The impact of having a debt collector’s valid and legal text message could easily be seen as a content-based restriction and incongruous with the First Amendment. While CRC does not believe that the FCC is making an outright attempt to restrict certain content-based speech (debt collection text messages), the result of an inartfully drafted rule such as the one proposed could be such a prior restraint on speech. *See Barr v. American Association of Political Consultants*, 140 S. Ct. 2355, 2346 (2020) (quoting *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95 (1972)) (“Above ‘all else, the First Amendment means that the government’ generally ‘has no power to restrict expression because of its message, its ideas, its subject matter, or its content.’”).

Although the FCC makes clear that it wants to adopt “standard to ensure competitively- and content-neutral grounds for blocking”, the proposed rule does not address how it will address mobile wireless providers who choose to unilaterally block content-based restrictions. For instance, T-Mobile recently put a blanket prohibition on sending debt collection related messages.¹

¹ See <https://www.consumerfinancemonitor.com/2022/08/19/text-messages-from-debt-collectors-not-in-my-backyard/>

The FCC should not equate Over-the-Top messaging platforms with SMS messaging.

CRC does not believe the FCC should regulate Over-the-Top (OTT) messaging because OTT messaging is not limited to mobile wireless providers. OTT messaging uses an internet-based instant messaging application (like Facebook Messenger, WhatsApp, Telegram, LINE, and WeChat) which can be done from either a computer or a mobile wireless phone. Thus, it does not exclusively need a mobile network for messages to be sent, unlike SMS which requires a mobile network. Additionally, SMS messages are sent from one mobile wireless phone number to another, but many OTT services do not require a mobile wireless phone number. CRC believes that the FCC would overstep by attempting to regulate text messages that can be sent through a medium other than a mobile wireless network.

CRC agrees that a single point of contact should be required to be placed on a terminating provider's website.

CRC agrees that the FCC should “require that each terminating provider blocks texts provide a single point of contact, readily available on the terminating provider’s public-facing website, for receiving text blocking error complaints and verifying the authenticity of the texts.” 87 Fed. Reg. 61271, 61272. Many CRC members want to utilize text messages to communicate with consumers and vice versa. When there is a problem with a particular mobile wireless provider, the company must be able to resolve the issue efficiently and with as little impact on the consumer as possible. By requiring mobile wireless providers to provide a readily and publicly available point of contact, the FCC would be attempting to limit the impact of blocked text messages to both the company and consumer. CRC generally supports the proposals set forth in this section. *Id.*

CRC urges the FCC to pay close attention to digital equity and inclusion as any rule that is adopted should not disparately impact certain protected classes.

CRC’s largest concern is the impact the FCC’s proposed rules regarding “unwanted” text messaging on certain protected classes. While the FCC wants to continue to promote digital equity for all, these proposals may have a disparate on the following groups of protected class:

- For instance, by seeking a blanket prohibition on “unwanted” text messages (as opposed to “illegal” text messages which CRC supports), the proposed rule could disparately impact the deaf or hearing-impaired community. The deaf and hearing-impaired community rely more and more on text messages rather than TTY machines to communicate in real-

time. In fact, many members of this community have data-only plans with mobile wireless providers. In other words, these data-only plans do not allow for telephone calls, but only text messages and other data access.² A blanket-ban on certain text messages could lead to a consumer not being able to access much-needed information.

- The blind or visually impaired community could also be disadvantaged by a blanket-ban on what the FCC deems “unwanted” text messages because they might not answer calls from an unknown telephone number but would be able to use a screen reader (or other technology) to access a text message. Similarly, many companies are opting to send information via text rather than the traditional letter.
- The well-discussed “digital divide” affects impoverished people with unstable living conditions or inconsistent access to stable internet. These consumers are more likely to have a personal cell phone and would be severely harmed by the proposal related to text messaging. This is especially true if the FCC decides it also has the authority to regulate OTT messaging. Impoverished consumers are more likely to use OTT messaging because it is easier to access (with a public internet connection, like at a local library) than a mobile wireless telephone plan.
- Similarly, the wide array of consumers along the neurodivergent spectrum as well as those consumers with certain mental health conditions may be particularly sensitive to noise or social interactions, including telephone calls. In some instances, both telephone calls and lengthy letters may cause so much anxiety or overwhelm that a consumer may simply choose to not to respond. However, the research indicates that members of this community show a strong preference for communicating via text message because it is a short-written communication which the consumer can respond to on their own timetable.³ A blanket ban on “unwanted” text messages could disparately impact this group as well.

² See <https://www.cbsnews.com/news/for-deaf-texting-offers-new-portal-to-world/>

³ See <https://journals.sagepub.com/doi/full/10.1177/13623613211014995>