



December 1, 2023

**VIA ELECTRONIC FILING**

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

**Re: In the Matter of Targeting and Eliminating Unlawful Text Messages, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket Nos. 02-278 AND 21-402, 17-59**

Dear Ms. Dortch:

The Office of Advocacy respectfully submits this *ex parte* letter for consideration by the Federal Communications Commission (FCC or Commission) in the above-referenced proceeding.

**About the Office of Advocacy**

Congress established the Office of Advocacy (Advocacy) under Pub. L. 94-305 to represent the views of small businesses before federal agencies and Congress. Advocacy is an independent office within the Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. Part of our role under the Regulatory Flexibility Act (RFA) is to assist agencies in understanding how regulations may impact small businesses, and to ensure that the voice of small businesses is not lost within the regulatory process.<sup>1</sup> Congress crafted the RFA to ensure that regulations do not unduly inhibit the ability of small entities to compete, innovate, or to comply with federal laws.<sup>2</sup> In addition, the RFA's purpose is to address the adverse effect that "differences in the scale and resources of regulated entities" has had on competition in the marketplace.<sup>3</sup>

**Background**

On November 1, 2023, Advocacy held a small business roundtable focused on pending regulatory matters before the FCC. Participants included small businesses and trade association representatives, as well as staff from the FCC who observed the discussion. Among other topics, small businesses raised concerns about the FCC's proposal to require that callers covered by the FCC's robocalling and robotexting regulations must obtain consent to make such calls or texts from one customer at a time (1-1 consent). Roundtable participants shared that small businesses who purchase sales leads, and small businesses who act as lead generators, would be significantly disadvantaged by such a change. On November 21, 2023, the FCC announced its December meeting agenda and

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<sup>1</sup> Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

<sup>2</sup> *Id.* § 2(a)(4)-(5) (codified at 5 U.S.C. § 601 note).

<sup>3</sup> *Id.* § (4).

published a draft Second Report and Order and Further Notice of Proposed Rulemaking (Draft Order)<sup>4</sup> which would finalize the 1-1 consent requirement proposed by the FCC, while continuing to seek comment on other proposed rules to target and eliminate unwanted calls and text messages. Small businesses and their representatives have again reached out to Advocacy and expressed confusion and concern about the impact of the 1-1 consent requirement.

### **Small Business Concerns**

Small businesses have shared with Advocacy that the FCC's proposal to require sellers to obtain consent to call or text from one consumer at a time could increase costs significantly for small businesses that both buy and sell sales leads. Many small businesses, such as the small credit unions and small insurance companies that Advocacy has spoken with, rely on purchasing sales leads from lead generators as their primary marketing method. These businesses lack the advantages of larger firms that can afford targeted advertising but offer important competitive alternatives that benefit consumers. They have shared some unease regarding their future ability to purchase affordable sales leads, compared to larger entities. Small businesses that aggregate consumer information and sell leads have also contacted Advocacy to share concerns about the feasibility and cost of obtaining consent for each individual seller that might meet a consumer's needs.

Advocacy respectfully requests that the FCC continue to seek comment from small entities on the 1-1 consent proposal and conduct a more extensive analysis of the economic impact the proposal could have on small entities before making a final decision about whether to implement the requirement. Given the concerns that small businesses have shared with our office, Advocacy believes that the Initial Regulatory Flexibility Analysis (IRFA) published with the proposed rule<sup>5</sup> and Final Regulatory Flexibility Analysis (FRFA) in the Draft Order may underestimate the impact that the final rule would have on small entities.<sup>6</sup> Seeking additional comment and conducting further analysis of the costs of the proposal will provide a better record to support any final action on this matter.

Thank you for considering the concerns of small businesses in this proceeding. Should you have any questions please contact me or my staff at (202) 516-6290.

Respectfully submitted,

/s/ Major L. Clark III  
Deputy Chief Counsel  
Office of Advocacy  
U.S. Small Business Administration

/s/ Jamie Belcore Saloom  
Assistant Chief Counsel  
Office of Advocacy  
U.S. Small Business Administration

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<sup>4</sup> See Fed. Comm'n Comm'n, *Targeting and Eliminating Unlawful Text Messages* (Nov. 21, 2023), <https://www.fcc.gov/document/targeting-and-eliminating-unlawful-text-messages>.

<sup>5</sup> See *Targeting and Eliminating Unlawful Text Messages, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket Nos. 02-278, 21-402, Report and Order and Further Notice of Proposed Rulemaking, FCC 23-21 (Mar. 17, 2023).

<sup>6</sup> Fed. Comm'n Comm'n, *supra* note 4, at 49.